

# DRAFT

## **FISH PASSAGE WAIVER AGREEMENT Smith Dam, Carmen Smith Hydroelectric Project, McKenzie River**

This agreement is entered into on the date of last signature by and between the Oregon Fish and Wildlife Commission (“Commission”) and the Eugene Water & Electric Board (“EWEB”).

### **PREAMBLE**

EWEB is the licensee for the Carmen Smith Hydroelectric Project (“Project”), which is licensed by the Federal Energy Regulatory Commission (“FERC”) as FERC project 2242. The project includes three dams; Trail Bridge Dam and Carmen Diversion Dam located on the upper McKenzie River, and Smith Dam located on Smith River.

The Project was originally licensed in 1958, and the FERC license expires on November 30, 2008. Prior to issuance of the original license, EWEB and the Oregon State Game Commission and the Fish Commission of Oregon entered an agreement in 1958 for licensing the Project (“the 1958 Agreement”).

EWEB, the Oregon Department of Fish and Wildlife (“Department”) and other interested parties have negotiated a Settlement Agreement for relicensing of the Project (“Settlement Agreement”).

Without waiving its rights under the 1958 Agreement, EWEB has filed the Fish Passage Waiver Application (Attachment A) for Smith Dam.

### **PROVISIONS OF THE AGREEMENT**

1. Pursuant to ORS 509.585 and OAR 635-412-0025(1), 9(b), 10(b)(A), the Commission waives the fish passage requirements for the artificial obstruction created by Smith Dam because it determines that the mitigation EWEB has agreed to implement will result in a net benefit (Attachment B) to native migratory fish relative to providing fish passage at the artificial obstruction on Smith River.
2. The locations of the artificial obstruction and mitigation sites shall be those specified in Attachments A and B.
3. EWEB shall provide fish passage mitigation by implementing the measures from Attachment A.
4. The fish passage mitigation will be approved by the Department prior to installation as provided in the Settlement Agreement. EWEB will be responsible for obtaining all other necessary authorizations for implementation of the fish passage mitigation.
5. EWEB shall implement the fish passage mitigation pursuant to the schedule adopted in the Settlement Agreement or as modified by the parties to the Settlement Agreement or FERC (OAR 635-412-0025 (9)(b)).
6. EWEB shall monitor and maintain the fish passage mitigation as required in the Settlement Agreement or as modified by the parties to the Settlement Agreement or FERC (OAR 635-412-0025 (9)(b)).
7. EWEB may employ other parties to perform work under this agreement, but remains responsible for the mitigation.

DRAFT

FISH PASSAGE WAIVER AGREEMENT  
Smith Dam, Carmen Smith Hydroelectric Project, McKenzie River

8. This agreement remains in effect for the term of the new FERC license that triggered this agreement.

9. EWEB shall permit ODFW, at any reasonable time, access to, through, and across Project lands and works for the purpose of inspecting the mitigation. EWEB shall allow such inspections only after ODFW provides EWEB reasonable notice of such inspections and agrees to follow EWEB's applicable safety and security procedures when engaged in such inspections.

10. EWEB's annual reporting as required in Proposed License Article 15 or as modified by the Settlement Agreement Parties or FERC shall be considered sufficient for the annual reporting requirements of this agreement.

Signature:	_____	_____
	Eugene Water & Electric Board Date	Oregon Fish and Wildlife Commission Date
Name:	Randy Berggren _____	Marla Rae _____
Title:	General Manager _____	Commission Chair _____