



Greg Apke, Fish Passage Coordinator
Oregon Department of Fish and Wildlife

March 14, 2022
emailed to: greg.d.apke@odfw.oregon.gov

**SUBJECT: OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW) FISH PASSAGE ADMINISTRATIVE
RULE REVISION PROCESS**

Dear Mr. Apke:

The Rules Advisory Committee (RAC) regarding fish passage has been active since March 2021 and over the course of many meetings has done a deep dive into the Oregon Administrative Rules (OAR) pertaining to dams and fish passage. Our Chapter (Mike Tripp from our board is on the RAC) appreciates all the time and effort committee members have put into this process. In our minds, the present condition of these OAR's (last revised in 2006) has done a disservice to our area and the Deschutes River because a 100-year-old dam at Mirror Pond, which originally had fish passage, has been allowed to operate without fish passage for over 60 years. This is an obvious litmus test that current OAR's have failed. As this phase of the RAC process concludes at its March 15 meeting, we are concerned that possible OAR revisions will still not provide the clear direction needed to guide ODFW staff in implementing ORS 509.580 - .992. In our opinion, the efforts to date with respect to dams can be described as a scoping process. While this is an important first step in OAR revision, we do not believe it should be accepted as a final product. Effective OARs should provide ODFW with a "tool box" of evaluation criteria that are consistently understood and applied to dam and fish passage locations throughout Oregon. Whether identified as "triggers" or "evaluation criteria", the bottom line is OAR's that are science-based, predictable and, to the maximum extent practicable, beneficial to our fisheries. Terms like "practicable" are always concerning and the leading cause of situations like Mirror Pond, but we also recognize that ultimately engineering judgement/practicability will need to factor into fish passage decisions. The final recommended OARs by the RAC should specify quantifiable evaluation criteria that allow a defined space for incorporating site-specific conditions. Easier said than done!

It is our hope that ODFW will not conclude this process without achieving the "tool box" mentioned above. The scoping done to date should be the basis for a more focused and specific evaluation of the OARs in order to provide staff the tools, guidelines and authority necessary to consistently implement the statute.

Sincerely,

Shaun Pigott, President
Deschutes Redbands Chapter - TU