



AGENDA ITEM SUMMARY

BACKGROUND

Oregon's fish passage statutes allow owners of an artificial obstruction to choose between three options when there is a triggering event (i.e., construction, abandonment, fundamental change in permit status). These options include 1) providing fish passage, 2) obtaining a waiver, or 3) obtaining an exemption. Each of these options has specific requirements in statute and rule that the Commission and Department must follow when completing their analysis and determination.

In January 2022, the Department presented the Commission with a request from Silvie Valley Ranch (SVR) to grant an exemption from fish passage requirements at 10 artificial structures located on Jump Creek, a tributary to the Silvie River (referred to here as "fish passage exemption requests") (Attachment 2). The Commission reviewed and tabled these fish passage exemption requests, asking for more information including:

- Additional information on the stream conditions and sampling results (Attachments 4, 5 and 6)
- The Fish Passage Task Force (FPTF) meeting minutes (Attachment 7)
- The Oregon Department of State Lands (DSL) Consent agreement (Attachment 8)
- Information on the water right and geology of the Jump Creek (Attachment 9, provided by the applicant)

The Department has compiled this additional information and is requesting a decision from the Commission on these exemption requests to allow Silvie Valley Ranch to make progress on addressing the requirements associated with their DSL consent agreement.

Prior History: SVR initially applied for fish passage exemptions for the structures in Jump Creek in 2019. This exemption request was part of a larger fish passage plan resulting from a Consent Agreement between SVR and DSL, which required SVR to comply with Oregon's fish passage law on multiple streams where artificial structures had been constructed (Attachment 8).

The FPTF reviewed the 2019 request and decided not to make a recommendation at that time, instead requesting that SVR provide more information on the artificial structures and asked the Department to gather more information on the habitat conditions, fish presence, and habitat connectivity in the relevant area.

In September 2020, SVR reapplied for a fish passage exemption for the structures on Jump Creek (Attachment 2). This application included the additional details that were requested by the FPTF on the location, composition, and size of each structure. The Department conducted additional sampling in Jump Creek during high flows the following spring (Attachments 5 and 6). The exemption requests and findings from the Department (Attachment 3) 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](#). Attachment 6 contains abbreviated meeting minutes, covering only the section of the FPTF minutes that relate to the Jump Creek exemptions.

PUBLIC INVOLVEMENT

- The exemption requests were posted for a 3-week public comment period commencing on September 29, 2019.
- The FPTF met on October 18, 2019 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.
- Information on the Jump Creek exemption requests was posted for a 3-week public comment period commencing on September 21, 2021. The posted information included:
 - the application,
 - the Department benefit analysis,
 - fish sampling summary,
 - minutes from the 2019 meeting, and
 - a pre-recorded video PowerPoint presentation.
- The exemptions were considered and recommended for approval by the FPTF at their public meeting held on October 15, 2021.
- The Commission considered the exemption requests on January 15, 2022 and requested more information. Public comments were provided prior to the meeting.
- The public has additional opportunity to comment as part of the October Commission presentation.

ISSUE

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

ANALYSIS

Fish and Habitat Surveys:

The Department sampled for fish and habitat 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 as requested by the FPTF. During these surveys Department staff failed to find native migratory fish (NMF) but did document poor habitat conditions and the presence of downstream barriers that currently prevent NMF from entering the section of stream associated with the SVR fish passage exemption requests (Attachments 3 and 4).

Finding:

ORS 509.585 states that the Commission shall grant exemption from the requirement to provide fish passage, or alternatives to fish passage, at an artificial obstruction if the Commission finds that there is no appreciable benefit to providing fish passage. The Department has concluded that there is currently no appreciable benefit to providing fish passage at these sites based upon the following findings (Attachments 3 and 4):

- NMF are not currently present in Jump Creek, based on sampling in 2019 or 2021.
- NMF cannot currently access Jump Creek because of two downstream barriers (a dam located at [44.021147 -118.984303](#) and the disconnected confluence of Jump

Creek and the Silvies River, at [44.025400, -118.946241](#)) prevent fish from migrating upstream.

- NMF are unlikely to survive year-round in Jump Creek because of poor habitat conditions, including drying of the stream channel.

Exemptions are reviewed every seven years to determine if circumstances have changed such that the basis for the exemption no longer applies. If conditions change in the future such that providing passage at these sites would result in an appreciable benefit to NMF, these exemptions can be revoked or amended (see ORS 509.585(9)(b) and OAR 635-412-0025(6)).

OPTIONS

1. Approve the fish passage exemption requests for 10 artificial obstructions on Jump Creek because providing fish passage at these 10 artificial obstructions would not currently provide an appreciable benefit to NMF.
2. Not approve the fish passage exemption requests for 10 structures on Jump Creek.

STAFF AND FISH PASSAGE TASK FORCE RECOMMENDATION

Department 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 were provided at these structures.

EFFECTIVE DATE: Upon Approval