



AGENDA ITEM SUMMARY

In the Matter of *Winchester Water Control District*

SUMMARY

The Department issued a Notice of Non-Compliance, Proposed Order, and Opportunity for Contested Case Hearing (Notice) to the Winchester Water Control District (“Respondent” or “WWCD”) in September 2024, which concluded that work conducted in 2023 triggered obligations under ORS 509.585(4) that were not met, and therefore, required that Respondent install fish passage at Winchester Dam consistent with the Department’s current standards. Respondent contested the violation and Proposed Order and requested a contested case hearing.

The matter was referred to the Office of Administrative Hearings, and after a hearing in late December 2025, the Administrative Law Judge (ALJ) issued a proposed order consistent with the timeline and including most of the requirements in the Department’s order. The Oregon Fish and Wildlife Commission is now called upon to consider the contested case hearing record, including the ALJ’s proposed order, exceptions and argument filed by the Winchester Water Control District, and determine whether to modify or adopt issuance of a Final Order, which would require installation of criteria-compliant fish passage at Winchester dam by December 1, 2029.

FACTUAL BACKGROUND AND HISTORY OF CASE NO. 2024-ABC-06772

On October 18, 2022, Winchester Water Control District (Respondent) filed a Fish Passage Plan Application (FPPA) with the Department. The purpose of the FPPA was to request that the Department approve a temporary cessation of fish passage for a three-week dewatering period to facilitate repairs in normally submerged areas of the Dam, during which period the North Umpqua River would be directed entirely through the Dam’s spill gates. The FPPA proposed to complete in-water construction work during the period July 22 through September 15, the period of minimum fish migration, with the initial phase of the project to include the three-week dewatering of the Dam.

On December 29, 2022, the Department issued the Fish Passage Approval (FPA), #PA-17-0138, approving the FPPA filed on October 18, 2022, but limiting closure of upstream fish passage to the period August 7 through August 28, 2023.

Respondent’s contractors started the process of dewatering Winchester dam on the evening of August 6, 2023, and performed work on the dam in August and September of 2023.

On August 17, 2023, and August 25, 2023, Department staff visited the dam to assess the condition of the Dam, now observable during dewatering. During the August 17, 2023, visit, staff observed the replacement of materials on the upstream face of the Dam and concluded that this appeared to exceed what had been included in the FPPA and FPA. By the August 25, 2023, visit, the

ultra-high molecular weight (UHMW) sheeting replacement was complete, thus making its full scale observable to Department staff.

On September 17, 2024, the Department issued a Notice of Non-Compliance, Proposed Order, and Opportunity for Contested Case Hearing (Notice) to the Respondent, which required that Respondent install fish passage at Winchester Dam consistent with the Department's current standards.

On October 3, 2024, Respondent requested a hearing to contest the Notice.

On October 29, 2024, the Department referred the matter to the Office of Administrative Hearings (OAH) for the scheduling of a contested case hearing. An ALJ scheduled the hearing for July 14 through 18, 2025, and set other filing deadlines.

On February 6, 2025, WaterWatch of Oregon, the Steamboaters, the Pacific Coast Federation of Fishermen's Associations, and the Institute for Fisheries Resources (Limited Parties) jointly filed a Petition for Party Status with the Department. On February 28, 2025, the Department issued an Order Conditionally Approving Limited Party Status, which granted limited party status and set parameters on the Limited Parties' participation in the contested case.

On March 12, 2025, Respondent filed a Motion for Summary Determination (MSD) with supporting documents. On March 14, 2025, the Department filed a MSD with supporting documents. On April 2, 2025, the Department and Respondent both filed a Response with additional supporting documents, and the Limited Parties filed a Brief in Opposition to Respondent's MSD. On April 9, 2025, the Department and Respondent both filed a Reply.

On May 29, 2025, ALJ Schmidt issued a Ruling on MSD's, which granted in part and denied in part the Department's MSD and denied Respondent's MSD. ALJ Schmidt also issued a Ruling that granted in part and denied in part the Department's Discovery Motion and denied Respondent's Cross Motion.

On July 14, 2025, ALJ Schmidt convened the hearing at the Office of Administrative Hearings in Salem, Oregon. Mr. Carollo and Mr. Smith represented Respondent, with Respondent's president, Ryan Beckley, attending the hearing and testifying as a witness for both the Department and Respondent. Ms. Marriott represented the Department, with Mr. Apke appearing from the Department and testifying on its behalf. The Department called the following additional witnesses: Department Fish Passage Engineer Joel Watts; DOWL Project Manager James Stupfel; DOWL Project Engineer Ben Wardell; TerraFirma Commercial Program Manager Andrea Knudson; TerraFirma Project Manager Daniel Holborow; Department Fish Biologist Evan Leonetti; and Department Deputy Director Shaun Clements, PhD. Respondent called the following additional witnesses: former Department Fish Screen and Passage Program Manager Alan Ritchey; Strata Design Geotechnical Engineer Frederick Thrall, PhD; Department Fish Technician Fabian Carr; and Department Umpqua Watershed District Manager Greg Huchko. In rebuttal, the Department recalled Mr. Watts and Mr. Huchko.

Issues Before the Administrative Law Judge:

1. Whether Respondent executed “construction” on Winchester Dam during the repairs it completed in August and September of 2023. ORS 509.580; ORS 509.585; OAR 635-412-0005(9) (2006), *amended by* DFW 154-2022 (January 1, 2023); OAR 635-412-0020(2) (2006), *amended by* DFW 154-2022 (January 1, 2023); OAR 635-412-0005(10); OAR 635-412-0020(2).

2. If so, whether the Department may require that Respondent install Department-approved fish passage at Winchester Dam in accordance with the terms of the Notice. ORS 509.585; ORS 509.625; OAR 635-412-0005(49); OAR 635-412-0020.

The parties completed all witness testimony on July 17, 2025, but asked that the record remain open for the submission of written closing arguments. The Department, Respondent, and the Limited Parties all submitted timely written closing arguments on September 10, 2025. On October 10, 2025, the Department, Respondent, and the Limited Parties all submitted timely written responses. The record closed on October 10, 2025.

Summary of Events Following Written Closing Arguments:

On December 18, 2025, the ALJ issued a Proposed Order concluding that Respondent executed “construction” on Winchester Dam during the repairs it completed in August and September of 2023, and ODFW may require that Respondent install Department-approved fish passage at Winchester Dam, but may not require the construction of a fish counting window, a fish counting facility, or pit tag arrays. The ALJ proposed that the order set forth in ALJ’s Proposed Order section entitled “Order” be issued by ODFW.

The ALJ’s Proposed Order stated that any party to the proceeding that disagrees with the recommended action of the Proposed Order may file exceptions to the Proposed Order no later than 14 days after the order was served.

Timely exceptions were filed by Respondent on December 30, 2025.¹ In that filing, WWCD requested “[a]n opportunity to present argument to the Oregon Fish and Wildlife Commission during its contemplation of the Proposed Order.” ODFW interprets the ALJ’s language in the Proposed Order “Appeals Procedure” section to satisfy the requirements of ORS 183.460 and OAR 137-003-0645(5) as that section set out where and when, and in what form, exceptions and argument may be made (e.g., in writing) for consideration by the Commission. However, to avoid any confusion or issue, ODFW notified WWCD in writing that it could present further written argument to the Commission if received by February 5, 2026. This written submission was received on February 2, 2026, by email (received by mail February 5, 2025).

PROPOSED ORDER OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to ORS 509.625(3)(b)(A), the Winchester Water Control District must install fish passage at Winchester Dam consistent with the following timeline and applicable criteria set forth in OAR 635-412-0035(1), (2), (7), and (10) to accommodate passage of native migratory fish and their corresponding migratory timing identified in Exhibit F (List of Native Migratory Species)

¹ No other party filed exceptions to the Proposed Order.

of the Notice of Non-Compliance; Proposed Order; and Opportunity for Contested Case Hearing issued on September 17, 2024, except as amended by prior written authorization of the Department.

1. January 1, 2026 to December 31, 2026 (12 Months)

a. Project Engineering Design Plans Development and Completion:

i. Upstream passage requirements:

1. Vertical slot (possible dual slot) fishway configuration;
2. Six-inch pool to pool Water Surface Elevation (WSE) differential;
3. Provisions to ensure adequate lamprey passage as well as all other native migratory fish;
4. Screened auxiliary water system (AWS);
5. Criteria attraction flow; and
6. Develop detailed construction sequencing and other plans consistent with requirements set forth below.

ii. Downstream passage requirements:

1. Modify spillway to maintain regulated WSE above the dam,
 - a. Modeled flows and design to compliment passage at fishway; and
 - b. Screen fishway AWS designed to current NMFS guidelines.

iii. Detailed de-watering, work area isolation, and fish rescue and salvage plans; and

iv. Design related to the permanent abandonment of the North Bank Fishway.

b. Interagency Coordination:

- i. Frequent check-ins with the Department: kickoff, preliminary, 30%, 60%, 90% and 100% final design intervals; and
- ii. Include local, county, state and federal regulatory agencies in design development and review.

c. Final Engineering Design Plans and Specifications:

- i. 100% engineered stamped design plan set & specifications.

2. January 1, 2027 to June 30, 2027 (6 months)

a. Permit Submission and Acquisition:

- i. Department Fish Passage Plan Authorization, including approval of plan for work area isolation;
- ii. Fish Rescue & Salvage Permit(s);

- iii. Oregon Water Resources Department confirmation of valid water right(s) or authorization(s), as applicable;
- iv. U.S. Army Corps of Engineers – Oregon Department of State Lands Joint Fill-Removal Permit;
- v. NOAA Fisheries ESA Consultation;
- vi. Oregon Department of Environmental Quality, Clean Water Act, Section 401 Certification;
- vii. National Historic Preservation Act (Section 106) Authorization;
- viii. Local and County Permit(s);
- ix. FEMA Floodway Permit; and
- x. Any other applicable federal or state permit(s) required.

3. July 1, 2027 to December 1, 2029² (29 Months)

a. Project Implementation/Construction:

- i. Appropriate agency notification in advance of project commencement;
- ii. Frequent coordination, site inspections and schedule updates;
- iii. In-water work shall be complete during Department-approved in-water work periods;
- iv. Isolate work site as required for anticipated high water events during multiyear construction phases;
- v. Maintain temporary fish passage;
- vi. Detailed fish rescue and salvage plan based on regulatory agency input and approval, including:
 - 1. Adequately staffed and managed fish salvage and relocation operations; and
 - 2. Use of temporary water management and work area isolation to avoid harm to applicable species.
- vii. Construct new fishway and AWS (2028 – 2029 in-water work windows);
- viii. Permanently abandon existing North Bank Fishway and related infrastructure (2029 in-water work window); and
- ix. Project completion December 1, 2029³.

² This date has been changed from the date set forth in the ALJ's proposed order as it is a typo, because 29 months from July 1, 2027, is December 1, 2029, and not December 31, 2029.

³ This date has been changed from the date set forth in the ALJ's proposed order as such is a typo. Project completion date is December 1, 2029, and not December 31, 2028.

4. December 2, 2029,⁴ to December 31, 2040⁵ (10 years or to be determined)

- a. Post-Project Installation Certification and Long-term Monitoring & Reporting.

5. Winchester Water Control District Long-term Ownership, Maintenance, and Operation of Fishway

- a. ORS 509.610 requires Winchester Water Control District to maintain and operate fish passage in such repair so as to provide adequate fish passage of native migratory fish species at all times, including without limitation monitoring and evaluating ongoing effectiveness of fish passage.

RESPONDENT’S APPEAL RIGHTS OF COMMISSION FINAL ORDER

Respondent has the right to appeal a Final Order of the Commission to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal, Respondent must file a petition for judicial review with the Court of Appeals within 60 days from the day of service of any Commission Final Order unless otherwise provided by statute. If the petition for judicial review is not filed within the 60-day time period, Respondent will lose the right to appeal.

COMMISSION ACTION REQUIRED

The Commission must consider the record, the ALJ’s proposed order, WWCD’s written exceptions and argument, and determine how to proceed with respect to issuance of a final order. Available options for next steps are listed in the following Alternatives section.

⁴ This date has been changed from the date set forth in the ALJ’s proposed order as such is a typo. Project completion date is December 1, 2029, and not January 1, 2030; therefore, Post-Project Installation Certification and Long-term Monitoring & Reporting commences December 2, 2029.

⁵ This date has been changed from the date set forth in the ALJ’s proposed order as such is a typo. Post-Project Installation Certification and Long-term Monitoring & Reporting commences December 2, 2029, and goes through 10 years or to be determined to December 2, 2039.

COMMISSION'S ALTERNATIVES

1. Deny all exceptions and issue a Final Order that is consistent with the ALJ's Proposed Order, except as modified to address the filing and consideration of exceptions, and minor typos.
2. Deny in part the exceptions and issue a Final Order that is consistent with the ALJ's Proposed Order, except to make specific modifications directed by the Commission.
3. Accept the exceptions, in whole or in part, and issue an amended proposed order as directed by the Commission.