



OREGON DEPARTMENT OF FISH AND WILDLIFE

Fish Passage Task Force

Abbreviated _ MEETING MINUTES

October 18, 2019

Oregon Department of Fish and Wildlife Commission Room
Salem, Oregon

Silvies Valley Ranch – Fish Passage Exemption Requests

ODFW Proposal Presentation

Kregg Smith, ODFW Assistant Fish Passage Coordinator, presented information on 160 fish passage exemptions requested by Silvies Valley Ranch (SVR).

In 2013, ODFW and Oregon Department of State Lands (DSL) became aware of these structures and pursued investigation action at SVR. This investigation resulted in a Consent Agreement (CA), signed in 2014 between SVR and DSL, with a Remedial Action Plan (RAP).

Smith reminded the Task Force of the three options when a trigger occurs:

- Providing fish passage
- Receiving a fish passage waiver
- Receiving a fish passage exemption

SVR constructed 160 artificial beaver dam (ABD) structures on Jump, Flat, Paine, and Jack Andy Creeks. There is less than one mile between each barrier. These creeks historically contained redband trout, but no native migratory fish are currently present. SVR constructed many more ABD's on Camp and Hays Creeks, but those streams are currently fish bearing, so the RAP required fish passage. Additional ABD's were constructed in areas without historic fish presence where fish passage was not required.

Smith reminded the FPTF that they received written public comments prior to the meeting. ODFW field staff reviewed historic surveys, conducted additional biological surveys and field observations to determine where fish are presence or absent. For example, a 1999 survey of Jack Andy Creek on Forest Service Lands above the structures identified redband trout, but in 2019, no redband trout were located in the same area, so that area was determined to have had fish present historically, but no fish are currently present.

Smith displayed an overview of the locations where the ABD's are located. This request is to exempt fish passage at 10 AO's on Jump Creek, 91 on Flat Creek, 26 on Paine Creek, and 33 on Jack Andy Creek.

Cunningham asked about the identification of the structures as ABD's throughout the application and presentation noting that these appear to be dirt and rock push up barriers. Smith responded that ABD is the classification identified by the applicant and included in the consent agreement and remedial action plan. For consistency, ODFW staff are using that term to identify the AO's.

Smith explained that additional structures on SVR where fish were present were required to provide

fish passage. More structures, in areas where ODFW does not have jurisdiction, were addressed by DSL and they required mitigation for the wetland impacts at these sites.

Kelly Moore explained that the application indicates the AO's were constructed during 2010, noting the large amount of work to complete in one period. Moore asked about the planning process and evaluation that the applicant used to determine how and where to install the structures. Smith responded that the structures were constructed prior to 2013 when ODFW became aware of the structures. Moore explained that he is interested in hearing how they selected where to put the structures as they worked their way up through the basin.

Toledo asked for confirmation that the proposal is to waive fish passage at these sites where ABD's are already constructed, not a proposal to approve the waiver prior to new construction. Smith confirmed the proposal submitted would waive passage requirements at structures that have already been constructed.

Applicant Presentation

Elizabeth Howard, Schwabe, Williamson and Wyatt Attorney, presented information on behalf of Silvies Valley Ranch about the exemption proposals.

Howard directed the Task Force to the three page exemption notices for information relating to the construction timeframe for each of the sites. The structures were constructed between 2008 and 2012.

Howard explained the process that lead to the CA between DSL and SVR in 2014. Fish passage was included as part of the CA and RAP. Camp and Hay Creeks were determined to have fish present, so fish passage was addressed within the CA. ODFW, DSL, and the applicant determined that the four systems proposed for exemptions did not need fish passage, and the exemption applications were submitted.

By 2013, the ranch was notified that these could potentially be violations. Prior to that, there was an understanding by the ranch that the construction of these structures was voluntary restoration that did not need permitting. Many of the streams are highly incised, and when there is water in them, it is going rapidly through the streams. The structures were installed to try to restore the habitat that would have been present when beavers were in the area.

Howard introduced Carolyn Nash, Boise State University Hydrologist, to present information on the hydrology of the drainages. Nash introduced herself explaining that she completed work on SVR as part of her education at Oregon State University looking at the suite of restoration ranging from Stage O to full channel restoration including restoration aimed at restoring floodplain reconnections. The focus of her research involved structures and projects aimed at increasing water levels, increasing connection with the floodplain and changing hydraulics on the floodplain to spur a response in riparian vegetation.

The streamflow in a system is affected by inflow of water (differences between rain and snow) and climate; as snow transitions to rain, there is often a corresponding decrease in streamflow. This information along with drainage area and soil permeability are factors that can be used to predict streamflow.

There are no gauging stations in the headwaters streams of the Silvies River, but there is one station

in the mainstem Silvies River. US Geological Service (USGS) identified peak flows in the Silvies River near Burns have ranged between 500 cubic feet per second (cfs) and 3500 cfs since 2000. During the same time, low flows drop to about 10 cfs. This is a wide variability between low and flood peak flows. Nash presented additional information from a gauging station installed at Silvies in 2014. Annual precipitation and soil permeability were similar to the gauging station at Burns. Nash also highlighted a change in peak flow timing from March-April to February-March.

Bierly asked how the soil permeability was determined. Nash responded it was determined by USGS. Bierly asked if this data includes a recent hydrogeological mapping by USGS and Oregon Water Resources Department (OWRD). Nash confirmed this does not include that data, so it is less accurate than that effort, but still applicable when evaluating the streamflow.

The data available from the smaller drainage area near Silvies (510 square miles) compared to the larger area (934 square miles) downstream at Burns shows greater variability with high flows near 1200-1400 cfs and times where there is no flow.

Nash presented calculations of median annual flow on Flat, Jack Andy, Paine, and Jump Creek comparing the annual precipitation, drainage area, and soil based on the Silvies at Silvies gauge. She explained that the drainages are highly variable in response of precipitation to stream flow.

Nash explained the streams in this area tend to flow only once the soil has become saturated with snowmelt or a wet storm causes overland flow. Runoff is also seen during very large summertime storms when the water is so intense that it exceeds more than one inch per hour and flows overland into the channels.

Bierly asked if the median annual flow is a relevant factor in fish use since there are stream flows in the spring when freshets melt when the connectivity would be expected.

Nash responded that she is trying to give a sense of the basin hydrology for the Task Force to consider. When basins are this small, very few of the tools effectively work in them and median annual flow was one way to inform the Task Force on the characteristics of the streams.

Howard responded they are providing the information as context for the staff recommendation and why these streams were selected for the exemption process. In order to have an appreciable benefit for fish, adequate hydrology is needed. Bierly explained that median annual flow might not be the flow that aquatic organisms need.

Photos taken of each creek bed during the early fall were presented, Nash explained that data collected shows the creeks go dry in July and are dry for large portions of the year.

ODFW Net Benefit Analysis Presentation

David Banks, ODFW District Fish Biologist, presented the Net Benefit Analysis via phone and was available to answer questions.

Banks explained that after reviewing available information and conducting field surveys, he determined that Jump, Flat, Paine, and Jack Andy creeks do not currently have fish present, but they historically supported fish.

Bierly asked if a side channel to Jack Andy Creek that Banks surveyed is spring fed. Banks responded that the side channel is spring fed and discussed the specific areas of the side channel that he surveyed. Banks also explained the area surveyed included a defined, incised channel with

vegetation growing in the channel. The creek does not have many pools, and fish were not located during the survey. Very low water was flowing in the channel at the time of the survey (about 0.008cfs). Limiting factors to fish being present include vegetation in the channel, low flows, high sediment load, hot water in summer, and very cold water (with frizzle ice) in the winter.

Banks presented information on a recent survey in Flat Creek. The first site was along the boundary of USFS and Bureau of Land Management (BLM) properties. The channel was dry in this area. A second site had water present, but it was difficult to see due to an undefined channel with large amounts of vegetation and sedimentation. A third site at DM spring included a broad wet area with vegetation growing and water sheet flowing across the flood plain with no defined channel, no pools or riffles were present noting water flows over land in the lowest part of the landscape.

Bierly asked about the life history of redband trout and how they utilize small streams in the area where these structures have been constructed. He specifically asked when fish typically use these streams (seasonally, year-round, during high flows, etc.). Banks responded the fish are typical of desert trout that spawn during the spring at the headwaters, hatch from eggs quickly, and migrate after the first year of life. During high spring flows the following year, they migrate down into larger waters.

Bierly asked if the streams contained suitable spawning habitat. Banks responded that the streams were mostly mud with vegetation growing out of it. The streams do not have the gravel that would be suitable for redband trout spawning.

Cunningham asked if the redband trout in this area only migrate periodically when flows are suitable. Banks responded that the fish typically migrate annually, but they have adapted to produce more offspring during years with higher water. This adaptation allows them to quickly respond to changes in habitat conditions.

Toledo asked why this area would have historically had fish and what has changed. Banks responded that these streams would have flowed into the Silvies River, but land use changes have eliminated these connections and access to these areas. If this area had not been altered, it would be expected to be similar to other areas with small tributaries that support redband trout.

Bierly asked if construction of the Westside Canal and alteration of the floodplain that prevented access. Banks responded land use in general have blocked fish access to these areas. Ken Loffink, former ODFW Fish Passage Assistant Coordinator, explained water would likely have come down from the headwaters, spread across the valley, and then flowed into the Silvies River. Changes to the area including construction of a highway, completion of the irrigation canal, and other land uses over the past 150 years have altered the landscape so these streams are no longer connected to the Silvies. Loffink also explained a large number of streams were impacted and staff were asked to make a determination of whether fish would have been present historically on approximately 30 different streams. If a stream connected to a stream with fish or provides habitat consistent to carry fish year-around, those were determined to be fish bearing. For the streams in question, the habitat upstream in the forest is markedly different from the reaches on SVR, so staff concluded that fish had been present.

Bierly asked what fish other than redband have been documented in the Silvies River system. Loffink and Smith responded that dace, suckers, whitefish, and other fish are present. Bierly asked if those fish would have used these habitats. Loffink responded that it is likely that those species would likely have moved into those areas, especially the lower reaches of these streams when flows

allowed. Banks confirmed they would likely have been in the lower area as the gradient increases as the streams get closer to the forest area.

Cunningham asked if these structures that are robbing the channels of flow to increase ground water have now altered the systems so much that they have forever eliminated any chance for reconnecting the flows. Howard responded that the exemption if granted would be reviewed in seven years. The structures are designed to provide additional flow and riparian areas to enhance the streams. They are trying to store water overtime and create a resiliency. Benefits to the Silvies River include the water percolating underground and improving the flows downstream over time. Howard said there is a lot of question about whether these streams ever will or ever have supported native migratory fish. She said that whether redband trout would ever return to these streams and whether they ever were there is an open question and that many assumptions are being made without a lot of data.

Nash explained that when a channel becomes cut down and it becomes incised, it acts as a tidal drain to put water into the aquifers. As long as the channel remains incised, the systems remain flashy with water leaving them very quickly.

Scott Campbell, SVR Owner, stated that the purpose is to reestablish the native meadow like qualities.

Cunningham explained that the focus of the Task Force is only on fish passage and not riparian restoration, percolation, wetlands, pastureland, or anything other than fish passage. Fish can only pass when some connectivity exists between where a fish currently is and where a fish wants to go.

Campbell commented that fish can only exist where there is water and they are trying to create an environment where you can have fish so that fish passage is important. Some of the structures that are being considered are half-full of silt and they only have water when they have runoff from snowmelt less than two months per year.

Moore expressed concern about how extensive these structures are and the current or future opportunity for fish populations to reestablish and maintain themselves in this extensive area. This approach is very different from structures and strategies used in other Eastern Oregon streams where fish passage is available while completing habitat projects with similar goals. Moore would like additional information on the long-term plan for this area and how these structures are expected to play into that plan. Howard responded explaining that SVR provided a channel around the ABDs to provide fish passage in the areas where fish are currently present. SVR is requesting the exemption so that they do not spend time and resources creating side channels in the areas where fish are not currently present to use them. They are also trying to provide the floodplain to restart this ecosystem so there is connectivity and there can be fish presence.

Smith displayed photos of the area with ABDs including Paine Creek, Lower Flat Creek, Upper Flat Creek, Jack Andy Creek, Camp Creek, and Campbell Creek. The photos provided were primarily during the dry season. The Task Force asked for photos of the sites taken during spring.

Hoffert asked about the terminology being used to describe the structures. She noted these ABDs look exactly like push up dams. Smith responded ABD is the term the applicant uses to describe the structures, so ODFW staff are using that term to reduce confusion. Hoffert explained that these are not similar to typical ABDs and using that term to describe them is disingenuous. Loffink responded that the structures could have a variety of names, but the important definition is that these are artificial obstructions that have been placed in a stream. Howard responded that most push up dams are used to divert water, but these are not used to divert water.

Steve Albertelli asked if the structures are ever overtopped. Howard responded they are overtopped. Albertelli asked if they are regularly overtopped. Howard explained that Camp and Hayes Creek are overtopped during high water. Albertelli asked if they have blown out or needed maintenance. Howard responded that they do need to be maintained. Smith clarified that Camp and Hayes Creek sites were modified to provide fish passage. Albertelli clarified that he would like information on whether the structures proposed for exemption are overtopped. Loffink responded that he has not seen them overtopped; most of the water is now exchanged underground. Nash responded that structures at the upper end sometimes have water flow around the sides of the structure during high water, but that is very site specific based on water availability.

Public Comment

Rocky Dallum, Tonkin Torp, represents Oregon Cattleman's Association (OCA) and SVR. The comments he is providing are on behalf of OCA. OCA works with a number of clients on the east side of the Cascade Mountain Range who face unique geological, economic, and climate challenges.

OCA is interested in encouraging better restoration techniques, particularly for private lands. Channel degradation and erosion continue to be issues on these private lands, but funding is not readily available to address these types of projects.

The benefits to restoring channels include reduction of fire risk, reduction of invasive riparian vegetation, increase biodiversity and increased water, which increases land productivity. If the status quo is maintained, reduced habitat will be available for fish. Dallum appreciated the staff's effort to present photos of the sites current conditions.

Dallum noted the name "Creek" is too much of a name. These are channels where water flows during the wet season or extreme rain events.

Dallum is supportive of the exemptions. The structures could be called ABDs, check dams, or environmental restoration weirs. Some terms are specific for diversion or storage of water, which these are not doing. These structures are meant to restore connectivity to the ancient floodplain. To do so, they slow the water to stop degradation and incision and allow water to flow around them.

These creeks were a mucky thicket of willow and sedge. These structures are holding the sediment as they fill and will allow the water to flow across the landscape. These structures could be altered in the future to allow fish passage once the sediment has been held back and the channels are restored.

This is a high number of exemptions for a small number of projects. The gradient requires structures to be close together to keep the water from flowing fast or overtaking. OCA supports these projects because they have an opportunity for better productivity for the ranchers, better

environmental products, and addressing water needs with higher temperatures and shorter water years.

Dallum stated staff have identified that there are no fish present and there have not been fish present. Approving these exemptions would not put any hypothetical fish at risk, and other types of restoration projects can be very costly. Dallum noted the restoration projects on Bridge Creek in the John Day Basin could not be completed because public funds were not available.

Scott Campbell, Silvies Valley Ranch owner, thanked the Task Force for their time. Campbell explained that the structures were created scientifically and SVR legal help had identified the streams as non-jurisdictional streams, so no they did not get permits before constructing the structures. The streams are ephemeral and do not have fish that go to the ocean.

Campbell grew up in Burns. Starting in 1952, the ranch was owned by a series of absentee landowners, and most of them did not take very good care of it. One of the previous owners put fish in some man-made lakes, but there were no fish anywhere else on the ranch.

About 12 years ago, Campbell talked to many of the families of the people who homesteaded and they identified that they had not seen any fish in any of the streams. Some people had seen fish in Camp Creek, but much earlier than when Campbell purchased the ranch. They have returned a really good fishery to Camp Creek and Hay Creek. Campbell would like to do the same with these streams, but they are dry ephemeral streams that were cut down 6-14 feet when Campbell purchased the ranch.

Campbell explained that he has had ODFW, the Governor, many other people, and Oregon State onsite to give advice and recommendations many times over the course of the project.

There is an estimated 250,000 miles in Eastern Oregon of small cut down streams. To restore these streams, it costs about \$1.5 million per mile, which clearly is not going to happen much. He is trying to figure out a way to help fish, and if there is no fish available, there are a lot of other animals that rely on the creeks. The water that is held back by the sponge ends up back in the stream at a lower section of the river. These structures cost a lot less at \$20,000-30,000 per mile. When fish passage is required at the beginning of the project, when fish are not there, it adds 30% to the cost and increases the required maintenance since that is the part of the project that takes the most maintenance. Campbell stated, "Everyone doesn't agree with our designs, but that's why there are meetings like this".

Greg Apke, Fish Passage Program Coordinator, thanked Campbell for providing testimony and noted the desired effect of these structures is to restore the tributaries so that fish could be returned to these basins. Apke explained exemptions can be revoked when conditions change. Apke asked if the 160 exemptions are granted and conditions change if Campbell would provide passage at the structures. Campbell responded that if habitat was there for the fish, then of course he would.

Campbell stated that the structures are shown every day to people and he invited everyone to come see the projects. Campbell explained that they are designed to evolve and provide fish passage. They are designed with only two feet of rise between them so it's easy to get fish passage if needed.

Cunningham asked if the structures are designed to degrade overtime and if SVR will be maintaining the structures. Campbell responded that the structures are not push-up dams and the stuff is hauled in. They have to be maintained so they don't wash out. They evolve and fill up with

dirt. He thinks they will eventually all fill up, starting at the uppermost ones. They do not stick up, but the meadow has receded with the decay of the natural material. He also noted that they do not cover the entire floodplain. Campbell stated that they evolve to provide fish passage, so he doesn't think they will need maintenance, but if they need it, then SVR will take care of it.

Burke O'Brien asked about the depth of the structures. Campbell explained that as the wet meadows decayed and went away, the surface evolved. These structures are made to fill the channel width, so some are 14 feet and wide enough that when full the water velocity doesn't wash them out. A swift stream with a lot of water, then the longer they are, the smaller the stream, the shorter they are.

O'Brien asked if they have flow through them. Campbell explained that the water flows through them. They are set on top of the ground, but they eventually go dry.

O'Brien asked if creeks that hold water during times of limited flow get pretty high water temperatures. Campbell replied that it varies where the water temperature is measured; near the center, the water gets warm, but near the edge where the water comes in, it's cooler. Burke commented that the increased water temperature may make it so that fish would not survive even if passage were provided. Campbell responded that there are no fish there, but at some point, they will be there, and the desert streams have cool water coming into them from underground.

Task Force Discussion and Questions

Denise Hoffert asked if future maintenance of these 160 structures would require permitting and/or potentially trigger fish passage. Apke responded that maintaining the material behind these structures would likely not trigger fish passage, but may require DSL permitting. Hoffert asked if increasing these structure sizes through maintenance would require passage. Smith explained that if this exemption were approved, then they would not require additional fish passage review. Howard explained that maintenance of the structures is addressed in the CA so that maintenance of these structures must be done in accordance with DSL rules regarding maintenance. Apke also responded that a structure modified to exceed more than 30% of the volume of the structure would be a new trigger action requiring a new exemption request or that fish passage be provided.

Toledo expressed concern about the lack of information provided for this large of a number of exemptions. Toledo noted that the applications provided limited information, and additional information was provided during the public comment, and the net benefit analysis consisted of a checklist for the four creeks. The Task Force expressed concern about how little information was provided for consideration of this large package. They discussed implications of limited information for future reviews of similar structures.

Bierly asked if OWRD reviewed these structures in terms of water storage. Loffink responded that OWRD, DSL, ODFW, and DEQ has been involved from the start of this process. OWRD is investigating the legality of water storage with these structures, and their staff are considering whether a water right will be necessary.

Motion:

Mark Kujala moved to recommend approval of the 160 exemption requests. Ken Bierly seconded the motion so there could be further alternative discussion.

Task Force Discussion and Questions, continued

The Task Force discussed requesting additional information and documentation of how the projects meet the statutory and rule criteria for exemptions.

Bierly noted the process of reviewing these projects has been ongoing six years and he would rather review them at a future meeting after receiving additional information.

Kujala noted the Task Force is tasked with reviewing exemptions based on whether fish are present. Regardless of the number of structures, fish will not be impacted because there are no fish present. Bierly responded that the determination that fish were historically there is in question, and he is concerned about the lack of documentation available.

O'Brien expressed concern about approving the waiver since the request for exemption was not requested prior to construction of the structures. Bierly responded that after the fact approvals require additional scrutiny when showing what fish were present at construction that are not there now.

Albertelli asked how these structures came to be noticed by DSL. Loffink responded that the structures were first noticed by USFS from the adjoining land, and they notified the State about the structures.

Albertelli asked for confirmation that the ODFW District Biologist supports these exemptions. Loffink confirmed the District Biologist's net benefit analysis supports the exemptions.

Toledo noted the Task Force's job is to advise and recommend on these types of projects. Toledo would like to recommend ODFW document the net benefit determination in more than just an analysis checklist, especially considering the scale of these projects. Smith noted that ODFW had provided additional documentation on each creek and provided the checklist. Toledo noted that the documentation was not clearly identifiable as coming from ODFW and he thought the applicants provided it.

Bierly asked how the facts fit the regulations, and how the signed agreement between DSL and SVR are impacted by the proposed exemptions. Bierly explained that context is important to understand the process and how the facts fit the statutory requirements.

Toledo explained that understanding the hydrology of the system was helpful, but having additional information about how the biological needs of fish are or are not met based on the flow information would benefit the Task Force as they review of these projects.

Cunningham noted historically present opens a need for fish passage. Historically present can be so far in the past that it becomes very presumptive during evaluations. O'Brien noted that fish are not there and will not be if the requests are approved. Loffink noted the historical context is prior to statehood, and that areas upstream would provide appropriate habitat if fish could get there. Land use and other alterations blocked access to those reaches within the historical timeframe, so historical presence was likely.

Cunningham asked for clarification on the timeframe in which fish were located upstream of SVR. Smith responded that Jack Andy and Flat Creek surveys in 1999 found fish upstream of the structures. During the more recent 2014 and 2019 surveys, several years after the construction of these structures, no fish were found.

Terry Turner explained the Task Force rarely reviews projects of this size and the scale, and the number of structures makes the determination difficult. Discussions on the evaluation of these structures and potential for increasing fish habitat are appropriate.

Hoffert expressed concern about approving 160 structures and the amount of land involved permanently with multiple tributaries to be altered; a large length of upstream fish passage is now blocked.

Moore also expressed concern about the scale of the restoration.

O'Brien expressed concern about the finality of approving exemptions in this large of an area. Cost of review of the projects is expensive for the applicant and ODFW. Balancing the scale of the project with the cost of review is important since approval of for this size of projects informs the future of continued large projects coming in with similar structures.

Albertelli noted the structures are not permanent and will need continued maintenance; the waivers will be reviewed again in seven years; and the habitat is not currently in a state to be productive to fish.

Vote:

The Task Force voted on the motion to recommend that ODFW approve the exemption of all 160 structures. The Task Force declined the motion with a vote of 6-2. Steve Albertelli and Mark Kujala voted yes; Ken Bierly, Zak Toledo, Terry Turner, Kelly Moore, Denise Hoffert, and Burke O'Brien voted no; and Bill Cunningham abstained from voting.

Motion:

Ken Bierly moved to ask staff to compile the information with a more clearly articulated finding of fact relevant to the criteria for the exemption and bring it back to the next meeting for additional consideration. Terry Turner amended the motion to request additional information about the status of the streams connectivity to the Silvies River and whether the creeks could again become fish bearing with the right environment in place. Bierly accepted the amendment to the motion. Zak Toledo seconded the motion.

Additional Task Force Discussion

Albertelli noted the length of time the review of these projects has been under consideration and is costly for both ODFW and the applicant. He expressed a desire to not extend the review to the next meeting. Turner responded the exemption sets a precedent on this type of structure and he would like to see additional documentation for future reviews of similar structures.

Bierly noted the structures are already in place and approval of the exemptions does not hold back the applicants from completing construction during an in-water period during the additional review time. Howard responded that the delay in decision would delay the RAP, and some actions will not be completed as timely as anticipated.

Apke noted the information could be presented differently, but no new information is expected to be identified. The Task Force requested the following:

- A map showing where the streams connect in relation to the structures
- Where the streams become dewatered in relation to where the water is impounded.
- Assistance identifying the distance from where the stream is dewatered

- Where other preventing factors are located including a perched culvert nearby
- Additional information about the lifecycle of desert fish
 - If they need one full year in their natal stream
 - If they would use available habitat for a short time and then move to another area when the stream becomes dry.
- Documentation about how these projects have been prepared

Cunningham encouraged documentation of the open process as the Task Force, ODFW, and Oregon Fish and Wildlife Commission decide on the proposals based on the information available.

Moore explained his history with trout in Western Oregon not being present during surveys due to a downstream blockage, and then fish are found in the same area without the blockage being repaired. Moore would appreciate input from the Native Fish Investigations Program on the potential for fish to be present in these areas even though they were not seen during the surveys.

Vote:

The Task Force voted on the motion to request staff to compile the information available with a more clearly articulated finding of fact relevant to the criteria for the exemption and bring it back to the next meeting for additional consideration. The motion also includes a request of additional information about the status of the streams connectivity to the Silvies River and whether they could again become fish bearing streams with the right environment in place. The Task Force approved the motion with a vote of 9-0.



OREGON DEPARTMENT OF FISH AND WILDLIFE

Fish Passage Task Force

Abbreviated_MEETING MINUTES

October 15, 2021

Oregon Department of Fish and Wildlife
Salem, Oregon

~11:05 Silvies Valley Ranch LLC - Jump Creek Exemption Requests (Nordholm) 30 min

***Public Testimony: 48-hour Advance Registration Required**

10 individual exemptions associated with this application. Video presentation was posted online.

- 3 public comments received
- 2 were in against exemptions in general
- 1 brought up water right at downstream dam exemption creep, and definition of native migratory fish.

A native fish (Speckled dace) was observed in the upstream reservoir, but this does not fall within the OAR native migratory fish used in the fish passage OAR's. Could not find exact date of downstream dam construction but it is between 1956 and 1981. Water right concern is within OWRD authority. ODFW did not rely solely on dam to make the determination of no benefit to NMF. Downstream area of Jump Creek is not connected to Silvies. Jump Creek terminates in downstream canal and field.

Thanks to Dave Banks and crew for obtaining more information as task force requested in 2019. Banks has nothing else to add but is available for questions.

Questions

1. These came before task force previously with three other creeks. What changed from 2019 to 2021? Pain Creek received passage approval. Flat Creek will also have passage. Jack Andy Creek is close to having passage. There was no change in our understanding of the fish populations in these creeks, just that the structures on these channels were easy to provide passage if not already providing passage.
2. Are these now considered environmental restoration weirs under HB2298? Structures have not been evaluated under HB2298. Some would likely qualify but some would not. Jump Creek is not downcut so it may not qualify for HB2298. Likely meets other criteria. Closed basin, eastside, low flows.
3. Has the applicant been notified of the possibility of a reservoir permit? They were asked for additional documentation and aware it was brought up in public comments. How would ODFW respond to recommend approving the waiver with conditions requiring OWRD requirements were satisfied? Even without dam, it would have the same recommendation due to the disconnect in lower stream below the reservoir. Dam removal does not change benefit for native migratory fish. There is not much of a channel below the dam. Water would still be captured by the ditch.
4. Need separate water right to store and take it out. Conclusion of no fish seemed based on the dams. Irrigation ditch should only be flowing during irrigation season. Speckled dace are not on list but list references "including", which indicates it's not exclusive? Speckled dace are native and move but they are not considered migratory that needs to migrate for life cycle needs. Waiting to

hear back from OWRD on water right questions.

If something changes and Jump Creek reconnects with the Silvies, this could be reevaluated in the future.

Bierly moved to approve the exemption for Jump Creek. Cunningham second.

Moore, yes

Hoffert, yes

Turner, yes

Albertelli, yes

Snell, yes

Messerle, yes

Toledo, Yes

Motion passed unanimously (9-0).