



## AGENDA ITEM SUMMARY

### BACKGROUND

Silvies Valley Ranch (SVR) is seeking exemptions from fish passage requirements for 10 artificial structures located on Jump Creek, a tributary to the Silvies River (referred to here as “fish passage exemption requests”). The fish passage exemption requests relate to previously constructed structures located above two artificial barriers to native migratory fish (NMF). The first barrier is a dam (44.021147 -118.984303) whereas the second barrier occurs at the confluence of Jump Creek and the Silvies River (44.025400, -118.946241), where anthropogenic changes led to a disconnection between Jump Creek and the Silvies River. Both locations are complete barriers to NMF migration.

History: SVR initially applied for these fish passage exemptions in 2019, along with exemptions for artificial obstructions on three other creeks in the area (Flat Creek, Paine Creek and Jack Andy Creek). These fish passage exemption requests were part of a larger fish passage plan resulting from a Consent Agreement between SVR and the Oregon Department of State Lands, which required SVR to comply with Oregon’s fish passage law on multiple streams where artificial structures had been constructed.

The Fish Passage Task Force (FPTF) reviewed the fish passage exemption requests for artificial obstructions on the four streams on October 18, 2019 (Jump Creek, Flat Creek, Paine Creek, and Jack Andy Creek). The FPTF decided not to make a recommendation at that time, instead requesting that SVR provide more information on the artificial structures and asking the Oregon Department of Fish and Wildlife (Department) to gather more information on the habitat conditions, fish presence, and habitat connectivity in the relevant area.

In September 2020, SVR reapplied only for fish passage exemptions for the structures on Jump Creek (Attachment 2). This application included details on the location, composition, and size of each structure. The Department conducted additional sampling in Jump Creek during high flows the following spring. The exemption request and findings from the Department were submitted to the FPTF on October 15, 2021, and there was unanimous recommendation to approve the exemptions, with a vote of 9-0. Minutes from the October 2019 and 2021 meetings are located online at the [FPTF website](#).

Statute: ORS 509.585 allows for an exemption from the requirement to provide fish passage, or alternates to fish passage at an artificial obstruction if the Commission finds that there is no appreciable benefit to providing fish passage.

Rules: Consistent with ORS 509.585, OAR 635-412-0025 allows the Department to grant an exemption if the total stream distance, including tributaries, affected by the artificial structure is less than or equal to one mile to a natural barrier. Pursuant to OAR 635-412-0010(4)(e), the Department presents an exemption request to the FPTF for a recommendation in these instances. Additionally, OAR 635-412-0025(10) requires the Commission to review exemption requests in instances where the total stream distance affected by artificial structures is more than one mile. In these cases, the FPTF makes a recommendation to the Commission.

Note: An exemption is valid until the next fish passage triggering event (construction, abandonment, fundamental change in permit status) at these locations, and if conditions change in the future such that providing passage at these sites would result in an appreciable benefit to native migratory fish, these exemptions can be revoked or amended (see ORS 509.585(9)(b) and OAR 635-412-0025(6)). Exemptions are reviewed every seven years to determine if circumstances have changed such that the basis for the exemption no longer applies.

## PUBLIC INVOLVEMENT

- September 29, 2019. The exemption requests were posted for a 3-week public comment period commencing on this date.
- October 18, 2019. The FPTF met on this date to review the exemption requests and chose not to approve the exemption requests and requested additional documentation on the artificial structures, the habitat conditions, fish presence, and habitat connectivity in the relevant area.
- September 21, 2021. Information on the Jump Creek exemption requests was posted for a 3-week public comment period commencing on this date. The posted information included
  - the application,
  - the Department benefit analysis (Attachment 3),
  - fish sampling summary,
  - minutes from the 2019 meeting, and
  - a pre-recorded video PowerPoint presentation.
- October 15, 2021. The exemptions were considered and recommended for approval by the FPTF at their public meeting held on this date.

## ISSUE

**Fish Passage Exemption Requests for 10 Artificial Structures on Jump Creek.**

## ANALYSIS

### Sampling:

- The relevant 10 artificial obstructions span approximately 2.8 miles of Jump Creek.
- The distance from the lowest artificial structure upstream to the end of possible fish distribution is approximately 3.7 miles.

The Department sampled for fish in the area during the fall of 2019 and the spring of 2021. Sampling in the fall of 2019 was conducted upstream of SVR property. Sampling in 2021 was conducted along the length of Jump Creek and included an evaluation of streamflow and connectivity. No NMF were found in the area during either survey. The Department also confirmed the existence of two full fish passage barriers (described above) that are located downstream from the proposed exemption sites.

Finding:

The fish passage exemption requests may be approved by the Commission consistent with ORS 509.585 and OAR 635-412-0025 based upon the following findings:

- NMF were not found in Jump Creek during sampling in 2019 or 2021.
- Poor habitat conditions above the downstream barrier to fish passage (e.g., the dam located at 44.021147 -118.984303) make the persistence of NMF in that area unlikely.
- Two downstream barriers (a dam located at 44.021147 -118.984303 and a second barrier at the confluence of Jump Creek and the Silvies River, at 44.025400, -118.946241) prevent fish from migrating upstream.
- The FPTF recommended approving the exemptions in a 9-0 vote on October 15, 2021.

**OPTIONS**

1. Approve the fish passage exemption requests for 10 structures on Jump Creek
2. Not approve the fish passage exemption requests for 10 structures on Jump Creek and require providing passage at each location.

**STAFF AND FISH PASSAGE TASK FORCE RECOMMENDATION**

1. ODFW staff and the Fish Passage Task Force recommend granting the fish passage exemptions as requested for artificial obstructions on Jump Creek.

**DRAFT MOTION**

I move to approve the fish passage exemption requests for 10 artificial structures on Jump Creek because the Commission finds that there would be no appreciable benefit to native migratory fish if passage was provided at these structures.

EFFECTIVE DATE: Upon Approval