

Compiled Permit Conditions for the Riggs Diversion Replacement Project

Table 1 summarizes all permit conditions and avoidance and minimization measures required to implement the Riggs Diversion Replacement Project (project). Specifically, Table 1 provides a summary of each term, condition or measure applicable to the project; the source document(s) the measure is summarized from; when the measure is required to be implemented (i.e., before, during, and/or after construction); and who is responsible for implementing the measure.

The information in Table 1 is intended to provide an overview of project requirements. Clarification on how or when a measure should be implemented should be derived from the source document(s). **A copy of all final permit authorizations must be maintained by the construction contractor at the project site throughout construction.**

Source documents referenced in Table 1 include the following:

U.S. Army Corps of Engineers (USACE), Nationwide Permit (NWP) 60, May 13, 2026 (Corps No. NWP-2026-00049). Contact: Danielle Erb, (503) 808-4368, Danielle.H.Erb@usace.army.mil. *NOTE: Project construction must be complete by March 15, 2031.*

Oregon Department of Environmental Quality (DEQ), Section 401 Water Quality Certification Approval for 2026-49. Contact: Delia Negru, (503) 593-2493, Delia.Negru@deq.oregon.gov. *NOTE: Project construction must be complete by March 15, 2031.*

Oregon Department of State Lands (DSL), Removal-Fill Permit (65954-RF), July 21, 2026. Contact: Michael Schmeiske, (503) 302-5594, Michael.Schmeiske@dsl.oregon.gov. *NOTE: Permit expires July 21, 2027.*

Oregon Department of Fish and Wildlife (DFW), Fish Passage Approval (PA-12-0015), approved June 8, 2026. Contact: Mac Barr, (971) 678-4871, Mac.Barr@odfw.oregon.gov.

Notes:

- a. USACE concurred with the determination of no effect to federally listed species per Section 7 of the Endangered Species Act and no effect on historic properties protected under Section 106 of the National Historic Preservation Act.
- b. Harney County issued a Land Use Compatibility Statement for the Project on January 15, 2026, and a Floodplain Development Permit on April 24, 2026. Contact: Brandon McMullen, (541) 573-6655, Brandon.McMullen@co.harney.or.us.

Construction Methods

The following construction methods were outlined in the permit application. If changes to the following are anticipated, **notify Ducks Unlimited immediately** so appropriate coordination with regulatory agencies can occur and the project remains in compliance with all regulatory requirements.

- Access. Construction access would be provided from Highway 78 via the existing dirt ranch road and overland via pasture along the existing maintenance path. See permit application figures for access route boundary. Any access outside of the identified route is out of compliance and not permitted.
- Staging. Construction materials and equipment would be temporarily staged within an approximately 2,500 square foot area in the pasture (i.e., wet meadow habitat) adjacent to and east of the work area.
- Dewatering. If any remaining ponded water is present in the work area, portable pumps would be used to discharge water into an adjacent vegetated wetland where any potential sediment could settle, and water can percolate into the soil. In the unlikely event that an upstream irrigator releases water into Foley Slough, a temporary earthen cofferdam would be constructed. The cofferdam would be constructed using

material from the existing land crossing and within the project disturbance footprint. Once construction is completed, all temporarily disturbed areas would be re-contoured to pre-project conditions.

Upon construction completion, all areas temporarily disturbed would be re-contoured to pre-project conditions and decompacted to support vegetation reestablishment.

Table 1. Riggs Diversion Replacement Project – Compiled Permit Conditions

Measure	Source Document	Timing	Responsibility		
			Landowner	Ducks Unlimited	Contractor
Notification Requirements					
Contact ODFW District Fish Biologist (Dave Banks) 2-weeks in advance and prior to implementing the project.	ODFW No. 2	Before construction		KU	
Submit a Certification of Compliance upon project completion.	NWP 27 pg 2	After construction		KU	
Monitoring and Reporting Requirements					
Submit monitoring reports to the ODFW Fish Passage Program staff and the ODFW Watershed District Fish Biologist (Dave Banks) post-construction and for a period of 5 years every other year (i.e., years 1, 3 and 5).	ODFW No. 8 - 10	Annually – During the fish migration period		KU	
<u>Post-Construction Report Required</u> : Submit a post-construction report to DSL within 90 days of construction completion and/or required planting.	DSL No. 26	After construction		Submit (KU)	
<u>Annual Monitoring Reports Required</u> : Submit annual monitoring reports by November 1 for a minimum period of 2 growing seasons after project completion.	DSL No. 27 - 33	After construction		Submit (KU)	
Construction Best Management Practices					
<u>Construction Corridor</u> : Do not remove vegetation or operate or traverse heavy equipment outside the designated access route or construction footprint.	DSL No. 14; DEQ No. 12a	During construction		Verify (GW)	Implement
<u>Work Period</u> : All in-water work must occur during the ODFW in-water work period of September 1, 2026 and January 31, 2027. If fish eggs are observed, work must cease, and DSL contacted immediately.	ODFW No. 1; DSL No. 3 - 4; DEQ No. 15	During construction		Verify (GW)	Implement
<u>Work Area Isolation</u> : Implement temporary water management and work area isolation measures. The work area must be isolated from water during construction. All structures and materials used to isolate the work area must be removed immediately following construction and water flow returned to pre-construction conditions.	ODFW No. 4; DEQ No. 17; USACE Regional Cond. No. 6	During construction		Verify (GW)	Implement

Measure	Source Document	Timing	Responsibility		
			Landowner	Ducks Unlimited	Contractor
<u>Cessation of Work During High-Flow Conditions:</u> All project operations must cease during high-flow conditions that will result in inundation of the project area. Only efforts to avoid or minimize turbidity or other resource damage are allowed during high flow conditions.	DEQ No. 18	During construction		Verify (GW)	Implement
To prevent or minimize impacts to the aquatic environment, implement the following: • Operate equipment from the top of a streambank and conduct work outside of the active stream channel. • Maintain and ensure adequate spill prevention and containment materials are readily accessible at vehicle staging areas.	USACE Regional Cond. No. 8	During construction		Verify (GW)	Implement
<u>Operation of Equipment in the Water:</u> Areas below ordinary high water (OHW) (i.e., work in Foley Slough) must be free of flowing or standing water prior to operating heavy equipment. All machinery operated below OHW elevation must use vegetable-based hydraulic fluids, be steam cleaned and inspected for leaks prior to each use, and be diapered to prevent leakage of fuels, oils, or other fluids. Any equipment found to be leaking fluids must be immediately removed from and kept out of OHW until repaired.	DSL No. 16; DEQ No. 10	During construction		Verify (GW)	Implement

Measure	Source Document	Timing	Responsibility		
			Landowner	Ducks Unlimited	Contractor
<u>Turbidity</u>: Any activity that causes turbidity to exceed 10% above natural stream turbidities is prohibited except short term exceedances allowed as outlined in the DEQ permit. Complete turbidity monitoring and record daily logs as outlined in the DEQ permit. Implement the following BMPs to minimize turbidity during in-water work: i. Schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances. ii. Complete in-stream digging passes and placement of fill in-stream to minimize turbidity. Practicable techniques include employing an experienced equipment operator, not dumping partial or full buckets back into the wetted stream, adjusting the volume and/or speed of the load, or using a closed-lipped environmental bucket. iii. Limit the number and location of stream-crossing events. Establish temporary crossing sites at the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods, as appropriate. iv. Machinery may not be driven into the flowing channel. v. Excavated material must be placed so that it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled. vi. Containment measures such as silt curtains, geotextile fabric, and silt fences must be in place and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.	DSL No. 10, DEQ No. 19	During construction		Verify (GW)	Implement

<u>Erosion Control Measures:</u> Implement the following erosion control measures to prevent erosion and minimize movement of soil into waters: a. Stabilize all exposed soils during and after construction to prevent erosion and sedimentation. b. Use filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures to prevent movement of soil into waterways and wetlands. c. Use compost berms, impervious materials, or other equally effective methods to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours. d. Use removable pads or mats at all construction access points through, and staging areas in, riparian and wetland areas to prevent soil compaction. At project completion, decompact and recontour disturbed areas to rectify temporary impacts. Disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetation plantings/seeding. Cover soils that are to remain exposed more than seven days with erosion control pads, mats or similar devices until vegetative stabilization is installed. e. Use a tackified seed where vegetation is used for erosion control on slopes steeper than 2:1. f. Dredged or other excavated material must be placed on upland areas and prevented from eroding back into waterways and wetlands. g. Inspect erosion control measures daily and maintain erosion control measures to ensure their continued effectiveness until soils become stabilized. h. All erosion control structures must be removed when the project is complete, and soils are stabilized and vegetated. i. When earth moving equipment is leaving the site and traveling on paved surfaces, utilize truck or wheel washes or place clean aggregate at all construction entrances to prevent tracking of sediment off site by vehicles. j. Flag wetlands not specifically authorized to be impacted to protect them from disturbance and/or erosion.	DSL No. 11; DEQ No. 8; USACE General Cond. No. 11, 12; USACE Regional Cond. No. 9	During construction	Verify (GW)	Implement
<u>Previously Contaminated Soil and Groundwater:</u> If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site.	DEQ No. 14	During construction	Verify (GW)	Implement

Measure	Source Document	Timing	Responsibility		
			Landowner	Ducks Unlimited	Contractor
The Environmental Cleanup Section of DEQ must be notified at 1-800-452-4011.					
<u>Fuels, Hazardous, Toxic, and Waste Material Handling:</u> Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, material treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Cure concrete, cement, or grout for at least 24 hours before any contact with waters of the state. Use only clean fill, free of waste and polluted substances. Remove all foreign materials, refuse, and waste from the project area. Machinery and equipment staging, cleaning, maintenance, refueling, and fuel storage must be at least 150 feet from ordinary high water (i.e., Foley Slough) and wetlands to prevent contaminants from entering waters of the state. Refueling is to be confined to a designated area to prevent spillage into waters of this state. Sufficient spill prevention and containment materials shall be maintained on site and readily accessible at staging areas. Project-related spills into waters of this state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311 within 24 hours. Cleanup must begin immediately and be completed as soon as possible.	DSL No. 12; DEQ No. 9, 10, 11; USACE Regional Cond. 8b	During construction		Verify (GW)	Implement
<u>Trenching in Wetlands:</u> During excavation, strip and preserve the top layer of soil and vegetation and replace strippings once upon disturbance completion. If native soils are not used as bedding material, preventative measures such as clay or concrete plugs must be used so that underground hydraulic piping does not dewater the site and adjacent wetlands.	DSL No. 20	During construction		Verify (GW)	Implement
<u>Temporary Ground Disturbances:</u> Stockpile and re-use native soils and/or sediments removed from waters of the US for site restoration, to the maximum extent practicable. All temporarily disturbed areas must be returned to original ground contours at project completion. All disturbed areas must be revegetated, as appropriate.	DSL No. 21; USACE General Cond. No. 13; USACE Regional Cond. No. 10	During construction		Verify (GW)	Implement

Measure	Source Document	Timing	Responsibility		
			Landowner	Ducks Unlimited	Contractor
<u>Site Rectification Required for Temporary Wetland Impacts</u> : Upon project completion and before the onset of fall rains, decompact and recontour all temporarily disturbed areas. If vegetation is not re-established by the existing seed bank by the spring growing season, seed temporarily disturbed areas with an erosion control seed mix to rectify temporary impacts to 0.32 acres of wetland.	DSL No. 23, 24; DEQ No. 12; USACE General Cond. No. 13	Post construction		Verify (GW)	Implement
<u>Riprap Placement Methods</u> : Riprap/rock must be placed under the following conditions: a. Only clean, erosion resistant rock from an upland source must be used as riprap. No broken concrete or asphalt must be used. b. Riprap rock must be placed in a manner that does not increase the upland surface area. c. Riprap must be placed in a way as to minimize impacts to the active stream channel. d. Gravel or filter fabric should be placed behind the riprap rock, including the toe trench rock, as a filter blanket. e. All riprap rock must be placed, not dumped, from above the bank line.	DSL No. 22	During construction		Verify (GW)	Implement
Resource-Specific Measures					
<u>Archaeological Resources</u> : If any archaeological resources, artifacts, or human remains are encountered during construction, all construction activity must immediately cease. Notify the State Historic Preservation Office at 503-986-0674 and the USACE District Engineer. Implement the Inadvertent Discovery Plan posted on the USACE website.	DSL No. 13; USACE General Cond. No. 21; USACE Regional Cond. No. 3	During construction		Verify (GW)	
<u>Fish Salvage Required</u> : If water is present, fish salvage and rescue shall occur prior to dewatering and any in-water construction activities. Fish salvage must be permitted and must be conducted by a qualified biologist and in compliance with Oregon Scientific Take Permit (OR-STP) Authorization Number 29722.	DSL No. 17; ODFW No. 3, 5; USACE Regional Cond. No. 6	Before construction		Verify (GW) completion by AT or ODFW	

Measure	Source Document	Timing	Responsibility		
			Landowner	Ducks Unlimited	Contractor
Maintain the project to provide adequate passage for native migratory fish (i.e., volitional fish passage of native migratory fish species between the fish passage design flows (5% to the 95% exceedance flows).	ODFW No. 6	After construction	Implement		
Failure to maintain fish passage shall constitute a violation of ODFW fish passage approval and applicable fish passage laws.	ODFW No. 7	After construction	Implement		



HARNEY COUNTY

Planning Department
Brandon M. McMullen, Planning Director
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Burns, OR 97720
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Website: www.co.harney.or.us

4/24/2026

FINDINGS FOR APPROVAL OF A FLOODPLAIN DEVELOPMENT PERMIT (Local File No. 26-01-FDP)

Applicant:

Pauline Braymen
70904 Highway 78
Burns, OR 97720

Project Contractor/Builder:

Gus Williams P.E. (Regional Engineer)
Ducks Unlimited, Inc.
11805 NE 99th Street, Suite 1300
Vancouver, WA 98682

Project Location:

T 23s, R31E, S15

Project Description:

****Williams Memorandum dated 3/18/26***

The 'Riggs Diversion Replacement Project' *proposes to replace a deteriorating in0stream diversion structure on Foley Slough with a new diversion structure and ODFW approved fish ladder. Efficiencies realized by installation of a new reinforced concrete weir/drop board diversion structure would enhance surface water distribution across 680 acres of historical Foley Slough-Silvies River floodplain and season wet meadows.*

The existing structure is comprised of a land crossing equipped with two culverts fitted with a metal gate and drop boards to control flows through the structure. When the gate and/or drop boards are in place, water backs up upstream of the structure facilitating diversions into three associated culverts that provide flood-irrigation to adjacent wet meadows. The existing structure does not provide fish passage during the irrigation season.

The proposed project would replace the existing diversion structure with a new concrete weir/drop board diversion structure with fish ladder. The new structure would consist of an

upstream weir, three stoplog posts that can be equipped with wooden boards to control flows, and a downstream weir connected to a 16.5-foot-wide, 34.5 feet long three-sided box culvert designed to maintain a land crossing while providing connectivity along the stream alignment to the diversion structure and fish ladder.

Williams notes that ODFW (Oregon Department of Fish and Wildlife) required fish passage to be provided by a fish ladder as part of the new diversion structure.

The following findings are attached to the approval of a floodplain development permit for a New (replacement of existing) diversion dam and related developments in Harney County.

A memorandum has been submitted (“Exhibit A”) as part of the application filing by the contractor which provides descriptions of the existing and proposed conditions along with a *No Rise Analysis*. The application materials also contain a site plan/vicinity map and construction detail (“Exhibit B”).

These findings reference the applicable standards for the proposed development. The proposal calls for replacing a diversion dam and supporting developments within the 100-year flood zone, specifically the “A zone” without established base flood elevation data within the effective Flood Insurance Rate Map (FIRM). The location of the development is within the Foley channel. The effective County FIRM maps (2022) indicate that this portion of the river channel is not within the designated floodway - Zone A, 41025C1430. Staff will apply FEMA’s riverine floodplain standard and require the applicant to submit a no-rise analysis as part of the application materials. Harney County Flood Plain Development standards are listed Ordinance No. 2021-02, however there are no specific development criteria which address this particular type of development.

FEMA’s floodplain development regulations are as follows for developments proposed in riverine floodplains where no floodway has been designated, the applicant must demonstrate that:

- *The development will not increase the water surface elevation of the base flood more than one foot at any point within the community, and*

FINDING: The Harney County Planning Director finds that this standard will be met, as the applicant’s Engineer has submitted a No Rise Analysis (“Exhibit A”) and supplemental materials which demonstrate that construction of the dam and supporting developments (improvements) will not increase the water surface elevation of the base flood more than one foot at any point within the community. The applicant states within the report that *Work associated with the project would result in no measurable change to the elevation of the base flood. The new in-stream diversion would have a flow area equal to 1.48 times the existing check dam flow area.*

The existing 30-foot-wide dam has 48 square feet (sf) of flow area. The new concrete weir would have 98 sf of flow area. Flow capacity at 2-year bank full flood flow, elevation 4144.5 feet NAVD88, would be increased from 80 cubic feet per second (cfs) to 200 cfs. The 100-year flow is estimated at elevation 4145 feet NAVD88 with a flow of 245 cfs. Passage of flood flows would be enhanced by the new diversion configuration with removable stanchions and a fish ladder to

provide a clear unobstructed flow path for high flows and debris associated with these types of flows.

The total floodplain area proximate to the in-stream diversion is 1200 acres. The project would result in no increase in the volume of material placed in the floodplain:

- *Total cut below 100-year Floodplain Elevation = 578 cubic yards*
- *Total fill below 100-year Floodplain Elevation = 578 cubic yards*
- *Net cut/fill below 100-year Floodplain Elevation = 0 cubic yards*

In addition, the project would likely reduce flood velocities on Foley Creek in the vicinity of the new instream diversion. By design, the new structure has been sized and configured to allow water to more efficiently pass over the diversion during high water events, whereas the poor condition of the current structure forces water to pool upstream, contributing to increased head, velocities and erosion along the banks of Foley Slough downstream.

Final Permit Requirements:

- **Applicant must attain all required State and Federal development permits necessary for the proposal prior to start of construction. It is the applicant's responsibility to fulfill this requirement.**
- **Once all permitting requirements are fulfilled as stated above, construction is allowed to begin on the new dam and associated improvements described within the application materials.**



Brandon M. McMullen,
Harney County Planning Director,
Harney County Floodplain Administrator



FLOODPLAIN DEVELOPMENT PERMIT APPLICATION 2026

Return Application
Materials To:

Brandon McMullen,
Planning Director
Voice: (541) 573-6655
Brandon.mcmullen@co.harney.or.us

at

**Harney County Planning
Department**
360 N. Alvord Ave.
Burns, OR 97720
Fax: (541) 573-2762

Visit us at
www.co.harney.or.us

Floodplain
Development Permit
File No. _____
(Office Use Only)

APPLICATION FOR A FLOODPLAIN DEVELOPMENT PERMIT IN HARNEY COUNTY

This application must be submitted to the Harney County Planning Department, 450 N. Buena Vista, Burns, OR 97720, (541) 573-6655, and must be accompanied by a non-refundable application fee. Acceptance of the application and fee does not guarantee approval. Please complete this application by printing clearly with a black ink pen.

The undersigned hereby makes application for a permit to develop in a designated floodplain area. The work to be performed is described below and in attachments hereto. The undersigned agrees that all such work shall be done in accordance with the requirements of the Harney County Floodplain Ordinance (HCZO, Section 4.080) and with all other applicable local, State and Federal regulations. This application does not create liability on the part of Harney County or any officer or employee thereof for any flood damage that results from reliance on this application or any administrative decision made lawfully there under.

Floodplain Development Permit Fee: \$145.00

Date Received: 3/20/16

Section 1: Contact Information

Name of Applicant: Pauline Braymen

Address of Applicant: 70904 Highway 78 Burns, OR 97720

Telephone # of Applicant: (541) 573-2787

Address of Property: 70904 Highway 78 Burns, OR 97720

Name of Builder: Ducks Unlimited, Inc.

Address of Builder: 11805 NE 99th Street, Suite 1300
Vancouver, WA 98682

Telephone # of Builder: (360) 885-2011

Associated Land Use Permit
Application # (if applicable): _____

Section 2: Description of Work (Complete for All Work)

1. Proposed Development Description: ("Development" as defined in HCZO, Section 4.080 (2)(G))	☐ New Building ☐ Manufactured Home ☐ Improvement to Existing Building ☒ Filling
2. Size and location of proposed development (attach Site Plan):	Replace existing in-stream diversion on Foley Slough with a new diversion structure and construct new fish ladder. Total approximate net fill volume = 590 CY; fill area = 10, 850 sf. See attached site plan.
3. Is the proposed development in a Special Flood Hazard Area (Zones A, AE, A1-A30, AH or AO)?	☒ Yes ☐ No
4. Per the floodplain map, what are the Zone, Community Number and Panel Number of the area of the proposed development:	Zone: <u>A</u> Community Number: <u>410083</u> (Unincorporated Harney County) Panel Number: 1430
5. Are other Federal, State or Local permits obtained? If so, please describe the type:	☐ Yes ☒ No Type: <u>Permits from USACE, ODEQ,</u> <u>DSL and ODFW in progress</u>
6. Is the proposed development in an identified Floodway?	☐ Yes ☒ No
7. If yes to #6, is a "No Rise Certification" with supporting data attached?	☐ Yes ☐ No

Section 3: Complete for New Structures and Building Sites

If the property site is in Zone A (without BFE calculated) then complete the **Natural Grade (NG)** portion for the remainder of the questions in this application as well as Elevations.

8. Base Flood Elevation (BFE) at the site: If property is in Zone A BFE is undetermined and so a minimum of 2 feet about Natural Grade is required.	_____####.00_____ Feet NAVD88* * National Geodetic Vertical Datum - used by the National Flood Insurance Program, it is based on the Mean Sea Level and also has been called "1929 Mean Sea Level".
9. Required lowest floor Elevation Based on BFE (including basement): - OR - 10. How high above Natural Grade is the lowest floor to be located? It is required to provide a reference mark at the project site.	_____N/A_____ Feet NAVD88 _____N/A_____ Feet above NG
11. Elevation to which all attendant utilities, including all electrical panels, heating, air conditioning, ventilation equipment and water systems (wells) will be protected from flood damage: -OR- 12. How high above Natural Grade are the utilities to be located? It is required to provide a reference mark at the project site.	_____N/A_____ Feet NAVD88 _____N/A_____ Feet above NG
13. Will a watercourse be altered or relocated as a result of the proposed development? If so, please describe in an attachment marked Exhibit A:	☐ No ☒ Yes, (see attached Exhibit A) Foley Slough will be altered to replace existing structure with new in-stream diversion.

Section 4: Complete only if applying for Additions/Improvements to Existing Structures

14. What is the estimated market value of the existing structure?	\$__N/A_____
15. What is the cost of the proposed construction?	\$__N/A_____
16. Is the cost of the proposed construction equal to or more than 50 percent of the market value of the existing structure? If so, then the Substantial Improvement provisions shall apply and an itemized list showing the number and valuation of materials and labor is required.	☐ Yes ☐ No

Section 5: Complete only if applying for Non-Residential Floodproofed Construction

17. Type of floodproofing method:	N/A
18. The required floodproofing elevation is: -OR-	__N/A_____ Feet NGVD
19. How high above Natural Grade must the Non-Residential structure be contracted?	__N/A_____ Feet above NG
20. Is floodproofing certification by a	☐ Yes

registered engineer attached?

☐ No

Section 6: Complete for Enclosures

21. Will the building be elevated on stem wall foundation or fill? If stem wall or other enclosure, what is the square footage of the building enclosures, (typically the square footage of the structure)?

(Circle answer)

N/A

Fill

Stem Wall/Permanent Enclosure

22. If permanent enclosure below the BFE, provide number of flood vents/openings proposed, and list total net area of flood openings (**total net area of openings must be at least 1 square inch for every square foot of building enclosed*)

Total Number of Permanent Vents/Openings: _____

Total Net Area of Flood Openings: _____

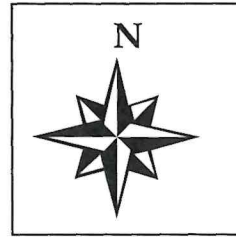
Flood openings must be within 1.0 foot above adjacent grade

Section 7: Required Application Materials

23. The Planning Department requests the following materials to be submitted with the application. Note: The proceeding page is to be used as a base for the site plan.

☒	Materials to submit for a Floodplain Development Permit Application:
☒	a) Completed Application form .
☒	b) Applicable Application fees .
☒	c) Site Plan Marked Exhibit B (see proceeding page) to include:
☒	• Scale of drawing
☒	• North Arrow
☒	• Site area showing <u>Property boundaries</u> and dimensions NOTE: Site area and property boundaries are shown in Figure 1.
☒	• Proposed and existing <u>structures</u> with dimensions to nearest Property lines.
☐	• Location of existing <u>wells</u>
☐	• Location of existing <u>septic systems</u> (i.e. tanks, drain fields)
☒	• Widths and names of <u>roads</u> adjacent to the site as well as existing roads, which provide direct access to the Property.
☒	• Existing <u>access points</u> (driveways, lanes, etc.)
☒	• Location of <u>all</u> creeks, streams, ponds, springs and other drainage ways. (Include proposed changes to waterways.)
☐	• Elevation in terms of mean sea level of the lowest floor (including basement) of all structures and utilities (Show height above Natural Grade if elevations are not required to be taken).
☐	• Elevation in relation to the mean sea level to which any structure has been Floodproofed (Show height above Natural Grade if elevations are not required to be taken).

Exhibit B Site Plan



See Separate Attachment

Section 8: Administrative Use Only

24. Permit Status:

☐ Approved
☐ Denied

25. Elevation Certificate attached?

☐ Yes
☐ No

26. As-Built Elevation Certificate attached?

☐ Yes
☐ No

27. As-Built lowest floor elevation:

_____ Feet NGVD

-OR-

28. How high above Natural Grade is the
lowest floor constructed to:

_____ Feet above NG

29. Work Inspected By:

X _____

30. CONDITIONS:

X

Signature of Applicant

Date

Pauline Braymen
Printed Name of Applicant

X

Signature of Floodplain Administrator
(Harney County Planning Director or Designee)

Date

Brandon McMullen
Printed Name of Floodplain Administrator
(Harney County Planning Director or Designee)

Section 8: Administrative Section

24. Permit Status: Approved Denied

25. Elevation Certificate attached? Yes No N/A

26. As-Built Elevation Certificate attached? Yes No
Feet above NG

27. As-Built lowest floor elevation:

-OR

28. How high above Natural Grade is
the lowest floor constructed to:

_____ Feet NGVD _____ N/A

29. Work Inspected By: X _____ 30. CONDITIONS:

X

Pauline Braymen March 23, 2026
Signature of Applicant Date

Pauline Braymen
Printed Name of Applicant

X

Brandon McMullen
Signature of Floodplain Administrator Date (Harney County Planning
Director or Designee)

Brandon McMullen
Printed Name of Floodplain Administrator
(Harney County Planning Director or Designee)



MEMORANDUM

DUCKS UNLIMITED, INC. WESTERN REGION
11805 NE 99TH STREET, SUITE 1300
VANCOUVER, WA 98682
(360) 885-2011

TO: Brandon McMullen, Planning Director, Harney County Planning Department

FROM: Gus Williams, P.E., Ducks Unlimited, Inc.

DATE: March 18, 2026

SUBJECT: Exhibit A – Riggs Diversion Replacement Project - Floodplain Development Permit Analysis

The purpose of this memorandum is to provide certification that the proposed improvements associated with the Riggs Diversion Replacement Project meet the requirements of the Harney County Floodplain Ordinance (HCZO Section 4.080).

Existing Conditions

The Riggs Diversion is located approximately 3 miles east of Burns, Oregon, following Highway 78 east for 2.7 miles, turning right into the property from the highway (**Figure 1**). The project proposes to replace a deteriorating in-stream diversion structure on Foley Slough with a new diversion structure and Oregon Department of Fish and Wildlife (ODFW) approved fish ladder. Efficiencies realized by installation of a new reinforced concrete weir/drop board diversion structure would enhance surface water distribution across 680 acres of historical Foley Slough-Silvies River floodplain and seasonal wet meadows.

The existing diversion structure is comprised of a land crossing equipped with two culverts fitted with a metal gate and drop boards to control flows through the structure. When the gate and/or drop boards are in place, water backs up upstream of the structure facilitating diversions into three associated culverts that provide flood-irrigation to adjacent wet meadows. The existing structure does not provide fish passage during the irrigation season.

The project site is located within the FEMA 100-year floodplain and is mapped as Zone A (“Areas of 100-year flood; base flood elevations and flood hazard factors not determined”) (Flood Map 41025C1430E, Effective 4/20/2022). For the purposes of this assessment, the 100-year flood surface elevation for Foley Slough is estimated to be approximately 4145.0 feet North American Vertical Datum of 1988 (NAVD88). **Figure 2** shows the location of the project site on the FIRM map for the area. The size of the floodplain in the vicinity of the project site is approximately 1,200 acres.

Proposed Conditions

The proposed project would replace the existing diversion structure with a new reinforced concrete weir/drop board diversion structure with fish ladder. The new diversion structure would consist of an upstream weir, three stoplog posts that can be equipped with wooden boards to control flows, and a downstream weir connected to a 16.5-foot-wide, 34.5 feet long three-sided box culvert designed to maintain a land crossing while providing connectivity along the stream alignment to the diversion structure and fish ladder. To meet velocity requirements for fish passage, the length of the proposed culvert was extended and the land crossing over the proposed box culvert shifted approximately 10 feet downstream of its existing location. As a result, the proposed structure outlet would be 22.5 feet downstream of the existing outlet. The entire structure would be placed on two feet of base rock. The upstream and downstream weirs as well as the foundation slab would be composed of concrete. The new diversion structure would be designed and constructed to meet current engineering standards and would be both measurable and lockable.

ODFW required fish passage to be provided by a fish ladder as part of the new diversion structure. The ladder would meet all ODFW criteria for fish ladders, including jump height requirements for fish species that have difficulty negotiating vertical jumps.

Exhibit B provides the site plan and shows the proposed work to be accomplished. All proposed work would take place within the 100-year floodplain boundary.

County Code Requirements and Applicability

Harney County Floodplain Development Standards are listed under Article 4.080 of the Harney County Floodplain Ordinance. There are no specific standards for this type of development in a floodplain in the County Ordinance. In the absence of a specific standard, this memorandum is provided to demonstrate the proposed project would not increase the water surface elevation of the base flood more than one foot at any point in the community, consistent with FEMA floodplain regulations for developments proposed in riverine floodplains where no floodway has been designated.

No Rise Analysis

Work associated with the project would result in no measurable change to the elevation of the base flood. The new in-stream diversion would have a flow area equal to 1.48 times the existing check dam flow area. The existing 30-foot-wide dam has 48 square feet (sf) of flow area. The new concrete weir would have 98 sf of flow area. Flow capacity at 2-year bank full flood flow, elevation 4144.5 feet NAVD88, would be increased from 80 cubic feet per second (cfs) to 200 cfs. The 100-year flow is estimated at elevation 4145.0 feet NAVD88 with a flow of 245 cfs. Passage of flood flows would be enhanced by the new diversion configuration with removable stanchions and a fish ladder to provide a clear unobstructed flow path for high flows and debris associated with these types of flows.

The total floodplain area proximate to the in-stream diversion is 1200 acres. The project would result in no increase in the volume of material placed in the floodplain:

- Total cut below 100-year Floodplain Elevation = 578 cubic yards

- Total fill below 100-year Floodplain Elevation = 578 cubic yards
- **Net cut/fill below 100-year Floodplain Elevation = 0 cubic yards fill**

In addition, the project would likely reduce flood velocities on Foley Creek in the vicinity of the new instream diversion. By design, the new structure has been sized and configured to allow water to more efficiently pass over the diversion during high water events, whereas the poor condition of the current structure forces water to pool upstream, contributing to increased head, velocities and erosion along the banks of Foley Slough downstream.

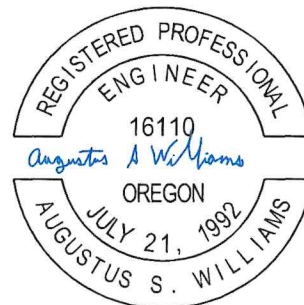
Conclusions

The project would increase flow capacity and reduce flow velocities at the new structure and would result in no net increase in the volume of fill material placed in the existing floodplain. The project would not result in a net rise in base flood elevations in Foley Slough or any increase in flood velocities or flows through the floodplain.

Sincerely,



Gus Williams P.E.
Ducks Unlimited Regional Engineer



EXPIRES: June 2026

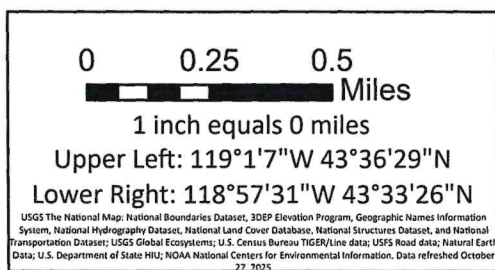
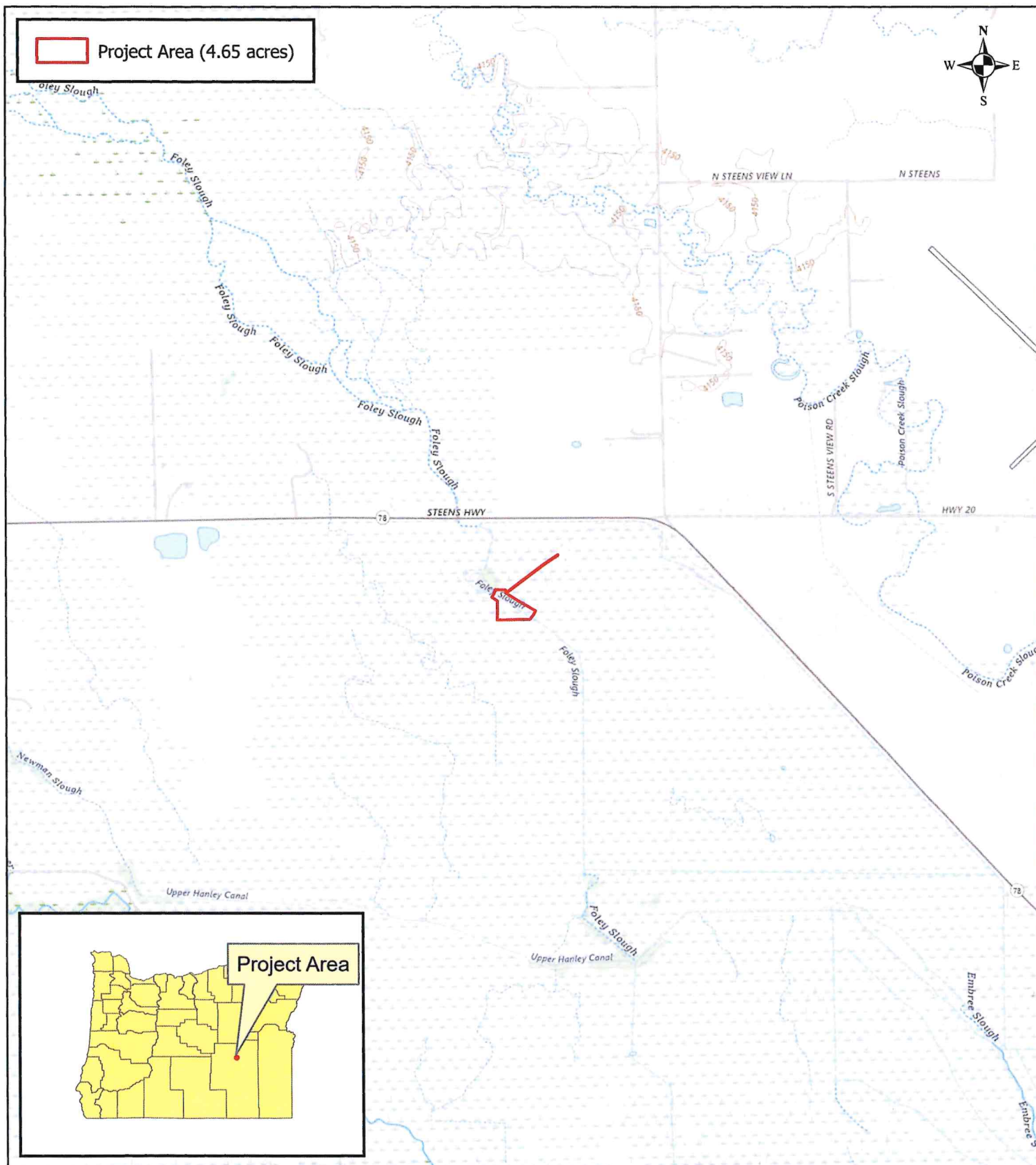


Figure 1. Project Vicinity
Riggs Diversion Replacement Project
 Applicant: Pauline Braymen
 Location: Harney County, OR
 Section/Township/Range: 15 / 23S / 31E
 Latitude/Longitude: 43.582200, -118.990200
 Prepared by: Ducks Unlimited
 Date Prepared: November 2025



Oregon

Tina Kotek, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

BEFORE THE DIRECTOR OF THE DEPARTMENT OF STATE LANDS OF THE STATE OF OREGON

Tina Kotek

Governor

In the Matter of Removal-Fill Permit)
Application 65954-RF) Proposed Permit Decision and Order;
) Notice of Right to a Hearing
By Pauline Braymen)

Tobias Read

Secretary of State

Elizabeth Steiner

State Treasurer

Short and Plain Statement of the Permitting Decision: The permit application is approved because the Department of State Lands (DSL or the Department) has determined that, when carried out in compliance with all terms and conditions outlined in the permit, the proposed removal-fill activity is consistent with the protection, conservation, and best use of the water resources of this state and will not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and recreation. See ORS 196.825.

I. **Applicable Law:**

- a. ORS Chapter 196 governs removal fill permits in Oregon. The Department administers Oregon's Removal-Fill Law, Oregon Revised Statutes (ORS) 196.795 to ORS 196.990, which protects the state's wetlands and waterways. See ORS 196.805. Unless an exception applies, a person may not remove material from waters of this state or fill waters of this state without a permit from DSL. ORS 196.810. Waters of this state include the all-natural waterways, tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, the Pacific Ocean that is in the boundaries of this state, and other water bodies. ORS 196.800; Oregon Administrative Rule (OAR) 141-085-0515; OAR 141-093-0100.
- b. Specifically, the statutes that govern removal-fill permits in Oregon, including the permit application at issue in this case, generally include the following:
 - ORS 196.795 (Administration of State Removal or Fill Permits; General Permits);
 - ORS 196.800 (Definitions);
 - ORS 196.805 (Policy);
 - ORS 196.810 (Removal from Bed or Banks of Waters; Permits; Exceptions);
 - ORS 196.812 (Removal of Large Woody Debris);
 - ORS 196.815 (Permit Applications; Fees);
 - ORS 196.816 (Removal of Materials for Purpose of Maintaining Drainage and Protecting Agricultural Land);
 - ORS 196.817 (Removal or Fill General Permits);
 - ORS 196.818 (Wetland Delineation Reports; Fees);
 - ORS 196.820 (Smith Lake, Bybee Lake Prohibition);
 - ORS 196.825 (Permit Criteria; Consultation with Other Agencies);

ORS 196.830 (Estuarine Resource Replacement; Other Permit Conditions);
ORS 196.835 (Issuance of Permits; Procedure);
ORS 196.845 (Investigations and Surveys of Location); and
ORS 196.850 (Waiver of Permit Requirement; Notice; Review).

The full text of these statutes may be viewed online at:

https://www.oregonlegislature.gov/bills_laws/ors/ors196.html.

The full text of these statutes may also be inspected in person during normal business hours at:
Oregon Department of State Lands
775 Summer St NE STE 100
Salem, OR 97301.

- c. OAR Chapter 141, Division 85 implement the above statutory scheme and govern removal-fill permits in Oregon. The rules that govern removal-fill permits in Oregon, including the permit application at issue in this case, generally include the following:

Div. 85 Removal-Fill Authorizations:

OAR 141-085-0500 (General);
OAR 141-085-0506 (Policy);
OAR 141-085-0510 (Definitions);
OAR 141-085-0515 (Removal-Fill Jurisdiction by Type of Water);
OAR 141-085-0520 (Removal-Fill Jurisdiction by Volume of Material);
OAR 141-085-0525 (Measuring and Calculating Volume of Removal and Fill);
OAR 141-085-0530 (Exemptions for Certain Activities and Structures);
OAR 141-085-0534 (Exemptions for Certain Voluntary Habitat Restoration Activities);
OAR 141-085-0535 (Exemptions Specific to Agricultural Activities);
OAR 141-085-0540 (Types of Authorizations);
OAR 141-085-0545 (Fees; Amounts and Disposition);
OAR 141-085-0550 (Application Requirements for Individual Permits);
OAR 141-085-0555 (Individual Removal-Fill Permit Application Review Process);
OAR 141-085-0560 (Public Review Process for Individual Removal - Fill Permit Applications);
OAR 141-085-0565 (Department Determinations and Considerations in Evaluating Individual Permit Applications);
OAR 141-085-0575 (Permit Appeals);
OAR 141-085-0580 (Discovery in Contested Cases);
OAR 141-085-0585 (Permit Conditions, Permit Expiration Dates and Permit Transfer);
OAR 141-085-0590 (Renewal and Extension of Individual Removal-Fill Permits);
OAR 141-085-0595 (Permit Requirements and Interagency Coordination for Department of Environmental Quality Approved Remedial Action, Corrections Facilities, Solid Waste Land Fills and Energy Facilities);
OAR 141-085-0665 (Expedited Process for Industrial or Traded Sector Sites);
OAR 141-085-0676 (Emergency Authorizations);
OAR 141-085-0680 (Compensatory Mitigation (CM); Applicability and Principal Objectives);
OAR 141-085-0685 (Functions and Values Assessment);
OAR 141-085-0690 (Eligibility Requirements for CM);
OAR 141-085-0692 (Mitigation Accounting);
OAR 141-085-0694 (Special Requirement for CM);
OAR 141-085-0695 (Administrative Protection of CM Sites);
OAR 141-085-0700 (Financial Security for CM Sites);

OAR 141-085-0705 (Requirements for CM Plans);
OAR 141-085-0710 (Monitoring Requirements for CWM);
OAR 141-085-0715 (Mitigation for Temporary Impacts);
OAR 141-085-0720 (Mitigation Banking Purpose, Applicability and Policies);
OAR 141-085-0725 (Process for Establishing Mitigation Banks);
OAR 141-085-0730 (Establishment of Mitigation Credits);
OAR 141-085-0735 (Release, Use and Sale of Mitigation Credits);
OAR 141-085-0740 (Authorization for Mitigation Banks);
OAR 141-085-0745 (In-Lieu Fee Mitigation);
OAR 141-085-0750 (Payments to and Expenditures from the Oregon Removal-Fill Mitigation Fund);
OAR 141-085-0755 (Advance Mitigation); and
OAR 141-085-0768 (Advance Aquatic Resource Plans).

The full text of these rules may be viewed online at:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=15700>.

The full text of these rules may also be inspected in person during normal business hours at:

Oregon Department of State Lands
775 Summer St NE STE 100
Salem, OR 97301.

II. Findings of Fact and Findings of Ultimate Fact:

1. The Department received a complete, written application from applicant on March 23, 2026 and revised on June 11, 2026 for the proposed removal-fill activity consisting of the replacement of an irrigation diversion structure and fish ladder in Foley Slough with 0.58 acres of wetland impacts and 175 linear feet of waterway impacts .
2. The Department circulated the complete application for 30-day public comment period April 27, 2026 to May 26, 2026 to parties including, affected local, state and federal agencies, affected tribal governments, adjacent landowners, and other parties requesting notification.
3. Public comments were received from Dave Banks (ODFW) and forwarded to applicant on May 26, 2026.
4. There were no comments that required a response to the Department.
5. Based on all the information in the agency file in this matter, including the complete application, comments received, applicant response to comments, and the agency's own investigations, the Department concludes as to the determinations in ORS 196.825(1) and (4), OAR 141-085-0565(3), and OAR 141-093-0115:
 - a. The project described in the permit application and as conditioned in the proposed permit, is consistent with the protection, conservation, and best use of the water resources of this state as specified in ORS 196.600 to 196.905;
 - b. The project described in the permit application and as conditioned in the proposed permit would not interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation.
6. Based on all the information in the agency file in this matter, including the complete application, comments received, applicant response to comments, and the agency's own

investigations, the Department concludes, as to the considerations in ORS 196.825(3), OAR 141-085-0565(4), OAR 141-093-0115.

- a. There is an identified public need for the proposed fill or removal and social, economic, or other public benefits likely to result from the proposed fill or removal. The new structure will facilitate fish passage and increased hydraulic conveyance for flood irrigated wetland, increasing functions and values on site including waterbird habitat.
- b. There is not an identified economic cost to the public if the proposed fill or removal is not accomplished.
- c. The application describes three alternatives to the project for which the fill or removal is proposed. There are no practicable alternatives with lesser impact to waters of this state.
- d. The application describes does not describe alternative sites for the proposed removal or fill due to the site-specific nature of the existing water right and infrastructure. There are no practicable alternative sites with lesser impact to waters of this state.
- e. The proposed project conforms to sound policies of conservation because adverse effects to the aquatic resources have been reduced to the extent practicable and the proposed permit contains operating conditions for best management practices to further minimize adverse effects. No interference with public health and safety was identified in the application evaluation and public review processes.
- f. There is not a conflict with existing public uses of the affected waters or adjacent land uses identified in the application evaluation and public review processes.
- g. The proposed permit is conditioned on future local approval as described in the application's Land Use Compatibility Statement.
- h. The proposed fill and removal is not for streambank protection.
- i. No permanent adverse effects to aquatic resources are expected, therefore, compensatory mitigation is not required.

III. Conclusions of Law:

Based on the factors laid out in ORS Chapter 196 and OAR Chapter 141, Division 85, including ORS 196.825, OAR 141-085-0565, and OAR 141-093-0115, DSL should approve the permit application as conditioned in the proposed permit.

IV. Proposed Order:

The Department proposes approving the permit application with conditions and based on the factors laid out in ORS Chapter 196 and OAR Chapter 141, Division 85, including ORS 196.825, OAR 141-085-0565 and OAR 141-093-0130.

As described below, you have the right to request a hearing within 21 days. Prior to the expiration of the 21-day period, this proposed permit decision is not the final agency order on the matter, and the permittee should be aware that the decision could be changed prior to the expiration of the 21-day appeal period—either because the permittee requests a contested case hearing, or as otherwise allowed under the removal fill law. A permittee who begins work under a permit prior to issuance of a final order does so with acceptance of this risk.

V. Hearing:

You are entitled to request a hearing based on this Proposed Order as provided by the Oregon Administrative Procedures Act (ORS chapter 183) and the administrative rules implementing the Administrative Procedures Act, OAR Chapter 137, Division 3. See ORS 196.825(7); OAR 141-001-0005; OAR 141-001-0010; OAR 141-085-0575; OAR 141-093-0130.

If you want a hearing, you must file a written request for a hearing with the Department no later than 21 calendar days from the date of the permit decision. See ORS 196.825(7); OAR 141-085-0575; OAR 141-093-0130. If you are a corporation, partnership, limited liability company, unincorporated association, trust, or government body, you must either have an attorney licensed to practice law in Oregon submit a request for a contested case hearing on your behalf or ratify your hearing request within 28 days. See OAR 137-003-0550.

The Department has determined that due to the complexity of removal-fill permitting, a general denial of the matters or a general objection to all permit conditions in the request for a contested case proceeding does not provide sufficient information for a fair and efficient contested case and a more specific request is warranted. OAR 141-085-0575. All requests for a contested case proceeding under this section shall include a specific list of issues for the contested case proceeding. OAR 141-085-0575. The requester may amend their request to include additional issues or clarify existing issues within 15 days of the date that the case is referred to the Office of Administrative Hearings. OAR 141-085-0575.

You may mail a request for a hearing to:
Department of State Lands
Aquatic Resource Management Program
775 Summer Street NE STE 100
Salem, OR 97301.

If you request a hearing, you will be notified of the time and the place of the hearing. See OAR 137-003-0525. You may be represented by legal counsel at the hearing. ORS 183.417; OAR 137-003-0550. Corporations, partnerships, limited liability companies, unincorporated associations, trusts and government bodies must be represented by an attorney except as provided in OAR 137-003-0555 or as otherwise authorized by law. OAR 137-003-0550. Legal aid organizations may be able to represent you if you have limited financial resources. You will be given information on the procedures, right of representation, and other rights of parties relating to the substance and conduct of the hearing before commencement of the hearing. See ORS 183.413.

VI. Jurisdiction and Authority to Hold a Hearing:

The Department has jurisdiction over the issuance of removal-fill permits pursuant to ORS Chapter 196, and specifically, ORS 196.810. A permit decision constitutes an order in a contested case. See ORS 183.310(2)(a); ORS 196.825(7). If timely requested, a hearing is held as laid out in ORS 183.411 to ORS 183.471, OAR Chapter 137, Division 3, ORS Chapter 196, and OAR Chapter 141, Division 85. ORS 196.825(7).

VII. Final Order and Defaults:

If a request for a hearing is not received by the Department within this 21-day period, your right to a hearing shall be waived and this Proposed Order shall become the Final Order by default. See ORS 196.825(7); OAR 141-085-0575; OAR 141-093-0130.

If you request a hearing and then either withdraw your hearing request, notify the Department or administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Department may issue a final order by default. See ORS 183.417.

If the Department issues a final order by default, it designates its file on this matter, including any materials submitted by you that relate to this matter, as the record for purposes of supporting its decision.

If you proceed to a contested case hearing, a Final Order will not be issued until after the hearing concludes. See ORS 183.464; OAR 141-085-0575; OAR 141-093-0130.

VIII. Federal Servicemembers Civil Relief Act:

Active duty servicemembers have a right to stay contested case proceedings under the federal Servicemembers Civil Relief Act. See *generally* 50 USC 3901 *et seq.* For more information, contact the Oregon State Bar (800-452-8260), the Oregon Military Department (503-584-3571), or the nearest United States Armed Forces Legal Assistance Office (<http://legalassistance.law.af.mil>). The Oregon Military Department does not have a toll-free telephone number.

Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
☎ 503-986-5200

Permit No.:	65954-RF
Permit Type:	Removal/Fill
Waters:	Foley Slough/Wetland
County:	Harney
Expiration Date:	July 21, 2027

PAULINE BRAYMEN

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE REFERENCED APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder must obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands (DSL) and all duly authorized representatives of the Director must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, DSL makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee must defend and hold harmless the State of Oregon, and its officers, agents and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the permittee must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940 if you want a transfer of title; public rights to such filled lands are not extinguished by issuance of this permit. This permit does not relieve the permittee of an obligation to secure appropriate leases from DSL, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact Department of State Lands, 503-986-5200.

Bethany Harrington, Operations Manager
Aquatic Resource Management
Oregon Department of State Lands

Authorized Signature

ATTACHMENT A

Permit Holder: Pauline Braymen

Project Name: Riggs Diversion Replacement Project

Special Conditions for Removal/Fill Permit No. 65954-RF

READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT.

The project site may be inspected by the Department of State Lands (DSL) as part of our monitoring program. A copy of this permit must be available at the work site whenever authorized operations are being conducted.

1. **Responsible Party:** By signature on the application, Pauline Braymen agrees to comply with and fulfill all terms and conditions of this permit, unless the permit is officially transferred to another party as approved by DSL. In the event information in the application conflicts with these permit conditions, the permit conditions prevail.
2. **Authorization to Conduct Removal and/or Fill:** This permit authorizes 0.58 acres of wetland and 175 linear feet of waterway impact(s) with associated removal and fill of material in T23S R31E Section 00, Tax Lot(s) 1300, 1700, & 1800, in Harney County, as referenced in the application, map and drawings (See Attachment B for project location(s)), dated June 11, 2026.
3. **Work Period in Jurisdictional Areas:** Fill or removal activities below the ordinary high water elevation of Foley Slough must be conducted between October 1, 2026 and January 31, 2027, unless otherwise coordinated with Oregon Department of Fish and Wildlife and approved in writing by DSL. If fish eggs are observed within the project area, work must cease, and DSL contacted immediately.
4. **Work Period in Jurisdictional Areas Variance:** The following applies if the permit remains active during the following listed timeframe. In addition to the in-work work window stated in permit condition #3, fill or removal activities below the ordinary high water elevation of the Foley Slough may also be conducted between September 1, 2026 and January 31, 2027, unless otherwise coordinated with Oregon Department of Fish and Wildlife and approved in writing by DSL. If fish eggs are observed within the project area, work must cease, and DSL contacted immediately.
5. **Changes to the Project or Inconsistent Requirements from Other Permits:** It is the permittee's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation or operating conditions to comply with conditions imposed by other permits resulting in removal-fill activity must be approved by DSL prior to implementation.
6. **DSL May Halt or Modify:** DSL retains the authority to temporarily halt or modify the project or require rectification in case of unforeseen adverse effects to aquatic resources or permit non-compliance.

7. **DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

Pre-Construction

8. **Local Government Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a floodplain development permit from the Harney County Planning Department.
9. **Stormwater Management Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality (DEQ), if one is required by DEQ.

General Construction Conditions

10. **Water Quality Certification:** The Department of Environmental Quality (DEQ) may evaluate this project for a Clean Water Act Section 401 Water Quality Certification (WQC). If the evaluation results in issuance of a Section 401 WQC, that turbidity condition will govern any allowable turbidity exceedance and monitoring requirements.
11. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) must be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
- All exposed soils must be stabilized during and after construction to prevent erosion and sedimentation.
 - Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands.
 - To prevent erosion, use of compost berms, impervious materials or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
 - Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the work, they must be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
 - Where vegetation is used for erosion control on slopes steeper than 2:1, a tackified seed mulch must be used so the seed does not wash away before germination and rooting.
 - Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands.
 - Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.
 - All erosion control structures must be removed when the project is complete, and soils are stabilized and vegetated.

12. **Fuels, Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, material treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Machinery and equipment staging, cleaning, maintenance, refueling, and fuel storage must be at least 150 feet from OHW or HMT and wetlands to prevent contaminants from entering waters of this state. Refueling is to be confined to a designated area to prevent spillage into waters of this state. Barges must have containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
13. **Archaeological Resources:** If any archaeological resources, artifacts or human remains are encountered during construction, all construction activity must immediately cease. The State Historic Preservation Office must be contacted at 503-986-0674. You may be contacted by a Tribal representative if it is determined by an affected Tribe that the project could affect Tribal cultural or archeological resources.
14. **Construction Corridor:** There must be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint (Figure(s) 3).
15. **Hazards to Recreation, Navigation or Fishing:** The activity must be timed so as not to unreasonably interfere with or create a hazard to recreational or commercial navigation or fishing.
16. **Operation of Equipment in the Water:** Heavy equipment may be positioned on or traverse the area below ordinary high water or highest measured tide only when the area is free of flowing or standing water. All machinery operated below ordinary high water (OHW) or highest measured tide (HMT) elevation must use vegetable-based hydraulic fluids, be steam cleaned and inspected for leaks prior to each use, and be diapered to prevent leakage of fuels, oils, or other fluids below OHW or HMT elevation. Any equipment found to be leaking fluids must be immediately removed from and kept out of OHW or HMT until repaired.
17. **Fish Salvage Required:** Fish must be salvaged from the isolation area. Permits from NOAA Fisheries and Oregon Department of Fish and Wildlife, Fish Research are required to salvage fish. Fish salvage permit information may be obtained by contacting ODFW Fish Research at 503-947-6254 or Fish.Research@state.or.us.
18. **Fish Passage Required:** The project must meet Oregon Department of Fish and Wildlife requirements for fish passage, as required in ORS 509.585. Contact the local ODFW District Fish Biologist (David Banks, 541-589-1905, David.T.BANKS@odfw.oregon.gov) to ensure your project meets the state's fish passage requirements.
19. **Raising or Redirecting Water:** The project must not cause water to rise or be redirected and result in damage to structures or property on the project site as well as adjacent, nearby, upstream, and downstream of the project site.
20. **Trenching in Wetlands:** During trenching or excavation, the top layer of soil must be separated from the rest of the excavated material and put back on top when the trench or pit is back-filled. If the native underlying soils are not used as bedding material and a coarser, non-native soil or other

material is used, preventative measures such as clay or concrete plugs must be used so that underground hydraulic piping does not dewater the site and adjacent wetlands.

- 21. Temporary Ground Disturbances:** All temporarily disturbed areas must be returned to original ground contours at project completion.

Riprap Placement

- 22. Riprap Placement Methods:** Riprap/rock must be placed under the following conditions:

- a. Only clean, erosion resistant rock from an upland source must be used as riprap. No broken concrete or asphalt must be used.
- b. Riprap rock must be placed in a manner that does not increase the upland surface area.
- c. Riprap must be placed in a way as to minimize impacts to the active stream channel.
- d. Gravel or filter fabric should be placed behind the riprap rock, including the toe trench rock, as a filter blanket.
- e. All riprap rock must be placed, not dumped, from above the bank line.

Rectification of Temporary Impacts

- 23. Site Rectification Required for Temporary Wetland Impacts:** Site rectification for temporary impacts to 0.32 acres of wetland must be conducted according to the rehabilitation plan in the application's Supplemental Attachment "Impacts, Restoration/Rehabilitation and Compensatory Mitigation (Box 9)". Failure to rectify the site may result in additional compensatory mitigation.

- 24. Pre-construction Elevations Must Be Restored Within the Same Construction Season:** Construction activities within areas identified as temporary impact must not exceed two construction seasons and rectification of temporary impacts must be completed within 24 months of the initiation of impacts. However, if the temporary impact only requires one construction season, re-establishment of pre-construction contours must be completed within that same construction season, before the onset of fall rains.

- 25. Rectification Monitoring Report(s) Required:** See Monitoring and Reporting Requirements below.

Monitoring and Reporting Requirements

- 26. Post-Construction Report Required:** A post-construction report demonstrating as-built conditions and discussing any variation from the approved plan must be provided to DSL within 90 days of site grading, which shall occur during the fall, winter, or spring immediately following the completion of grading within the required planting areas. The post-construction report must include:

- a. A scaled drawing, accurate to 1-foot elevation, clearly showing the following:
 - i. Finished contours of the site.
 - ii. Current tax lot and right-of-way boundaries.
 - iii. Photo point locations.
 - iv. Permanently and temporarily impacted wetland and waterway boundaries identified separately, with square foot listed.

- b. Photos from fixed photo points. This should clearly show the site conditions, and any signage, and fencing required.
- c. A narrative that describes any deviation from the approved plan.

27. Annual Monitoring Reports Required: Monitoring is required until DSL has officially released the site from further monitoring. The permittee must monitor the site to determine whether the site is meeting performance standards for a minimum period of one growing season after completion of all the initial plantings. Annual monitoring reports are required and are due by November 1. Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, forfeiture of the financial security and/or enforcement action.

28. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of DSL, for failure of the site to meet performance standards for the final two consecutive years without corrective or remedial actions (such as irrigation, significant weed/invasive plants treatment or replanting) or when needed to evaluate corrective or remedial actions.

29. Contents of the Annual Monitoring Report: The annual monitoring report must include the following information:

- a. Completed Monitoring Report Cover Sheet, which includes permit number, permit holder name, monitoring date, report year, performance standards, and a determination of whether the site is meeting performance standards.
- b. Site location map(s) that clearly shows the impact site and mitigation site boundaries.
- c. Site Plan that clearly shows at least the following:
 - i. The area seeded, with the square foot area listed.
 - ii. The area planted with trees and shrubs, with the square foot area listed.
 - iii. Current tax lot and right-of-way boundaries.
 - iv. Permanent monitoring plot locations that correspond to the data collected and fixed photo-points. These points should be overlaid on the as-built map.
 - v. PEM, PSS, PFO, waterways, riparian areas, and buffer clearly identified separately and the area (square foot or acreage) of each noted.
 - vi. Creation, restoration, enhancement, and preservations areas identified separately, with the square foot area of each listed.
- d. A brief narrative that describes maintenance activities and recommendations to meet success criteria. This includes when irrigation occurred and when the above ground portion of the irrigation system was or will be removed from the site.
- e. Data collected to support the conclusions related to the status of the site relative to the performance standards listed in this permit (include summary/analysis in the report and raw data in the appendix). Data should be submitted using the DSL Mitigation Monitoring Vegetation Spreadsheet or presented in a similar format as described in DSL's Routine Monitoring Guidance for Vegetation.
- f. Photos from fixed photo points (include in the appendix).
- g. Other information necessary or required to document compliance with the performance standards listed in this permit.

30. Corrective Action May Be Required: DSL retains the authority require corrective action in the event the performance standards are not accomplished at any time within the monitoring period.

Performance Standards

To be deemed successful, the rehabilitation of temporary impacts areas including buffers must meet the following performance standards, as determined by DSL:

31. **Establishment of Permanent Monitoring Locations Required:** Permanent plot locations must be established during the first annual monitoring in sufficient number and locations to be representative of the site. The permanent plot locations must be clearly marked on the ground.

Herbaceous Wetlands

32. **Bare Substrate Cover:** Bare substrate represents no more than 20% cover.
33. **Moisture Prevalence Index:** Prevalence Index is <3.0.

Monitoring and Reporting Schedule

Report	Requirements	Schedule
Post-Construction	Post-construction report	90 days after completion of revegetation
First Annual Report	Establishment of permanent monitoring locations Vegetation performance standards	After one growing season of all proposed plantings

ATTACHMENT B

Permit Holder: Pauline Braymen

Project Name: Riggs Diversion Replacement Project

Maps and Drawings for Removal/Fill Permit No. 65954-RF

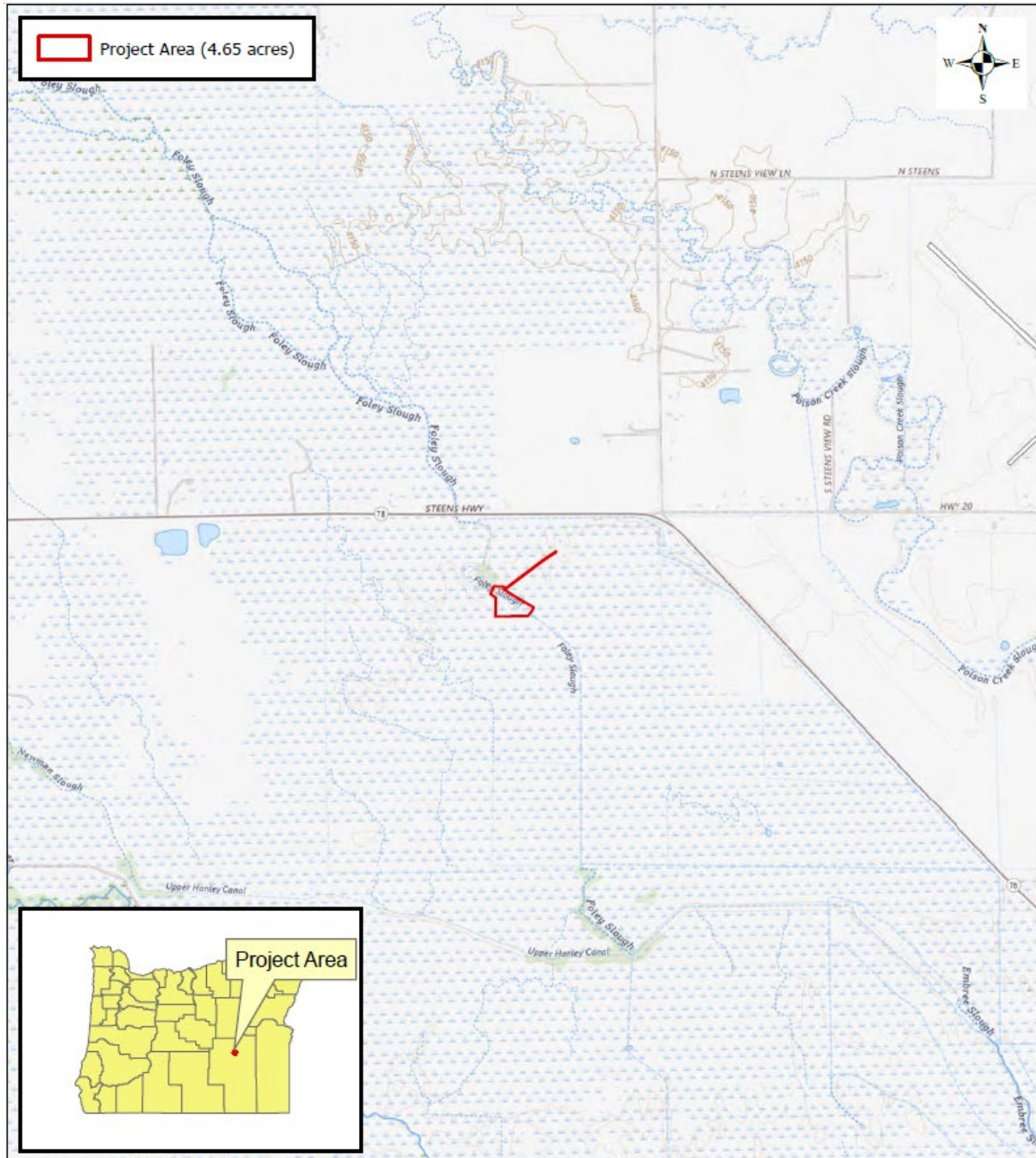


Figure 1. Project Vicinity
Riggs Diversion Replacement Project

Applicant: Pauline Braymen

Location: Harney County, OR

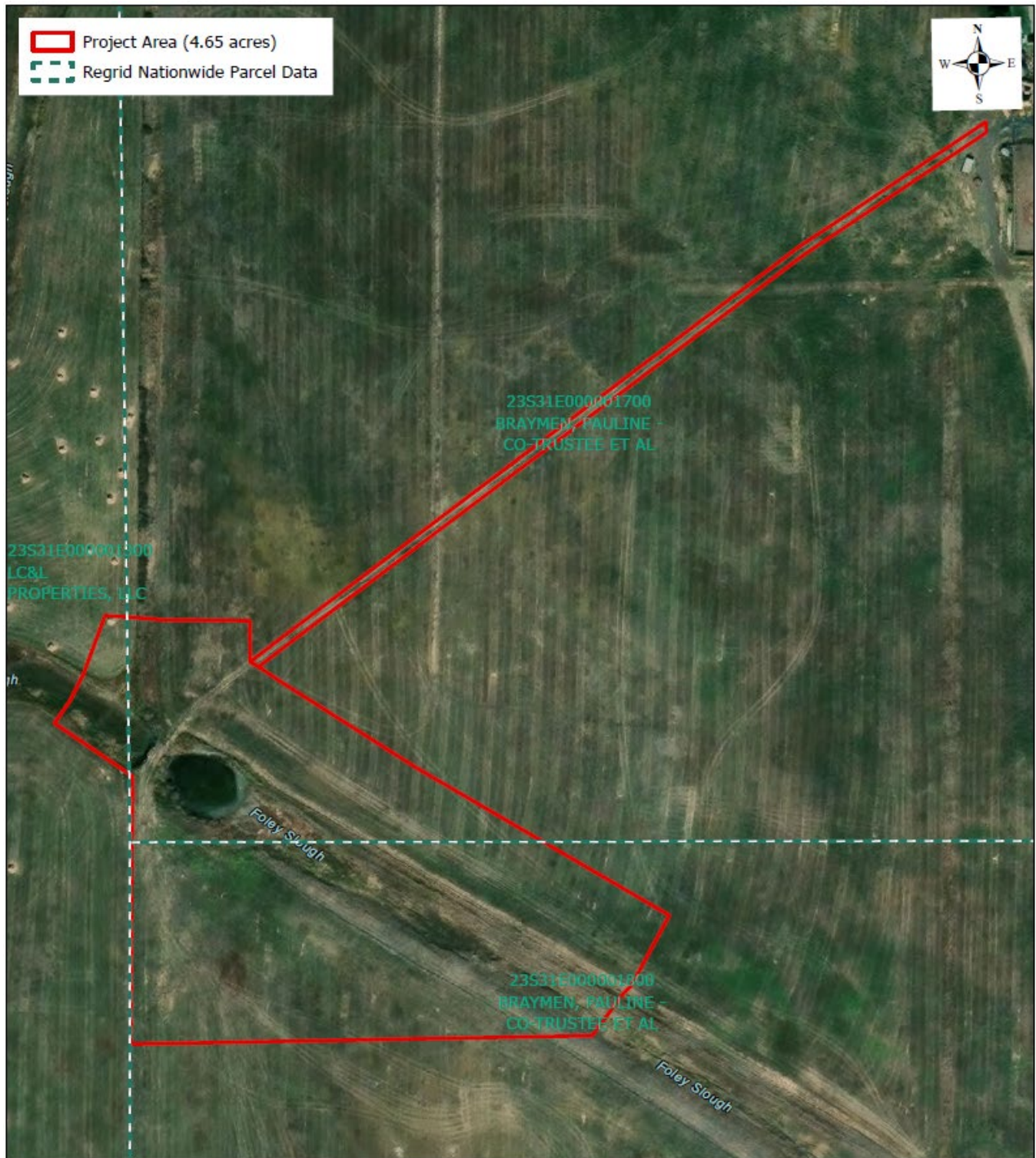
Section/Township/Range: 15 / 23S / 31E

Latitude/Longitude: 43.582200, -118.990200

Prepared by: Ducks Unlimited

Date Prepared: November 2025





0 100 200
Feet

1 inch equals 141 feet

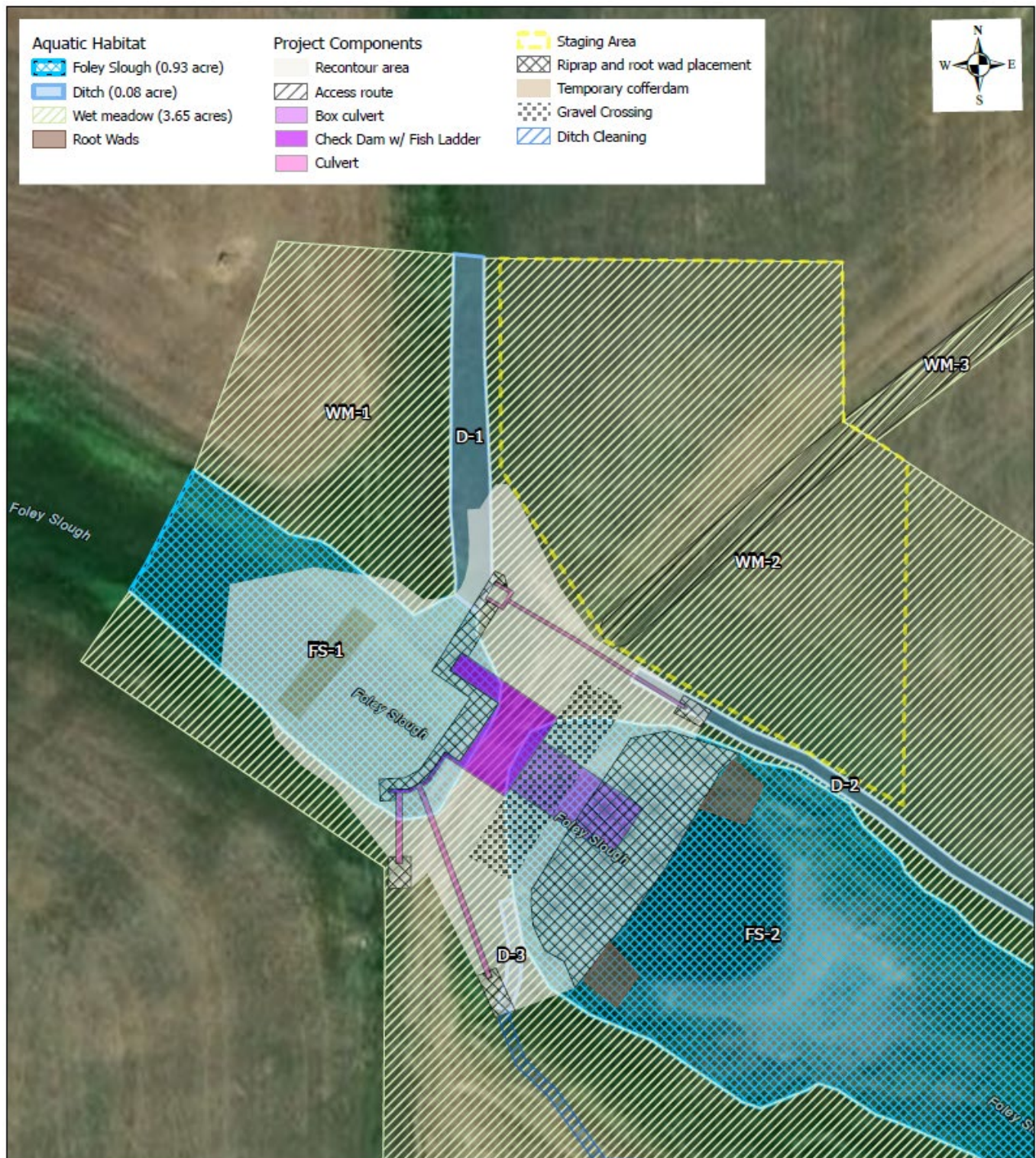
Upper Left: 118°59'27"W 43°35'4"N

Lower Right: 118°59'11"W 43°34'51"N

Vendor: Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



Figure 3. Tax Lots
Riggs Diversion Replacement Project
Applicant: Pauline Braymen
Location: Harney County, OR
Section/Township/Range: 15 / 23S / 31E
Latitude/Longitude: 43.582200, -118.990200
Prepared by: Ducks Unlimited
Date Prepared: November 2025



0 25 50 Feet

1 inch equals 36 feet

Upper Left: 118°59'26"W 43°34'58"N

Lower Right: 118°59'22"W 43°34'55"N

Microsoft, Vantor, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



Figure 5. Project Components
Riggs Diversion Replacement Project

Applicant: Pauline Braymen

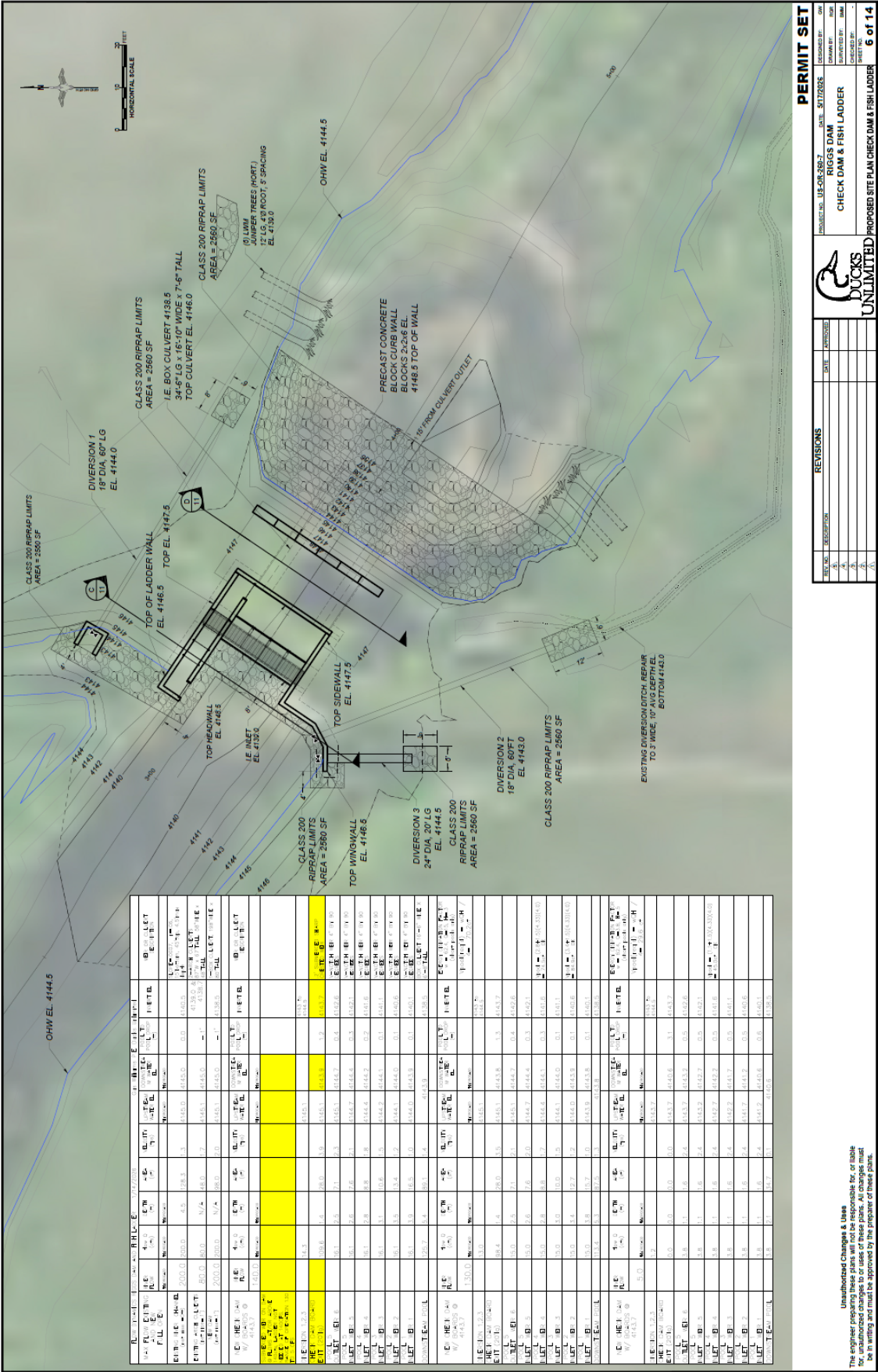
Location: Harney County, OR

Section/Township/Range: 15 / 23S / 31E

Latitude/Longitude: 43.582200, -118.990200

Prepared by: Ducks Unlimited

Date Prepared: June 2026





Oregon

Tina Kotek, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

BEFORE THE DIRECTOR OF THE DEPARTMENT OF STATE LANDS OF THE STATE OF OREGON

Tina Kotek

Governor

In the Matter of Removal-Fill Permit)
Application 65954-RF) Proposed Permit Decision and Order;
) Notice of Right to a Hearing
By Pauline Braymen)

Tobias Read

Secretary of State

Elizabeth Steiner

State Treasurer

Short and Plain Statement of the Permitting Decision: The permit application is approved because the Department of State Lands (DSL or the Department) has determined that, when carried out in compliance with all terms and conditions outlined in the permit, the proposed removal-fill activity is consistent with the protection, conservation, and best use of the water resources of this state and will not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and recreation. See ORS 196.825.

I. **Applicable Law:**

- a. ORS Chapter 196 governs removal fill permits in Oregon. The Department administers Oregon's Removal-Fill Law, Oregon Revised Statutes (ORS) 196.795 to ORS 196.990, which protects the state's wetlands and waterways. See ORS 196.805. Unless an exception applies, a person may not remove material from waters of this state or fill waters of this state without a permit from DSL. ORS 196.810. Waters of this state include the all-natural waterways, tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, the Pacific Ocean that is in the boundaries of this state, and other water bodies. ORS 196.800; Oregon Administrative Rule (OAR) 141-085-0515; OAR 141-093-0100.
- b. Specifically, the statutes that govern removal-fill permits in Oregon, including the permit application at issue in this case, generally include the following:

ORS 196.795 (Administration of State Removal or Fill Permits; General Permits);
ORS 196.800 (Definitions);
ORS 196.805 (Policy);
ORS 196.810 (Removal from Bed or Banks of Waters; Permits; Exceptions);
ORS 196.812 (Removal of Large Woody Debris);
ORS 196.815 (Permit Applications; Fees);
ORS 196.816 (Removal of Materials for Purpose of Maintaining Drainage and Protecting Agricultural Land);
ORS 196.817 (Removal or Fill General Permits);
ORS 196.818 (Wetland Delineation Reports; Fees);
ORS 196.820 (Smith Lake, Bybee Lake Prohibition);
ORS 196.825 (Permit Criteria; Consultation with Other Agencies);

ORS 196.830 (Estuarine Resource Replacement; Other Permit Conditions);
ORS 196.835 (Issuance of Permits; Procedure);
ORS 196.845 (Investigations and Surveys of Location); and
ORS 196.850 (Waiver of Permit Requirement; Notice; Review).

The full text of these statutes may be viewed online at:

https://www.oregonlegislature.gov/bills_laws/ors/ors196.html.

The full text of these statutes may also be inspected in person during normal business hours at:
Oregon Department of State Lands
775 Summer St NE STE 100
Salem, OR 97301.

- c. OAR Chapter 141, Division 85 implement the above statutory scheme and govern removal-fill permits in Oregon. The rules that govern removal-fill permits in Oregon, including the permit application at issue in this case, generally include the following:

Div. 85 Removal-Fill Authorizations:

OAR 141-085-0500 (General);
OAR 141-085-0506 (Policy);
OAR 141-085-0510 (Definitions);
OAR 141-085-0515 (Removal-Fill Jurisdiction by Type of Water);
OAR 141-085-0520 (Removal-Fill Jurisdiction by Volume of Material);
OAR 141-085-0525 (Measuring and Calculating Volume of Removal and Fill);
OAR 141-085-0530 (Exemptions for Certain Activities and Structures);
OAR 141-085-0534 (Exemptions for Certain Voluntary Habitat Restoration Activities);
OAR 141-085-0535 (Exemptions Specific to Agricultural Activities);
OAR 141-085-0540 (Types of Authorizations);
OAR 141-085-0545 (Fees; Amounts and Disposition);
OAR 141-085-0550 (Application Requirements for Individual Permits);
OAR 141-085-0555 (Individual Removal-Fill Permit Application Review Process);
OAR 141-085-0560 (Public Review Process for Individual Removal - Fill Permit Applications);
OAR 141-085-0565 (Department Determinations and Considerations in Evaluating Individual Permit Applications);
OAR 141-085-0575 (Permit Appeals);
OAR 141-085-0580 (Discovery in Contested Cases);
OAR 141-085-0585 (Permit Conditions, Permit Expiration Dates and Permit Transfer);
OAR 141-085-0590 (Renewal and Extension of Individual Removal-Fill Permits);
OAR 141-085-0595 (Permit Requirements and Interagency Coordination for Department of Environmental Quality Approved Remedial Action, Corrections Facilities, Solid Waste Land Fills and Energy Facilities);
OAR 141-085-0665 (Expedited Process for Industrial or Traded Sector Sites);
OAR 141-085-0676 (Emergency Authorizations);
OAR 141-085-0680 (Compensatory Mitigation (CM); Applicability and Principal Objectives);
OAR 141-085-0685 (Functions and Values Assessment);
OAR 141-085-0690 (Eligibility Requirements for CM);
OAR 141-085-0692 (Mitigation Accounting);
OAR 141-085-0694 (Special Requirement for CM);
OAR 141-085-0695 (Administrative Protection of CM Sites);
OAR 141-085-0700 (Financial Security for CM Sites);

OAR 141-085-0705 (Requirements for CM Plans);
OAR 141-085-0710 (Monitoring Requirements for CWM);
OAR 141-085-0715 (Mitigation for Temporary Impacts);
OAR 141-085-0720 (Mitigation Banking Purpose, Applicability and Policies);
OAR 141-085-0725 (Process for Establishing Mitigation Banks);
OAR 141-085-0730 (Establishment of Mitigation Credits);
OAR 141-085-0735 (Release, Use and Sale of Mitigation Credits);
OAR 141-085-0740 (Authorization for Mitigation Banks);
OAR 141-085-0745 (In-Lieu Fee Mitigation);
OAR 141-085-0750 (Payments to and Expenditures from the Oregon Removal-Fill Mitigation Fund);
OAR 141-085-0755 (Advance Mitigation); and
OAR 141-085-0768 (Advance Aquatic Resource Plans).

The full text of these rules may be viewed online at:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=15700>.

The full text of these rules may also be inspected in person during normal business hours at:

Oregon Department of State Lands
775 Summer St NE STE 100
Salem, OR 97301.

II. Findings of Fact and Findings of Ultimate Fact:

1. The Department received a complete, written application from applicant on March 23, 2026 and revised on June 11, 2026 for the proposed removal-fill activity consisting of the replacement of an irrigation diversion structure and fish ladder in Foley Slough with 0.58 acres of wetland impacts and 175 linear feet of waterway impacts .
2. The Department circulated the complete application for 30-day public comment period April 27, 2026 to May 26, 2026 to parties including, affected local, state and federal agencies, affected tribal governments, adjacent landowners, and other parties requesting notification.
3. Public comments were received from Dave Banks (ODFW) and forwarded to applicant on May 26, 2026.
4. There were no comments that required a response to the Department.
5. Based on all the information in the agency file in this matter, including the complete application, comments received, applicant response to comments, and the agency's own investigations, the Department concludes as to the determinations in ORS 196.825(1) and (4), OAR 141-085-0565(3), and OAR 141-093-0115:
 - a. The project described in the permit application and as conditioned in the proposed permit, is consistent with the protection, conservation, and best use of the water resources of this state as specified in ORS 196.600 to 196.905;
 - b. The project described in the permit application and as conditioned in the proposed permit would not interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation.
6. Based on all the information in the agency file in this matter, including the complete application, comments received, applicant response to comments, and the agency's own

investigations, the Department concludes, as to the considerations in ORS 196.825(3), OAR 141-085-0565(4), OAR 141-093-0115.

- a. There is an identified public need for the proposed fill or removal and social, economic, or other public benefits likely to result from the proposed fill or removal. The new structure will facilitate fish passage and increased hydraulic conveyance for flood irrigated wetland, increasing functions and values on site including waterbird habitat.
- b. There is not an identified economic cost to the public if the proposed fill or removal is not accomplished.
- c. The application describes three alternatives to the project for which the fill or removal is proposed. There are no practicable alternatives with lesser impact to waters of this state.
- d. The application describes does not describe alternative sites for the proposed removal or fill due to the site-specific nature of the existing water right and infrastructure. There are no practicable alternative sites with lesser impact to waters of this state.
- e. The proposed project conforms to sound policies of conservation because adverse effects to the aquatic resources have been reduced to the extent practicable and the proposed permit contains operating conditions for best management practices to further minimize adverse effects. No interference with public health and safety was identified in the application evaluation and public review processes.
- f. There is not a conflict with existing public uses of the affected waters or adjacent land uses identified in the application evaluation and public review processes.
- g. The proposed permit is conditioned on future local approval as described in the application's Land Use Compatibility Statement.
- h. The proposed fill and removal is not for streambank protection.
- i. No permanent adverse effects to aquatic resources are expected, therefore, compensatory mitigation is not required.

III. Conclusions of Law:

Based on the factors laid out in ORS Chapter 196 and OAR Chapter 141, Division 85, including ORS 196.825, OAR 141-085-0565, and OAR 141-093-0115, DSL should approve the permit application as conditioned in the proposed permit.

IV. Proposed Order:

The Department proposes approving the permit application with conditions and based on the factors laid out in ORS Chapter 196 and OAR Chapter 141, Division 85, including ORS 196.825, OAR 141-085-0565 and OAR 141-093-0130.

As described below, you have the right to request a hearing within 21 days. Prior to the expiration of the 21-day period, this proposed permit decision is not the final agency order on the matter, and the permittee should be aware that the decision could be changed prior to the expiration of the 21-day appeal period—either because the permittee requests a contested case hearing, or as otherwise allowed under the removal fill law. A permittee who begins work under a permit prior to issuance of a final order does so with acceptance of this risk.

V. Hearing:

You are entitled to request a hearing based on this Proposed Order as provided by the Oregon Administrative Procedures Act (ORS chapter 183) and the administrative rules implementing the Administrative Procedures Act, OAR Chapter 137, Division 3. See ORS 196.825(7); OAR 141-001-0005; OAR 141-001-0010; OAR 141-085-0575; OAR 141-093-0130.

If you want a hearing, you must file a written request for a hearing with the Department no later than 21 calendar days from the date of the permit decision. See ORS 196.825(7); OAR 141-085-0575; OAR 141-093-0130. If you are a corporation, partnership, limited liability company, unincorporated association, trust, or government body, you must either have an attorney licensed to practice law in Oregon submit a request for a contested case hearing on your behalf or ratify your hearing request within 28 days. See OAR 137-003-0550.

The Department has determined that due to the complexity of removal-fill permitting, a general denial of the matters or a general objection to all permit conditions in the request for a contested case proceeding does not provide sufficient information for a fair and efficient contested case and a more specific request is warranted. OAR 141-085-0575. All requests for a contested case proceeding under this section shall include a specific list of issues for the contested case proceeding. OAR 141-085-0575. The requester may amend their request to include additional issues or clarify existing issues within 15 days of the date that the case is referred to the Office of Administrative Hearings. OAR 141-085-0575.

You may mail a request for a hearing to:
Department of State Lands
Aquatic Resource Management Program
775 Summer Street NE STE 100
Salem, OR 97301.

If you request a hearing, you will be notified of the time and the place of the hearing. See OAR 137-003-0525. You may be represented by legal counsel at the hearing. ORS 183.417; OAR 137-003-0550. Corporations, partnerships, limited liability companies, unincorporated associations, trusts and government bodies must be represented by an attorney except as provided in OAR 137-003-0555 or as otherwise authorized by law. OAR 137-003-0550. Legal aid organizations may be able to represent you if you have limited financial resources. You will be given information on the procedures, right of representation, and other rights of parties relating to the substance and conduct of the hearing before commencement of the hearing. See ORS 183.413.

VI. Jurisdiction and Authority to Hold a Hearing:

The Department has jurisdiction over the issuance of removal-fill permits pursuant to ORS Chapter 196, and specifically, ORS 196.810. A permit decision constitutes an order in a contested case. See ORS 183.310(2)(a); ORS 196.825(7). If timely requested, a hearing is held as laid out in ORS 183.411 to ORS 183.471, OAR Chapter 137, Division 3, ORS Chapter 196, and OAR Chapter 141, Division 85. ORS 196.825(7).

VII. Final Order and Defaults:

If a request for a hearing is not received by the Department within this 21-day period, your right to a hearing shall be waived and this Proposed Order shall become the Final Order by default. See ORS 196.825(7); OAR 141-085-0575; OAR 141-093-0130.

If you request a hearing and then either withdraw your hearing request, notify the Department or administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Department may issue a final order by default. See ORS 183.417.

If the Department issues a final order by default, it designates its file on this matter, including any materials submitted by you that relate to this matter, as the record for purposes of supporting its decision.

If you proceed to a contested case hearing, a Final Order will not be issued until after the hearing concludes. See ORS 183.464; OAR 141-085-0575; OAR 141-093-0130.

VIII. Federal Servicemembers Civil Relief Act:

Active duty servicemembers have a right to stay contested case proceedings under the federal Servicemembers Civil Relief Act. See *generally* 50 USC 3901 *et seq.* For more information, contact the Oregon State Bar (800-452-8260), the Oregon Military Department (503-584-3571), or the nearest United States Armed Forces Legal Assistance Office (<http://legalassistance.law.af.mil>). The Oregon Military Department does not have a toll-free telephone number.

Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
☎ 503-986-5200

Permit No.:	65954-RF
Permit Type:	Removal/Fill
Waters:	Foley Slough/Wetland
County:	Harney
Expiration Date:	July 21, 2027

PAULINE BRAYMEN

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE REFERENCED APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder must obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands (DSL) and all duly authorized representatives of the Director must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, DSL makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee must defend and hold harmless the State of Oregon, and its officers, agents and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the permittee must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940 if you want a transfer of title; public rights to such filled lands are not extinguished by issuance of this permit. This permit does not relieve the permittee of an obligation to secure appropriate leases from DSL, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact Department of State Lands, 503-986-5200.

Bethany Harrington, Operations Manager
Aquatic Resource Management
Oregon Department of State Lands

Authorized Signature

ATTACHMENT A

Permit Holder: Pauline Braymen

Project Name: Riggs Diversion Replacement Project

Special Conditions for Removal/Fill Permit No. 65954-RF

READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT.

The project site may be inspected by the Department of State Lands (DSL) as part of our monitoring program. A copy of this permit must be available at the work site whenever authorized operations are being conducted.

1. **Responsible Party:** By signature on the application, Pauline Braymen agrees to comply with and fulfill all terms and conditions of this permit, unless the permit is officially transferred to another party as approved by DSL. In the event information in the application conflicts with these permit conditions, the permit conditions prevail.
2. **Authorization to Conduct Removal and/or Fill:** This permit authorizes 0.58 acres of wetland and 175 linear feet of waterway impact(s) with associated removal and fill of material in T23S R31E Section 00, Tax Lot(s) 1300, 1700, & 1800, in Harney County, as referenced in the application, map and drawings (See Attachment B for project location(s)), dated June 11, 2026.
3. **Work Period in Jurisdictional Areas:** Fill or removal activities below the ordinary high water elevation of Foley Slough must be conducted between October 1, 2026 and January 31, 2027, unless otherwise coordinated with Oregon Department of Fish and Wildlife and approved in writing by DSL. If fish eggs are observed within the project area, work must cease, and DSL contacted immediately.
4. **Work Period in Jurisdictional Areas Variance:** The following applies if the permit remains active during the following listed timeframe. In addition to the in-work work window stated in permit condition #3, fill or removal activities below the ordinary high water elevation of the Foley Slough may also be conducted between September 1, 2026 and January 31, 2027, unless otherwise coordinated with Oregon Department of Fish and Wildlife and approved in writing by DSL. If fish eggs are observed within the project area, work must cease, and DSL contacted immediately.
5. **Changes to the Project or Inconsistent Requirements from Other Permits:** It is the permittee's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation or operating conditions to comply with conditions imposed by other permits resulting in removal-fill activity must be approved by DSL prior to implementation.
6. **DSL May Halt or Modify:** DSL retains the authority to temporarily halt or modify the project or require rectification in case of unforeseen adverse effects to aquatic resources or permit non-compliance.

7. **DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

Pre-Construction

8. **Local Government Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a floodplain development permit from the Harney County Planning Department.
9. **Stormwater Management Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality (DEQ), if one is required by DEQ.

General Construction Conditions

10. **Water Quality Certification:** The Department of Environmental Quality (DEQ) may evaluate this project for a Clean Water Act Section 401 Water Quality Certification (WQC). If the evaluation results in issuance of a Section 401 WQC, that turbidity condition will govern any allowable turbidity exceedance and monitoring requirements.
11. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) must be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
- All exposed soils must be stabilized during and after construction to prevent erosion and sedimentation.
 - Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands.
 - To prevent erosion, use of compost berms, impervious materials or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
 - Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the work, they must be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
 - Where vegetation is used for erosion control on slopes steeper than 2:1, a tackified seed mulch must be used so the seed does not wash away before germination and rooting.
 - Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands.
 - Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.
 - All erosion control structures must be removed when the project is complete, and soils are stabilized and vegetated.

12. **Fuels, Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, material treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Machinery and equipment staging, cleaning, maintenance, refueling, and fuel storage must be at least 150 feet from OHW or HMT and wetlands to prevent contaminants from entering waters of this state. Refueling is to be confined to a designated area to prevent spillage into waters of this state. Barges must have containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
13. **Archaeological Resources:** If any archaeological resources, artifacts or human remains are encountered during construction, all construction activity must immediately cease. The State Historic Preservation Office must be contacted at 503-986-0674. You may be contacted by a Tribal representative if it is determined by an affected Tribe that the project could affect Tribal cultural or archeological resources.
14. **Construction Corridor:** There must be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint (Figure(s) 3).
15. **Hazards to Recreation, Navigation or Fishing:** The activity must be timed so as not to unreasonably interfere with or create a hazard to recreational or commercial navigation or fishing.
16. **Operation of Equipment in the Water:** Heavy equipment may be positioned on or traverse the area below ordinary high water or highest measured tide only when the area is free of flowing or standing water. All machinery operated below ordinary high water (OHW) or highest measured tide (HMT) elevation must use vegetable-based hydraulic fluids, be steam cleaned and inspected for leaks prior to each use, and be diapered to prevent leakage of fuels, oils, or other fluids below OHW or HMT elevation. Any equipment found to be leaking fluids must be immediately removed from and kept out of OHW or HMT until repaired.
17. **Fish Salvage Required:** Fish must be salvaged from the isolation area. Permits from NOAA Fisheries and Oregon Department of Fish and Wildlife, Fish Research are required to salvage fish. Fish salvage permit information may be obtained by contacting ODFW Fish Research at 503-947-6254 or Fish.Research@state.or.us.
18. **Fish Passage Required:** The project must meet Oregon Department of Fish and Wildlife requirements for fish passage, as required in ORS 509.585. Contact the local ODFW District Fish Biologist (David Banks, 541-589-1905, David.T.BANKS@odfw.oregon.gov) to ensure your project meets the state's fish passage requirements.
19. **Raising or Redirecting Water:** The project must not cause water to rise or be redirected and result in damage to structures or property on the project site as well as adjacent, nearby, upstream, and downstream of the project site.
20. **Trenching in Wetlands:** During trenching or excavation, the top layer of soil must be separated from the rest of the excavated material and put back on top when the trench or pit is back-filled. If the native underlying soils are not used as bedding material and a coarser, non-native soil or other

material is used, preventative measures such as clay or concrete plugs must be used so that underground hydraulic piping does not dewater the site and adjacent wetlands.

- 21. Temporary Ground Disturbances:** All temporarily disturbed areas must be returned to original ground contours at project completion.

Riprap Placement

- 22. Riprap Placement Methods:** Riprap/rock must be placed under the following conditions:

- a. Only clean, erosion resistant rock from an upland source must be used as riprap. No broken concrete or asphalt must be used.
- b. Riprap rock must be placed in a manner that does not increase the upland surface area.
- c. Riprap must be placed in a way as to minimize impacts to the active stream channel.
- d. Gravel or filter fabric should be placed behind the riprap rock, including the toe trench rock, as a filter blanket.
- e. All riprap rock must be placed, not dumped, from above the bank line.

Rectification of Temporary Impacts

- 23. Site Rectification Required for Temporary Wetland Impacts:** Site rectification for temporary impacts to 0.32 acres of wetland must be conducted according to the rehabilitation plan in the application's Supplemental Attachment "Impacts, Restoration/Rehabilitation and Compensatory Mitigation (Box 9)". Failure to rectify the site may result in additional compensatory mitigation.

- 24. Pre-construction Elevations Must Be Restored Within the Same Construction Season:** Construction activities within areas identified as temporary impact must not exceed two construction seasons and rectification of temporary impacts must be completed within 24 months of the initiation of impacts. However, if the temporary impact only requires one construction season, re-establishment of pre-construction contours must be completed within that same construction season, before the onset of fall rains.

- 25. Rectification Monitoring Report(s) Required:** See Monitoring and Reporting Requirements below.

Monitoring and Reporting Requirements

- 26. Post-Construction Report Required:** A post-construction report demonstrating as-built conditions and discussing any variation from the approved plan must be provided to DSL within 90 days of site grading, which shall occur during the fall, winter, or spring immediately following the completion of grading within the required planting areas. The post-construction report must include:

- a. A scaled drawing, accurate to 1-foot elevation, clearly showing the following:
 - i. Finished contours of the site.
 - ii. Current tax lot and right-of-way boundaries.
 - iii. Photo point locations.
 - iv. Permanently and temporarily impacted wetland and waterway boundaries identified separately, with square foot listed.

- b. Photos from fixed photo points. This should clearly show the site conditions, and any signage, and fencing required.
- c. A narrative that describes any deviation from the approved plan.

27. Annual Monitoring Reports Required: Monitoring is required until DSL has officially released the site from further monitoring. The permittee must monitor the site to determine whether the site is meeting performance standards for a minimum period of one growing season after completion of all the initial plantings. Annual monitoring reports are required and are due by November 1. Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, forfeiture of the financial security and/or enforcement action.

28. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of DSL, for failure of the site to meet performance standards for the final two consecutive years without corrective or remedial actions (such as irrigation, significant weed/invasive plants treatment or replanting) or when needed to evaluate corrective or remedial actions.

29. Contents of the Annual Monitoring Report: The annual monitoring report must include the following information:

- a. Completed Monitoring Report Cover Sheet, which includes permit number, permit holder name, monitoring date, report year, performance standards, and a determination of whether the site is meeting performance standards.
- b. Site location map(s) that clearly shows the impact site and mitigation site boundaries.
- c. Site Plan that clearly shows at least the following:
 - i. The area seeded, with the square foot area listed.
 - ii. The area planted with trees and shrubs, with the square foot area listed.
 - iii. Current tax lot and right-of-way boundaries.
 - iv. Permanent monitoring plot locations that correspond to the data collected and fixed photo-points. These points should be overlaid on the as-built map.
 - v. PEM, PSS, PFO, waterways, riparian areas, and buffer clearly identified separately and the area (square foot or acreage) of each noted.
 - vi. Creation, restoration, enhancement, and preservations areas identified separately, with the square foot area of each listed.
- d. A brief narrative that describes maintenance activities and recommendations to meet success criteria. This includes when irrigation occurred and when the above ground portion of the irrigation system was or will be removed from the site.
- e. Data collected to support the conclusions related to the status of the site relative to the performance standards listed in this permit (include summary/analysis in the report and raw data in the appendix). Data should be submitted using the DSL Mitigation Monitoring Vegetation Spreadsheet or presented in a similar format as described in DSL's Routine Monitoring Guidance for Vegetation.
- f. Photos from fixed photo points (include in the appendix).
- g. Other information necessary or required to document compliance with the performance standards listed in this permit.

30. Corrective Action May Be Required: DSL retains the authority require corrective action in the event the performance standards are not accomplished at any time within the monitoring period.

Performance Standards

To be deemed successful, the rehabilitation of temporary impacts areas including buffers must meet the following performance standards, as determined by DSL:

31. **Establishment of Permanent Monitoring Locations Required:** Permanent plot locations must be established during the first annual monitoring in sufficient number and locations to be representative of the site. The permanent plot locations must be clearly marked on the ground.

Herbaceous Wetlands

32. **Bare Substrate Cover:** Bare substrate represents no more than 20% cover.
33. **Moisture Prevalence Index:** Prevalence Index is <3.0.

Monitoring and Reporting Schedule

Report	Requirements	Schedule
Post-Construction	Post-construction report	90 days after completion of revegetation
First Annual Report	Establishment of permanent monitoring locations Vegetation performance standards	After one growing season of all proposed plantings

ATTACHMENT B

Permit Holder: Pauline Braymen

Project Name: Riggs Diversion Replacement Project

Maps and Drawings for Removal/Fill Permit No. 65954-RF

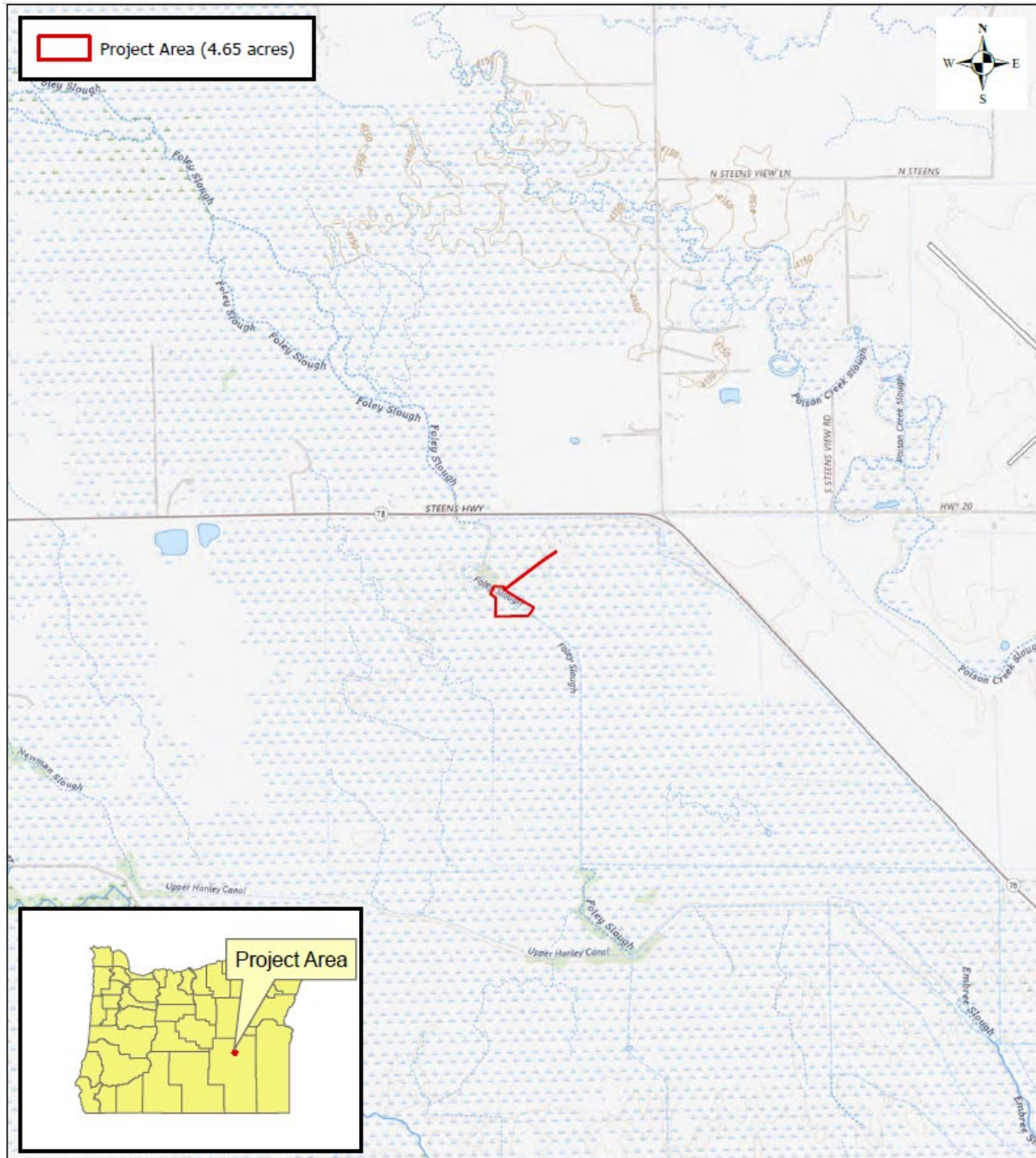


Figure 1. Project Vicinity
Riggs Diversion Replacement Project

Applicant: Pauline Braymen

Location: Harney County, OR

Section/Township/Range: 15 / 23S / 31E

Latitude/Longitude: 43.582200, -118.990200

Prepared by: Ducks Unlimited

Date Prepared: November 2025



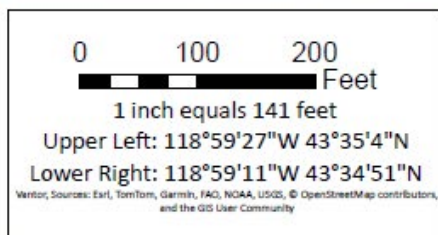
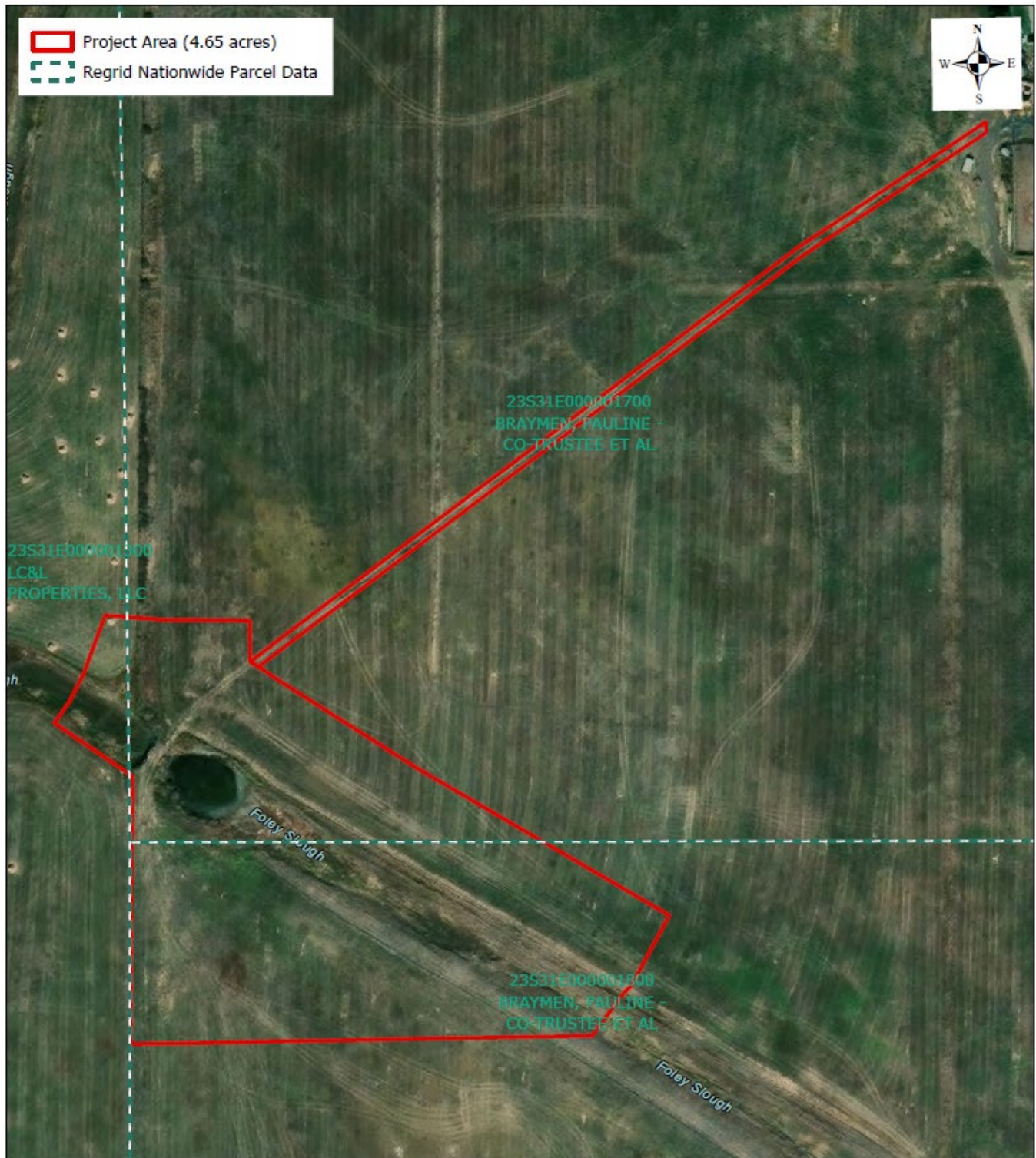
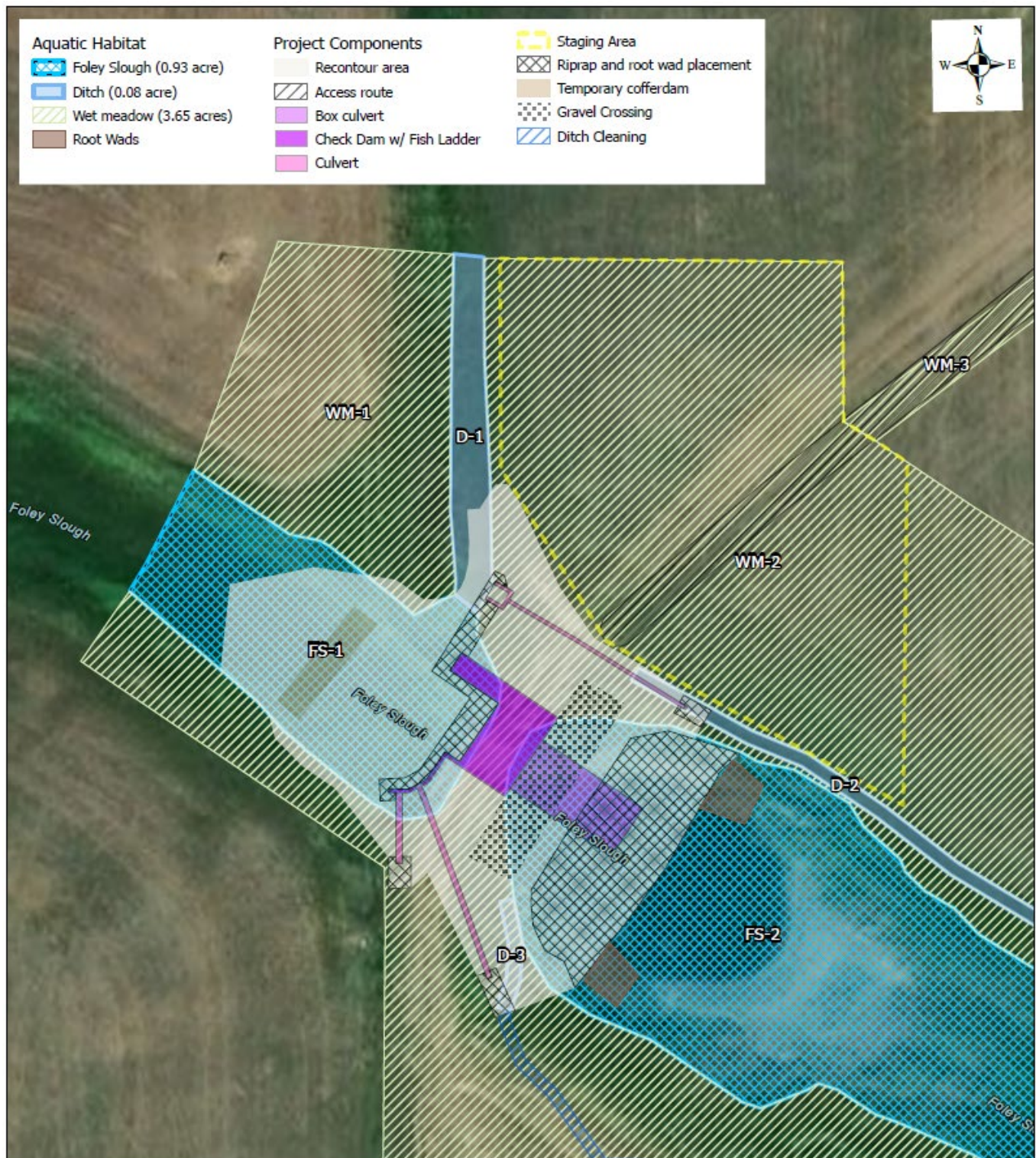


Figure 3. Tax Lots
Riggs Diversion Replacement Project
Applicant: Pauline Braymen
Location: Harney County, OR
Section/Township/Range: 15 / 23S / 31E
Latitude/Longitude: 43.582200, -118.990200
Prepared by: Ducks Unlimited
Date Prepared: November 2025



0 25 50 Feet

1 inch equals 36 feet

Upper Left: 118°59'26"W 43°34'58"N

Lower Right: 118°59'22"W 43°34'55"N

Microsoft, Vantor, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



Figure 5. Project Components
Riggs Diversion Replacement Project

Applicant: Pauline Braymen

Location: Harney County, OR

Section/Township/Range: 15 / 23S / 31E

Latitude/Longitude: 43.582200, -118.990200

Prepared by: Ducks Unlimited

Date Prepared: June 2026



Oregon

Tina Kotek, Governor

Department of Fish and Wildlife

Fish Division

4034 Fairview Industrial Drive SE

Salem, OR 97302

(503) 947-6201

FAX (503) 947-6202

www.dfw.state.or.us/

June 8, 2026

Pauline Braymen
70904 Highway 78
Burns, OR 97720
pb38sage@gmail.com



April Zohn
Ducks Unlimited
11805 NE 99th St, Suite 1300
Vancouver, WA 98682
azohn@ducks.org

Re: Fish passage approval for Riggs Diversion replacement, Harney County – PA-12-0015

Dear Pauline and April,

The Oregon Department of Fish and Wildlife's (ODFW) staff have reviewed the application and design plans for this project. This letter constitutes ODFW Fish Passage Approval, as required in Oregon Revised Statute 509.585.

The proposed project will replace an existing deteriorating in-stream diversion structure on Foley Slough in Harney County (43.582200, -118.990200) with a new diversion structure and fish ladder. The existing land crossing, culverts, gates, and stoplogs would be removed and replaced with a new reinforced concrete weir/drop board diversion structure. The new diversion structure would consist of an upstream weir, three stoplog posts that can be equipped with wooden boards to control flows, and a downstream weir connected to a 16.5-foot-wide, 34.5 feet long three-sided box culvert designed to maintain a land crossing while providing connectivity along the stream alignment to the diversion structure and fish ladder. ODFW has reviewed the project design plans submitted to ODFW and have determined that the design plans are consistent with the state's fish passage design criteria, as defined in OAR 635-412-0035 (1), (2), (3)(a), and (10), and therefore approve the project as required by Oregon fish passage law (ORS 509.585). Due to the expected dry conditions during project construction, requirements for temporary downstream passage have been waived (OAR 635-412-0035(10)(b)).

This ODFW fish passage approval is contingent on specific operational provisions which include:

1. All in-water work, defined as work at or below the ordinary high water mark elevation of the project area, shall be completed during the appropriate ODFW in-water work period, or as otherwise defined by ODFW.
2. The ODFW District Fish Biologist shall be contacted 2 weeks prior to the implementation of the project.

3. Should water be present during construction, fish salvage and rescue shall be performed prior to the commencement of any in-water work, including work area isolation and temporary water management.
4. Should water be present during construction, temporary water management and work area isolation measures shall be implemented during the project.
5. Should water be present during construction and pursuant to OAR 635-412-0035 (10)(e), prior to in-stream construction activities, all fish must be safely collected, removed from the construction site or dewatered reach, and placed in the flowing stream by an authorized person in possession of a separate valid permit issued by ODFW. An Oregon Scientific Take Permit (OR-STP) from ODFW is required to conduct fish salvage in Oregon and other additional authorization may be needed from NMFS or USFWS if work is in ESA waters. OR-STPs can take up to 4-6 weeks for processing and can be applied for at: <https://apps.nmfs.noaa.gov/index.cfm> or if you have questions about OR-STP permitting, please contact fish.research@odfw.oregon.gov
6. The owner/operator of the structure shall be responsible for all maintenance required such that the project provides adequate passage for native migratory fish. Adequate fish passage is defined as volitional fish passage of native migratory fish species between the fish passage design flows (5% to the 95% exceedance flows) for the project.
7. Failure to maintain fish passage at this location and for the duration of this approval shall constitute a violation of this approval and applicable fish passage laws (ORS 509.585 and 509.610).
8. Monitoring and reporting on the effectiveness of fish passage is required at the project. Monitoring shall coincide with the time of the year when native migratory fish are migrating through the project area. Monitoring and reporting shall be based on visual observations, established photo points, flow velocity characteristics, or other means, particularly with regards to fish passage conditions and fish passage performance through the project.
9. Monitoring reports shall be submitted to the ODFW Fish Passage Program staff and the ODFW District Fish Biologist for baseline monitoring in the year of completion (year 0) and for a period of five years post-construction on years 1, 3, and 5.
10. If monitoring indicates that volitional fish passage is questionable or not provided, the owner/operator, in consultation with the ODFW, shall determine the cause and, during a work period approved by the ODFW, shall modify the structure to rectify fish passage problems as necessary. Failure to monitor fish passage for the duration of the ODFW fish passage approval shall constitute a violation of this approval and applicable fish passage laws (ORS 509.585 and 509.610).
11. The ODFW shall be allowed to inspect the project at reasonable times for the duration of this approval. Unless prompted by emergency circumstances, inspection shall be limited to regular and usual business hours, including weekends.
12. It is the responsibility of the applicant to comply with all necessary and required local, county, state, and federal approvals and permits.
13. This approval in no way purports or authorizes take of a federally or state listed species.

This approval is solely for the purpose of fulfilling Oregon's fish passage statutory requirements and responsibilities administered by the Oregon Fish and Wildlife Commission or the ODFW, and does not satisfy any other Department, federal, state, or local laws, rules, or regulations, including but not limited to State or Federal Endangered Species Acts, any applicable water rights, approvals or other certificates administered by regulatory authorities.

Please retain this correspondence for your records, as this documents the ODFW's approval of fish passage at this project site. Again, please note that it is the responsibility of the owner/operator to maintain the project as approved (ORS 509.610). Thank you for your cooperation and patience as we worked through the fish passage plan and application for this project. If you have any questions, please don't hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Mac Barr". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Mac Barr
ODFW Fish Passage Coordinator

Cc: Greg Apke, ODFW Fish Screens and Passage Program Manager
Scott Janssen, ODFW Fish Passage Engineer
David Banks, ODFW Malheur District Fish Biologist
Kim Untermoser, Duck Unlimited Environmental Compliance Specialist

ODFW Project files #PA-12-0015



Oregon

Tina Kotek, Governor

Department of Fish and Wildlife

Fish Division

4034 Fairview Industrial Drive SE

Salem, OR 97302

(503) 947-6201

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www.dfw.state.or.us/

2026 – ODFW Rescue/Salvage Authorization



Applicant: Ducks Unlimited

Organization: Ducks Unlimited

Authorization Number: 29722

Project Title: Fish Salvage for construction during a water control structure replacement project

Dates Valid: 9/1/2026 – 12/31/2026

Federal Authorization: **This permit does not provide any federal authorization for ESA listed fish species.**

Principal Investigator: Andrea Seager

Co-Investigator(s): N/A

PI Signature: _____ CI Signature(s): _____

Terms and Conditions of This Authorization:

1. By conducting activities described in the permit application, the Applicant/Permit Holder, on behalf of any Responsible Party, Principal Investigator, Co-Investigator, and all people working under their supervision, accepts the terms and conditions of this permit and further agrees to observe and comply with all federal, state and local laws while performing activities described in the permit, including without limitation the federal Endangered Species Act.
2. Approval of this permit by the Oregon Department of Fish and Wildlife (ODFW) should not be construed as a determination that activities described in this permit are lawful under the federal Endangered Species Act (ESA), or other applicable federal, state or local laws. Permittee is solely responsible for obtaining permit(s)/authorization(s) required under the federal ESA, as well as any other permit(s)/authorization(s) required by federal, state, or local laws. Activities shall not be conducted under this permit until all required permits/authorizations are obtained. If any condition in this permit (including but not limited to allowable take) conflicts with any federal permit(s)/authorization(s), then the Permittee must comply with the more restrictive condition/limit. Any identified allowable take of federally listed species is not an authorization by ODFW for such take under the federal ESA.
3. This authorization is not transferable and must be carried while collecting. The Principal Investigator and all Co-Investigators must sign their own copy of the authorization. Persons not named on the permit/authorization may assist in collecting only while accompanied by the Principal Investigator or Co-investigator(s) listed above.
4. Access to private property is contingent on landowner permission. This authorization does not authorize trespassing.
5. This authorization is not valid in any refuge, park, city, wildlife area, or area closed to collection without written approval of manager or administrator. When collecting from state parks, please contact Oregon Parks and Recreation Department to inquire about the requirement for an OPRD scientific research collection permit - <https://oprperms.org/>. Additionally, you may need a permit from OPRD if you will be collecting marine plants/seaweeds/kelps.
6. Sampling must be coordinated with local Oregon Department of Fish and Wildlife District Fish Biologists (contact list attached). All requirements contained in the district biologist comments section of the issued authorization must be followed and you must notify them prior to sampling in their districts. Oregon State Police must also be notified prior to sampling by calling *OSP (*677) or 1-800-452-7888.
7. An annual activity/collection report associated with this authorization must be submitted to ODFW by December 31, 2026 via <https://apps.nmfs.noaa.gov/>. Renewal of this authorization will not be issued until

ODFW reviews and approves the annual activity/collection report. All fish, shellfish and marine invertebrate take must be recorded in the annual report. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, control, capture, or collect, or to attempt to engage in any such conduct.

8. In-water work must occur during the appropriate in-water work window (http://www.dfw.state.or.us/lands/inwater/oregon_guidelines_for_timing_of_inWater_work2008.pdf). Exceptions to in-water work periods must be approved by the local ODFW District Fish Biologist and submitted to the ODFW ESA staff in writing prior to commencing work outside the approved in-water work windows.
9. May rescue or salvage fish, shellfish, and marine invertebrates during in-water construction area isolation only as described in the attached issued APPS authorization and take table. After examination and recovery, all species should be released as soon as possible, unharmed, in nearby free-flowing water or as instructed by local ODFW biologists. Prior to release, species should be held in fresh, cool, aerated water.
10. May only conduct rescue and salvage activities as described in the issued APPS authorization. Actual distribution of take among sites is authorized as described in the authorization. The numbers by species detailed in the take table are annual totals.
11. Indirect mortality may not exceed 10%. Mortality rates are calculated as a percentage of total catch, not to exceed the number as described in the take tables in the authorization. In the event that mortality for any species exceeds this rate, the applicant should contact ODFW ESA staff (Fish.Research@odfw.oregon.gov, 971-372-4233 or 541-315-5265) prior to any further activity.
12. Follow U.S. Food and Drug Administration (FDA) approved protocols and use only FDA approved substances for anesthetizing fish.
 - a) **MS-222** may not be used where fish may be subject to sport harvest fisheries within 21 days;
 - b) **Clove oil** may not be used at all;
 - c) **AQUI-S® 20E** may be used as an alternative to MS-222 as a sedative in freshwater fish for field-based activities if the permittees are registered participants in USFWS-AADAP INAD 11-741 and comply with all requirements as set forth in the INAD Study Protocol for AQUI-S® 20E <https://www.fws.gov/service/investigational-new-animal-drugs-inads>. For any fish that can be legally harvested (per ODFW regulations), a 72-hour withdrawal time is required after sedation with AQUI-S 20E prior to release. AQUI-S 20E can only be used as an immediate release sedative for fish not eligible for legal harvest.
 - d) **Carbon dioxide** can be used as a fish anesthetic as per FDA rules and requires no withdrawal time;
 - e) **Electro-anesthesia** can be used as an alternative to chemicals and requires no withdrawal time.
13. If sampling in multiple sub-basins (4th field HUCs), ODFW requires that after each sampling event concludes all gear is cleaned, frozen for six hours and/or allowed to completely dry to prevent the spread of invasive species.
14. If you approach your authorized take or percent indirect mortality at a location and still have sampling to conduct, capture an unexpected species, or need an in season change to revise your sampling methods or procedures; please contact the ODFW ESA staff as soon as possible to request a modification so that you can continue your project.

ISSUED BY:



Endangered Species Act Specialist
Holly Huchko, Sara Hart

ISSUED DATE: 4/23/2026

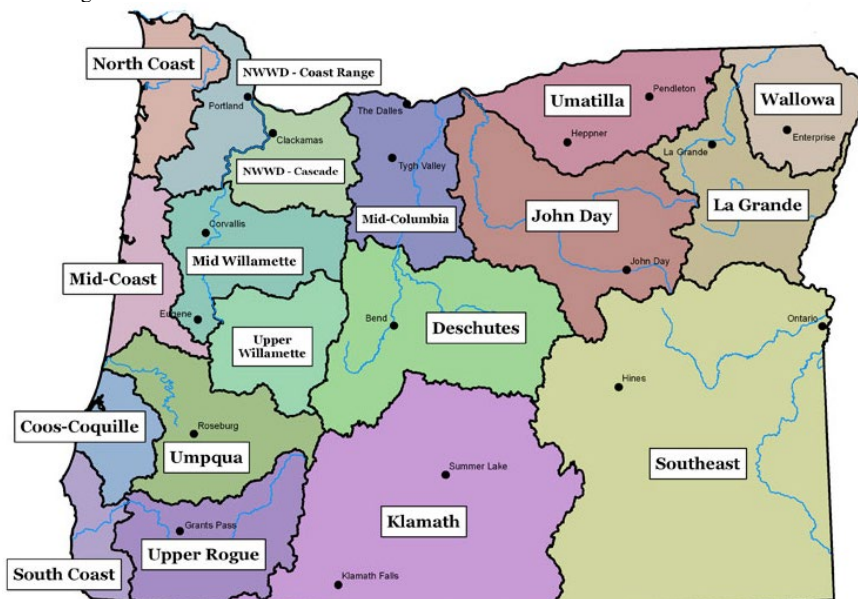
Distribution: Seager - DU, Banks, Handley, Fish Research –ODFW

OREGON FISH BIOLOGISTS CONTACT DETAILS updated 03.24.26

ODFW District Biologist	Phone	E-mail	Fish District	Office
Ben Walczak	(971) 673-6013	Ben.Walczak@odfw.oregon.gov	North Willamette-Cascade Unit	Clackamas
Michael Hayworth*	(971) 673-6011	Michael.D.Hayworth@odfw.oregon.gov	North Willamette-Cascade Unit	Clackamas
Kevin Stertz	(971) 673-6044	Kevin.A.Stertz@odfw.oregon.gov	North Willamette-Coast Range	Clackamas
Dylan O'Keefe	(541) 265-8306	dylan.j.okeefe@odfw.oregon.gov	Mid Coast	Newport
Caleb Yann*	(541) 812-8687	Caleb.W.YANN@odfw.oregon.gov	Mid Coast	Newport
Steve Mazur	(541) 247-7605	Steve.J.Mazur@odfw.oregon.gov	Rogue	Gold Beach
Laura Green*	(541) 247-7605	Laura.J.Green@odfw.oregon.gov	Rogue	Gold Beach
Taylor McCroskey	(541)-318-7969	Taylor.McCroskey@odfw.oregon.gov	Umatilla	Pendleton
Tyler Hoyt*	(541)-276-4344	Tyler.J.HOYT@odfw.oregon.gov	Umatilla	Pendleton
Jason Seals	(541) 296-4628	Jason.T.Seals@odfw.oregon.gov	Mid-Columbia	The Dalles
Lindsay Powell*	(541) 296-4628	Lindsay.J.Powell@odfw.oregon.gov	Mid-Columbia	The Dalles
Vacant	(541) 888-5515	Vacant	Coos-Coquille	Charleston
Vacant *	(541) 888-5515	Vacant	Coos-Coquille	Charleston
Jerry George	(541) 388-6009	Gerald.J.George@odfw.oregon.gov	Deschutes	Bend
Tim Porter*	(541) 447-5111 x24	Timothy.K.Porter@odfw.oregon.gov	Deschutes-Crooked	Prineville
Evan Leonetti	(541) 464-2175	Evan.Leonetti@odfw.oregon.gov	Umpqua	Roseburg
Chris Traill*	(541) 464-2177	Christopher.A.Traill@odfw.oregon.gov	Umpqua	Roseburg
Robert Bradley	(503) 842-2741	Robert.Bradley@odfw.oregon.gov	North Coast	Tillamook
Mike Sinnott*	(503) 842-2741	Michael.Sinnott@odfw.oregon.gov	North Coast	Tillamook
Elise Kelley	(541) 757-5249	Elise.X.Kelley@odfw.oregon.gov	Mid Willamette	Corvallis
Alex Farrand*	(541) 757-5239	Alex.Farrand@odfw.oregon.gov	Mid Willamette	Corvallis
Stephan Charette	(541) 575-1167	Stephan.R.Charette@odfw.oregon.gov	John Day	John Day
Alex Woolen*	(541) 575-1167	alex.w.woolen@odfw.oregon.gov	John Day	John Day
Dave Banks	(541) 573-6582	David.T.Banks@odfw.oregon.gov	Malheur	Hines
Kirk Handley*	(541) 573-6582	Kirk.A.Handley@odfw.oregon.gov	Malheur	Hines

ODFW District Biologist	Phone	E-mail	Fish District	Office
Kyle Bratcher	(541) 426-3279 x234	Kyle.W.Bratcher@odfw.oregon.gov	Wallowa	Enterprise
Michael Lance*	(541) 426-3279	Michael.J.Lance@odfw.oregon.gov	Wallowa/LaGrande	Enterprise
Ethan Brandt	(541) 962-1829	Ethan.J.Brandt@odfw.oregon.gov	LaGrande	LaGrande
Ben Ramirez	(541) 883-5732	Benji.S.Ramirez@odfw.oregon.gov	Klamath	Klamath Falls
Bill Tinniswood*	(541) 883-5732	William.R.Tinniswood@odfw.oregon.gov	Klamath	Klamath Falls
Justin Miles*	(541) 947-2950	Justin.P.Miles@odfw.oregon.gov	Klamath	Lakeview
Frank Drake	(541) 857-4209	francis.w.drake@odfw.oregon.gov	Upper Rogue	Central Point
Pete Samarin*	(541) 826-8774 x222	Peter.A.Samarin@odfw.oregon.gov	Upper Rogue	Central Point
Jeff Ziller	(541) 726-3515 x26	Jeffrey.S.Ziller@odfw.oregon.gov	Upper Willamette	Springfield
Jeremy Romer*	(541) 726-3515 x34	Jeremy.D.Romer@odfw.oregon.gov	Upper Willamette	Springfield
Stephanie Fields	(541) 961-4953	Stephanie.A.Fields@odfw.oregon.gov	Marine Invertebrates	Newport
Melanie Bukovec	(541) 857-2530	Melanie.A.Bukovec@odfw.oregon.gov	Marine Fish	Newport
Moritz Schmid	(541) 961-1715	Moritz.S.Schmid@odfw.oregon.gov	Marine Reserves	Newport
Art Martin	(971) 673-6061	Art.C.Martin@odfw.oregon.gov	Columbia River	Clackamas
Kelly Reis	(541) 726-3515 x29	Kelly.E.Reis@odfw.oregon.gov	Willamette BiOp	Springfield ¹

*= Assistant District Biologist





Authorizations and Permits for Protected Species (APPS)



File Number: 29722

Applicant/Holder

Affiliation: Ducks Unlimited
City,State,Zip: Vancouver, WA 98682
Phone Number: (541)658-9214

Project Information

File Number: 29722
Application Status: Application Complete
Project Title: Fish Salvage for construction during a water control structure replacement project
Project Status: New
Previous Federal or State Permit/Authorization:
Permit/Authorization Requested:

- Oregon Rescue/Salvage Authorization - Issued

Where will activities occur? Oregon (including Columbia River and offshore waters)
State department of fish and game/wildlife: N/A
Research Timeframe: **Start:** 09/01/2026 **End:** 12/31/2026
Sampling Season/Project Duration: One season
Project Type: Rescue/Salvage

Project Description

Purpose:
The purpose of the project is to replace an aging in-stream diversion structure on Foley Slough to maintain flood irrigation capabilities in the project area; to enhance wetland habitat conditions for migrating waterfowl and shorebirds; to improve aquifer recharge potential; and to provide fish passage, as required by ODFW regulations. There is an existing scour hole down stream of the water control structure which may pond water even when Foley Slough is dry and/or not receiving diverted waters. The project area would be isolated with temporary cofferdams before construction, although it is anticipated the slough would be dry at this time of year. Any fish remaining in the scour pool would need salvage.

Description:

The existing diversion on Foley Slough, which flood irrigates about 680 acres of seasonal wet pasture, is deteriorated, inefficient, and difficult to manage, and is a barrier to fish passage during the irrigation diversion season. Replacement of the structure would support continued flood irrigation practices (improving the reliability of the hydrologic conditions that support wetland habitats onsite) and provide for year-round volitional fish passage around the structure through a fish ladder. Fish salvage would be conducted by a qualified biologist. ODFW may be able to conduct the salvage based on availability per discussion with Dave Banks. Salvage would occur at one location only for the purposes of the construction. The start date is anticipated to be September 1st. Lat/long: 43.582200, -118.990200

Supplemental Information

Methods:

Options could be electrofishing, seining, pumping water and dip netting (this would require a screen on the pump intake), minnow traps.

Intentional Lethal Take: Not Applicable

Anticipated Effects on Animals:

Measures to Minimize Effects:

Capture of fish wouldn't occur when water temperatures are at or above 20 °C and often would occur early in the day when water temperatures are cooler.

Working when water temperatures are cooler or possibly using aerators.

Handing minimally and only for salvage.

Disposition of Tissues: Not Applicable

Public Availability of Product/Publications:

District Biologist Comments

Date	From	Comments
04/07/2026	Dave Banks	District staff discussed this project with the applicant and ODFW Fish Passage staff. District staff don't anticipate water at this location during construction activities and suggested the project proponent obtain a STP as a precaution. Any native fish (suckers, minnows, Redband Trout) and game fish (bass) should be salvaged and returned to the Silvies River near 5-Mile Dam. ODFW staff authorize project staff or authorized agents to capture and transport native species from the project site to 5-Mile Dam only. Project staff can coordinate with ODFW for equipment to facilitate transport of native fish. Salvage activities should be done when water temperatures are less than 20 °C (68 °F) to reduce the likelihood of mortality. All carp should be euthanized.
04/14/2026	Fish Research	Intentional mortality of nonindigenous aquatic species is authorized under ORS 496.860 as outlined in the project application and take table. Responsible disposal of all mortalities is required to avoid public and ecological nuisance; this includes, but is not limited to, not disposing of mortalities in waterways, on stream and river channel banks, on public lands (including in parking area and boat ramp refuse containers), or on private lands without permission of the landowner.

Federal Information

Federal Agency	Type	Authorization Number and Title	Date Signed	Expiration Date	Listing Units/Stocks Covered	Comments
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U.S. Army Corps of Engineers (Corps)	Other	Nationwide Permit 60, Section 404 verification			N/A	USACE permit application submitted 30 March 2026
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Location/Take Information

Please Note: only currently authorized takes are displayed. A letter in the Line column indicates that the take line has been modified.

Freshwater Location

Research Area: Pacific Ocean **State/Territory:** OR
Sub Basin (4th Field HUC): Silvies **Stream Name:** Foley Slough **Township:** 23 S **Range:** 31 E **Section:** 15 **Latitude:** 43.582200 **Longitude:** -118.990200 **Location Description:** The project is located in Harney County, ~3 miles east of Burns along the Steens Highway (Hwy 78). The project area is located on Foley Slough which primarily conveys water for irrigation diversions to various agricultural users in the Burns area.

Take Information

Line	Species	Listing Unit/Stock	Production/Origin	Life Stage	Sex	Take Action	Observe/Collect Method	Expected Take	Indirect Mortality	Procedures	Run	Transport	Begin Date	End Date
1	Dace, Speckled	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
2	Dace, Longnose	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
3	Shiner, Redside	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
4	Sucker, Bridgelip	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
5	Sucker, Largescale	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
6	Bullhead, Brown	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
7	Carp, Common	NA	Natural	All	Unknown	Intentional (Directed) Mortality	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	0		N/A		09/01/2026	12/31/2026

8	Trout, Redband (Native Rainbow)	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	5	1		N/A		09/01/2026	12/31/2026
9	Bass, Largemouth	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
10	Pumpkinseed	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
11	Bass, Smallmouth	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
12	Crayfish, Signal	NA		All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026
13	Chiselmouth	NA	Natural	All	Unknown	Rescue/Salvage	Electrofishing, Backpack; Net, Dip; Pump; Seine, Beach; Trap, Minnow	10	1		N/A		09/01/2026	12/31/2026

Project Contacts

Primary Contact: Andrea Seager
Principal Investigator: Andrea Seager

Status

Application Status: Application Complete
Date Submitted: March 31, 2026
Date Completed: April 23, 2026
Last Date Archived: April 23, 2026

- Oregon Rescue/Salvage Authorization

Current Status: Issued Status Date: September 1, 2026

Date State Approved: April 23, 2026

Expire Date: December 31, 2026

Attachments

Application Archive - P29722T14Issued (Added Apr 23, 2026)

Modification Requests

This section is currently empty.

Reports

Report Required						
Nbr	Report Type	Report Period		Date Due	Status	Date Received
		Start Date	End Date			
1	Annual-Year End	09/01/2026	12/31/2026	12/31/2026	N/A	



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OR 97208-2946

May 13, 2026

Regulatory Division
Corps No. NWP-2026-00049

Ms. Pauline Braymen
70904 Highway 78
Burns, OR 97720
pb38sage@gmail.com

Dear Ms. Braymen:

The U.S. Army Corps of Engineers (Corps) received your request for Department of the Army authorization to replace an existing in-stream diversion structure on Foley Slough with a new in-stream diversion structure and fish ladder. The project is proposed in Foley Slough, Ditch and Wet Meadow located 3 miles east of Burns, Harney County, Oregon (Latitude/Longitude: 43.582200°, -118.990200°). This letter verifies your project as depicted on the enclosed drawings (Enclosure 1) is authorized by Nationwide Permit (NWP) No. 60, Activities to Improve Passage of Fish and Other Aquatic Organisms (*Federal Register*, January 8, 2026, Vol. 91, No. 5).

You are authorized to permanently discharge up to 190 cubic yards (cy) of soil and concrete within 0.08-acre of Wet Meadow, to permanently discharge up to 390 cy of soil, concrete, rock, riprap, and root wads into 0.16-acre below the ordinary high water mark (OHWM) of Foley Slough (160 linear feet of streambed) and to permanently discharge up to 10 cy of concrete, riprap and soil within 0.01-acre (30 linear feet) below the OHWM of Ditch. You are authorized to temporarily disturb (compaction and decompaction) up to 0.32-acre of Wet Meadow where construction access and staging would be located, and temporarily discharge up to 40 cy of soil discharged within 0.01-acre below the OHWM of Foley Slough for the construction of a cofferdam.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed Nationwide Permit 60 Terms and Conditions (Enclosure 2); the Oregon Department of Environmental Quality (DEQ) Section 401 Water Quality Certification Conditions (Enclosure 3).

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined the project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

The DEQ has issued a Section 401 Water Quality Certification for this project. No further coordination with DEQ is required provided the work is performed in accordance with all of the enclosed conditions.

The Corps did not prepare a jurisdictional determination for this project. The Corps has treated the aquatic resources to be affected by this project as jurisdictional waters of the United States. If you believe the Corps does not have jurisdiction over some or all of the aquatic resources at the project site, you may request an Approved Jurisdictional Determination (AJD). If one is requested, please be aware that we may require the submittal of additional information to complete the AJD and work authorized in this letter may not occur until the Corps completes the AJD.

The verification of this NWP is valid until March 15, 2031, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 15, 2031, you will have until March 15, 2032, to complete the activity under the enclosed terms and conditions of this NWP. If the work cannot be completed by March 15, 2032, you will need to obtain a new NWP verification or authorization by another type of Department of the Army permit.

Our verification of this NWP is based on the project description and construction methods provided in your permit application. If you propose changes to the project, you must submit revised plans to this office and receive our approval of the revisions prior to performing the work. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act. You must also obtain all local, state, and other federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certification of Compliance with Department of the Army Permit* form (Enclosure 4). We would like to hear about your experience working with the Portland District, Regulatory Division. Please complete a customer service survey form available on our website (<https://regulatory.ops.usace.army.mil/customer-service-survey/>).

If you have any questions regarding this NWP verification, please contact Ms. Danielle Erb by telephone at (503) 808-4368 or by email at danielle.h.erb@usace.army.mil.

FOR THE COMMANDER, LARRY D. CASWELL, JR., PE, PMP, COLONEL, U.S. ARMY,
DISTRICT COMMANDER and DISTRICT ENGINEER:

A handwritten signature in black ink, reading "Gevgeniya Maljutina". The script is cursive and fluid.

For: William D. Abadie
Chief, Regulatory Division

Enclosures

cc:

Ducks Unlimited (April Zohn, azohn@ducks.org)
Oregon Department of State Lands (Richard Fitzgerald,
richard.w.fitzgerald@dsl.oregon.gov)
Oregon Department of Environmental Quality (Delia Negru,
Delia.NEGRU@deq.oregon.gov)

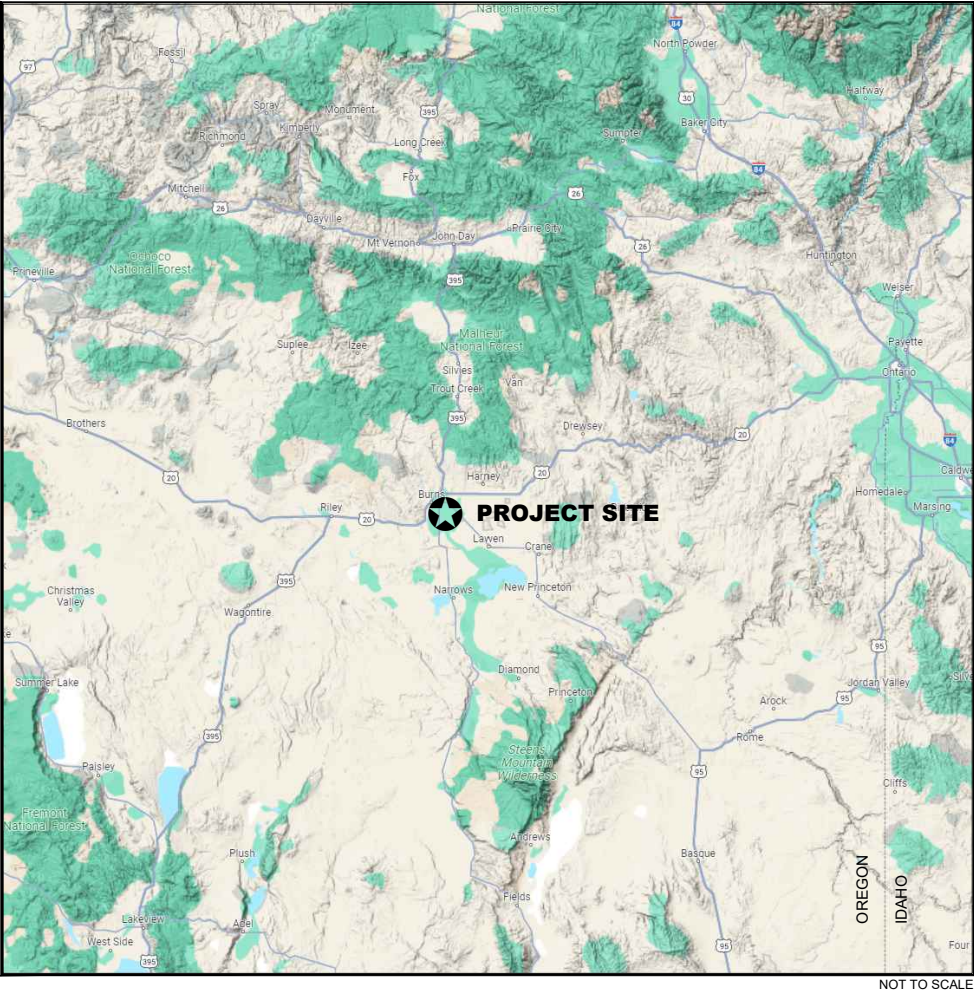


US-OR-260-7

RIGGS DAM

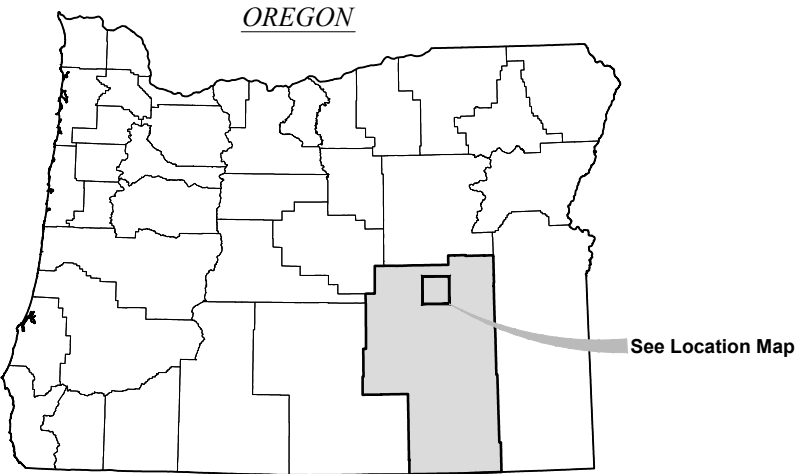
CHECK DAM & FISH LADDER

LOCATION MAP



NOT TO SCALE

VICINITY MAP



PROJECT LOCATION

Section: 15
Township: T 23 S
Range: R 31 E
Meridian: Willamette
County: Harney
State: Oregon

SURVEY DATUM

Horizontal: NAD 83
US State Plane Oregon South Zone
Vertical: NAVD88
Units: International Feet

A survey-grade GPS survey was provided by the NRCS

MAP DATA

Contour Interval: 1 Foot
Aerial Photo: Google, NAIP

SHEET INDEX

Sheet Number	Sheet Title
1	Cover Sheet
2	Definitons & Legend
3	Sheet Index
4	Site Plan Existing Stream & Check Dam
5	Plan Existing Check Dam
6	Proposed Site Plan Check Dam & Fish Ladder
7	Existing Stream Cross Sections
8	Plan View Dam, Box Culvert & Fish Ladder
9	Plan View Foundation
10	Deck and Slab Reinforcement
11	Dam Elevation and Profile
12	Fish Ladder Profile & Flow Dynamics
13	Walkway Framing Details
14	Steel Details

EMERGENCY CONTACT INFORMATION

In case of fire: CALL 911

PROJECT DIRECTORY

Ducks Unlimited, Inc.
Pacific Northwest Office
11805 NE 99th St. Suite 1300
Vancouver Washington 98682
Ph. (360) 885-2011

Gus Williams P.E.
Regional Engineer
Ph. (541) 610-5197

PERMIT SET

Unauthorized Changes & Uses
The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes must be in writing and must be approved by the preparer of these plans.



REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED



PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
		CHECKED BY: -
		SHEET NO. 1 of 14

COVER SHEET

GENERAL NOTES:

1. Ducks Unlimited makes no representations as to the existence or nonexistence of utilities. It is the responsibility of the contractor to comply with the provisions of all applicable utility notification regulations. The contractor will be liable for any damage to utilities caused by construction activities.
2. The engineer does not represent that the location of utilities shown on the plans are exact or complete. It shall be the responsibility of the contractor to determine the presence of, actual locations of and make provisions for all watercourses and utilities. The contractor shall verify location, depth and height. Their verification shall be coordinated by the contractor with the appropriate utility company.
3. The contractor shall exercise extreme caution when working in the vicinity of overhead power lines. Verify location in the field and protect in place.
4. At least 2 working days prior to beginning any digging or excavation work, the contractor shall notify underground service alert (a.k.a. USA North) at www.usanorth.org or by phone at 811 or 1-800-227-2600, to determine locations of existing utilities.
5. In accordance with generally accepted construction practices, the contractor will be solely and completely responsible for the conditions of the job site including safety of all persons and property during performance of the work. The contractor shall ensure that all work is performed in accordance with occupational safety laws, including the design and construction of proper shoring of trenches. The duties of the project engineer do not include review of the adequacy of the contractor's safety in, on, or near the job site.
6. It is the responsibility of the contractor to be knowledgeable about the project specifications and permits. All work shall be completed in compliance with the contract documents. The contractor shall have copies of the most current approved plans, specifications and permit conditions on site during all work operations.
7. The project site and adjacent areas contain sensitive habitat areas for protected wildlife, and may include endangered species. The contractor shall protect wildlife and water quality, and minimize possible air, waterway, and subsoil contamination or pollution or other undesirable effects.
8. Should it appear that the work to be done, or any matter relative thereto, is not sufficiently detailed or explained on these plans or in the specifications, the contractor shall contact the construction manager for such further explanations as may be necessary.
9. Should the contractor find any discrepancies between the conditions existing in the field and the information shown on the drawings, he shall notify the construction manager before proceeding with construction.

SURVEY POINT DESCRIPTORS

CTBM	Bench Mark (permanent)	RDSH	Road Shoulder
CTBT	Bench Mark (temporary)	RDSN	Road Sign
CTCP	Survey Control Point (permanent)	RDTO	Road, Toe of Slope
CTCT	Survey Control Point (temporary)	RDTF	Road, Top of Slope
DIFL	Ditch Flowline	SDMH	Storm Drain, Manhole
DIGB	Ditch Grade Break	SDPI	Storm Drain, Pipe Invert
DITO	Ditch Toe	SDPT	Storm Drain, Pipe Top
DITP	Ditch Top	SSMH	Sanitary Sewer, Manhole
ELBX	Electric, Box or Pullbox	SWFL	Swale Flowline
ELGY	Electric, Guy Wire	SWGB	Swale Grade Break
ELPP	Electric, Power Pole	SWTO	Swale Toe
ELSN	Electric, Warning Sign	SWTP	Swale Top
ELTR	Electric, Transformer	TFBL	Topo Feature, Building
ELTW	Electric, Tower	TFBR	Topo Feature, Brush
ELVT	Electric, Vault	TFCO	Topo Feature, Concrete (pad, slab, etc.)
FNAP	Fence Angle Point	TFFL	Topo Feature, Flowline
FNCR	Fence Corner	TFCB	Topo Feature, Grade Break
FNGT	Fence Gate	TFGS	Topo Feature, Ground Shot
FNLN	Fence Line	TFRK	Topo Feature, Rock Or Rocky Area Boundary
IRCO	Irrigation Concrete Pad	TFTL	Topo Feature, Tree line
IRCP	Irrigation Control Panel	TFTO	Topo Feature, Grade Break at Toe
IRPI	Irrigation Pipe Invert	TFTF	Topo Feature, Grade Break at Top
IRPM	Irrigation Pump	TFTR	Topo Feature, Tree
IRPT	Irrigation Pipe Top	WAEW	Edge of Water
IRVL	Irrigation Valve	WAHW	High Water Mark
IRWL	Irrigation Well	WAUW	Under Water Ground Shot
LVCL	Levee Centerline	WAWS	Water Surface
LVGB	Levee Grade Break	WCFL	Water Control Structure, Flowline/Invert at Structure
LVTO	Levee Toe of Slope	WCFR	Water Control Structure, Frame Top
LVTP	Levee Top of Slope	WCHW	Water Control Structure, Headwall
RDCL	Road, Centerline	WCPI	Water Control Structure, Pipe Invert at Outlet
RDED	Road, Edge of Dirt Road	WCPT	Water Control Structure, Pipe Top at Outlet
RDEG	Road, Edge of Gravel Road	WCST	Water Control Structure, Top of Structure
RDEP	Road, Edge of Paved Road	WCWW	Water Control Structure, Wing Wall
RDBG	Road Grade Break		

ABBREVIATIONS

AB	Aggregate Base	MIN	Minimum	WS	Water Surface
AC	Acre	MISC	Miscellaneous	WSEL	Water Surface Elevation
APPROX	Approximate	(N)	New	WWF	Welded Wire Fabric
BM	Benchmark	N	North	X:1	Slope, Horizontal:Vertical
CAP	Corrugated Aluminum Pipe	NIC	Not In Contract		
CC	Center to Center	NTS	Not To Scale		
CF	Cubic Foot	OC	On Center		
CFS	Cubic Foot Per Second	OD	Outside Diameter		
CL, ι	Centerline	PIP	Pressure Irrigation Pipe		
CMP	Corrugated Metal Pipe	PP	Power Pole		
CMPA	Corrugated Metal Arch Pipe	PSI	Pounds per Square Inch		
CONC	Concrete	PT	Pressure Treated		
CP	Control Point	PVC	Polyvinyl Chloride		
CY	Cubic Yard	QTY	Quantity		
DEMO	Demolish	R	Right		
DIA, Ø	Diameter	RCB	Reinforced Concrete Box		
Dp	Pipe Diameter	RD	Road		
Dr	Riser Diameter	REF	Reference Dimension		
DU	Ducks Unlimited, Inc.	REQD	Required		
D/S	Downstream	ROW	Right Of Way		
E	East	S	South		
EG	Existing Ground	SCH	Schedule		
EL	Elevation	SS	Stainless Steel		
EX, EXIST	Existing	SDR	Standard Dimension Ratio		
FG	Finished Grade	SF	Square Feet		
FL	Flowline	SHT	Sheet		
FRG	Final Rough Grade	SP	Special		
FT	Foot, Feet	SPECS	Specifications		
FTG	Fitting, Footing	SY	Square Yard		
GA	Gauge	STA	Station		
GB	Grade Break	STD	Standard		
H	Height	TBD	To Be Determined by Engineer		
HDPE	High-Density Polyethylene	TBM	Temporary Benchmark		
HR	Half Round	TE	Top Elevation		
ID	Inside Diameter	TEMP	Temporary		
IE	Invert Elevation	TOI	Top of Island		
IG	Initial Grade	TOL	Top of Levee		
IN	Inch, Inches	TOB	Top of Berm		
INV	Invert	TYP	Typical		
IPS	Iron Pipe Size	USA	Underground Service Alert		
L	Length, Left	U/S	Upstream		
LBF	Pounds-Force	VLV	Valve		
LF	Linear Feet	W	Width, West (where applicable)		
MAINT	Maintenance	W /	With		
MAX	Maximum	WCS	Water Control Structure		

LEGEND & STANDARD SYMBOLS

	Existing Fence Line - Barbed Wire		Existing Power / Telephone Pole
	Existing Fence Line - Chain Link		Existing Electric Guy Wire
	Existing Fence Line - Stockade		Existing Electric Transformer
	Power / Telephone Overhead Lines		Existing Electric Tower
	Underground Gas Line		Existing Electric Vault
	Electric Line		Existing Blind
	Force Main Line		Existing Gate Valve
	Sanitary Sewer Line		Existing Air Relief Valve
	Storm Drain Line		Existing Alfalfa / Overflow Valve
	Existing Ditch		Existing Irrigation Well
	Existing Levee		Existing Irrigation Pump
	Existing Swale		Existing Water Meter
	Existing Road - Dirt		Existing Fire Hydrant
	Existing Road - Gravel		Existing Manhole
	Existing Road - Paved		Existing Natural Gas Meter / Valve
	Existing Trees / Brushline		Existing Sign

	Water Control Structure ID#		New Power Pole
	Revision Number Identifier		New Gate Valve
	Cut/Borrow Area / Pothole		New Air Relief Valve
	Fill Area		New Alfalfa / Overflow Valve
	Ditch Cleaning		New Irrigation Pump
	New Ditch Centerline / Flowline		New Water Control Structure
	New Swale Centerline / Flowline		New Water Control Structure
	Regrade Existing Swale		New Agri-Drain Inline Water Control Structure
	New Levee Centerline		Benchmark
	Improved Levee Centerline		Temporary Benchmark
	Regraded/Lowered Levee Centerline		Control Point
	Remove Existing Levee		Wood Debris Pile
	Design Water Surface Elevation		

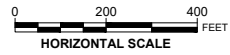
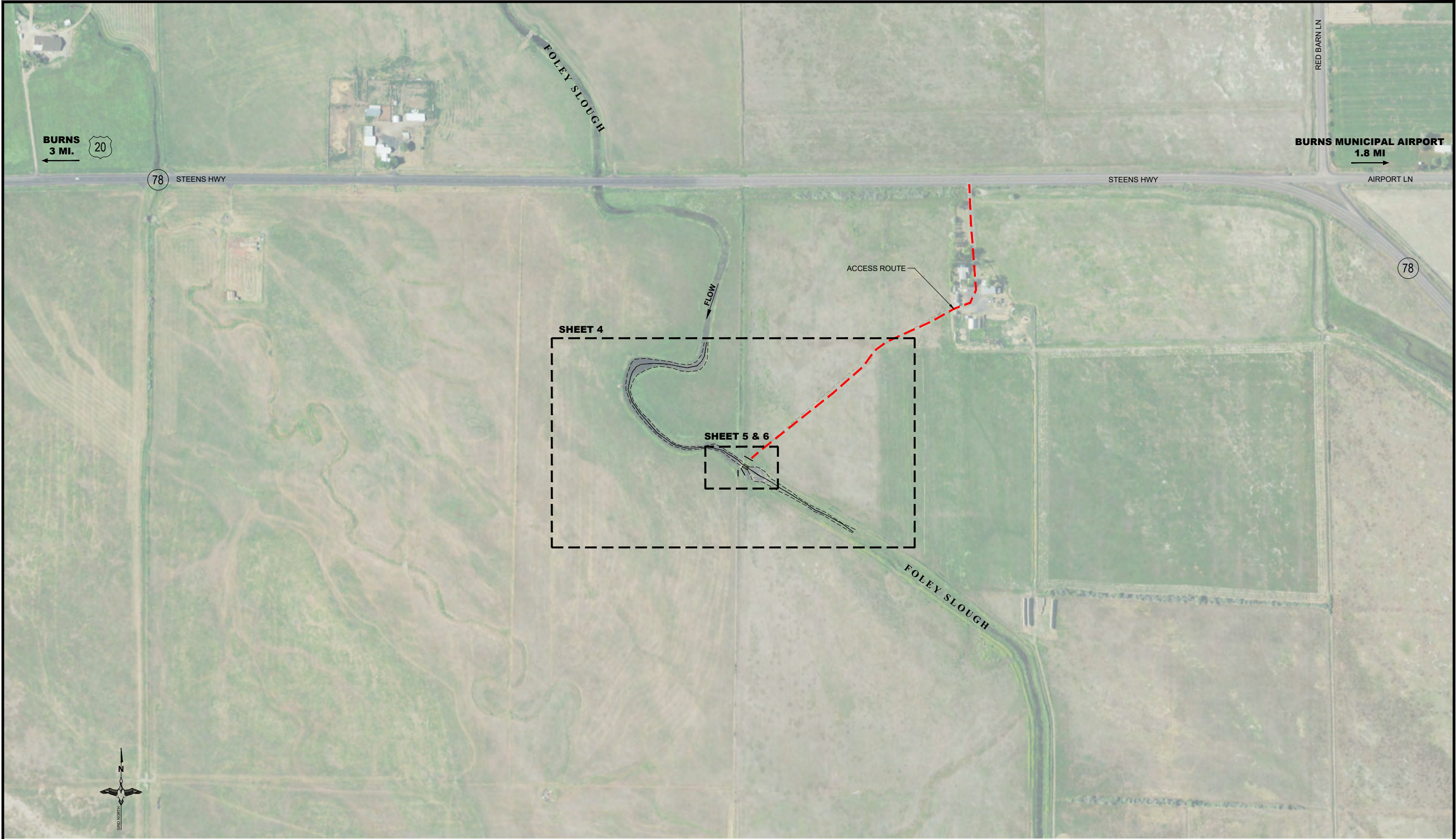
DETAILING CONVENTIONS

	Section Letter		Detail Number		Section Letter
	SEE SECTION		SEE DETAIL		Section Letter
	Sheet Where Section is Shown		Sheet Where Detail is Shown		Section Letter
	TYPICAL DETAIL		TYPICAL SECTION		Section Letter
	SCALE		SCALE		Section Letter
	Dash indicates that detail is typical and may appear on multiple sheets - a number would indicate the sheet(s) where detail was taken		Dash indicates that section is typical and may appear on multiple sheets - a number would indicate the sheet(s) where section was taken		Section Letter

PERMIT SET

PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
		CHECKED BY: -
DEFINITIONS & LEGEND		SHEET NO. 2 of 14

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REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
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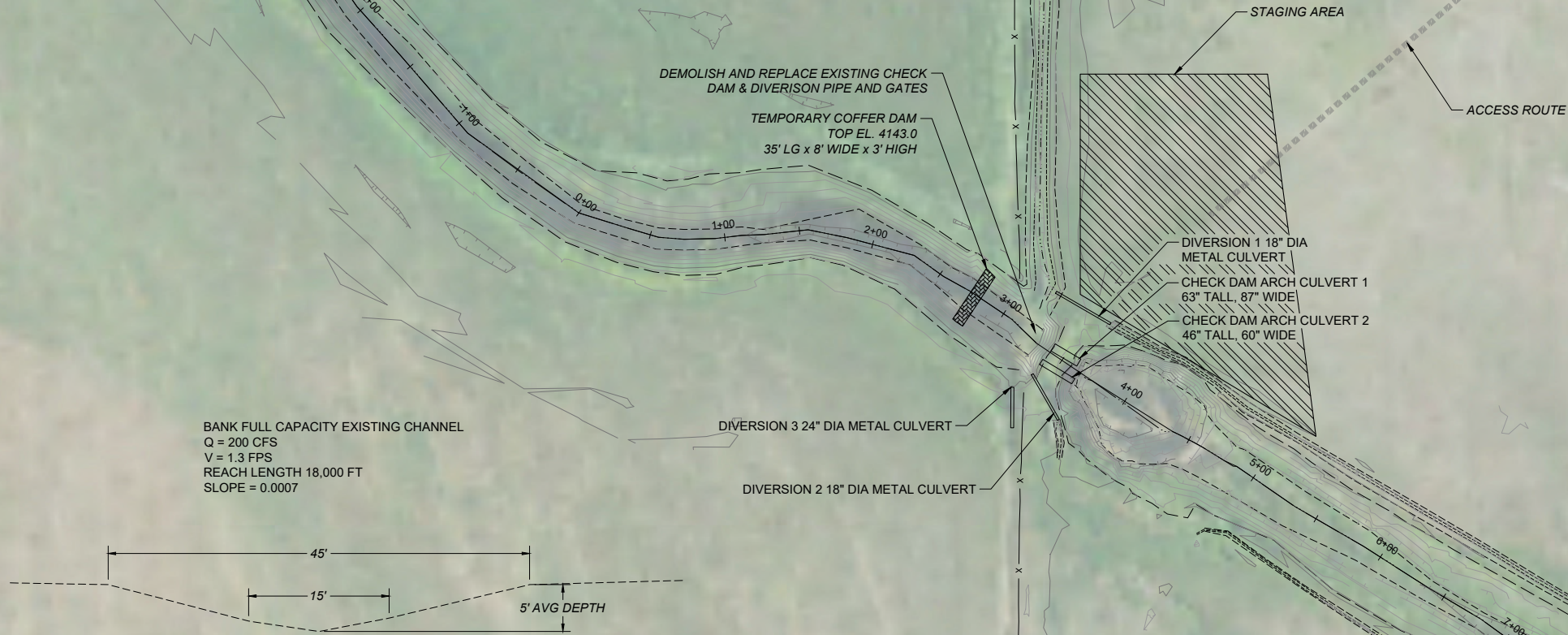


PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM CHECK DAM & FISH LADDER		DRAWN BY: RGR
		SURVEYED BY: BMM
		CHECKED BY: -
SHEET INDEX		3 of 14

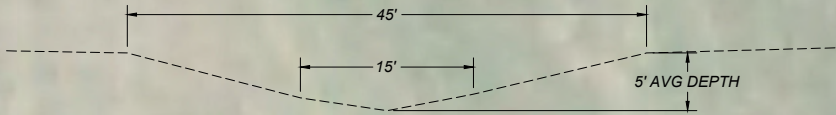
PERMIT SET

FLOW DATA NOT AVAILABLE FOR THIS SITE FOLEY
SLOUGH IS A REGULATED IRRIGATION DITCH SUBJECT
TO FLOOD OVERFLOWS FROM THE SILVES RIVER

FLOW DYNAMICS RIGGS DAM AND FISH LADDER						1/14/2026		Gus Williams P.E. Ducks Unlimited				
MAX FLOW EXISTING AND NEW FULL OPEN	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREAM WATER EL.	POOL TO POOL DROP (ft)	INVERT EL.	WEIR OR CULVERT DESCRIPTION		
	HYDROCAD	HYDROCAD	HYDROCAD			HYDROCAD	HYDROCAD					
EXISTING RIVER CHANNEL (net rise =0ft)	200.0	200.0	4.5	128.3	1.3	4145.0	4145.0	0.0	4140.5	SLOPE=.0007, n=.06, 15'bottom, 45'top, 4.5'max depth		
EXISTING ARCH CULVERTS (net rise=.1')	80.0	80.0	N/A	48.0	1.7	4145.1	4145.0	-.1'	4139.0 & 4138.7	2-ARCH CULVERTS 87"W x 67"TALL, 58"WIDE x 48"TALL		
NEW DAM (net rise=.1')	200.0	200.0	N/A	98.0	2.0	4145.1	4145.0	-.1'	4138.5	1-BOX CULVERT, 198"WIDE x 80"TALL		



BANK FULL CAPACITY EXISTING CHANNEL
Q = 200 CFS
V = 1.3 FPS
REACH LENGTH 18,000 FT
SLOPE = 0.0007



TYPICAL CHANNEL SECTION

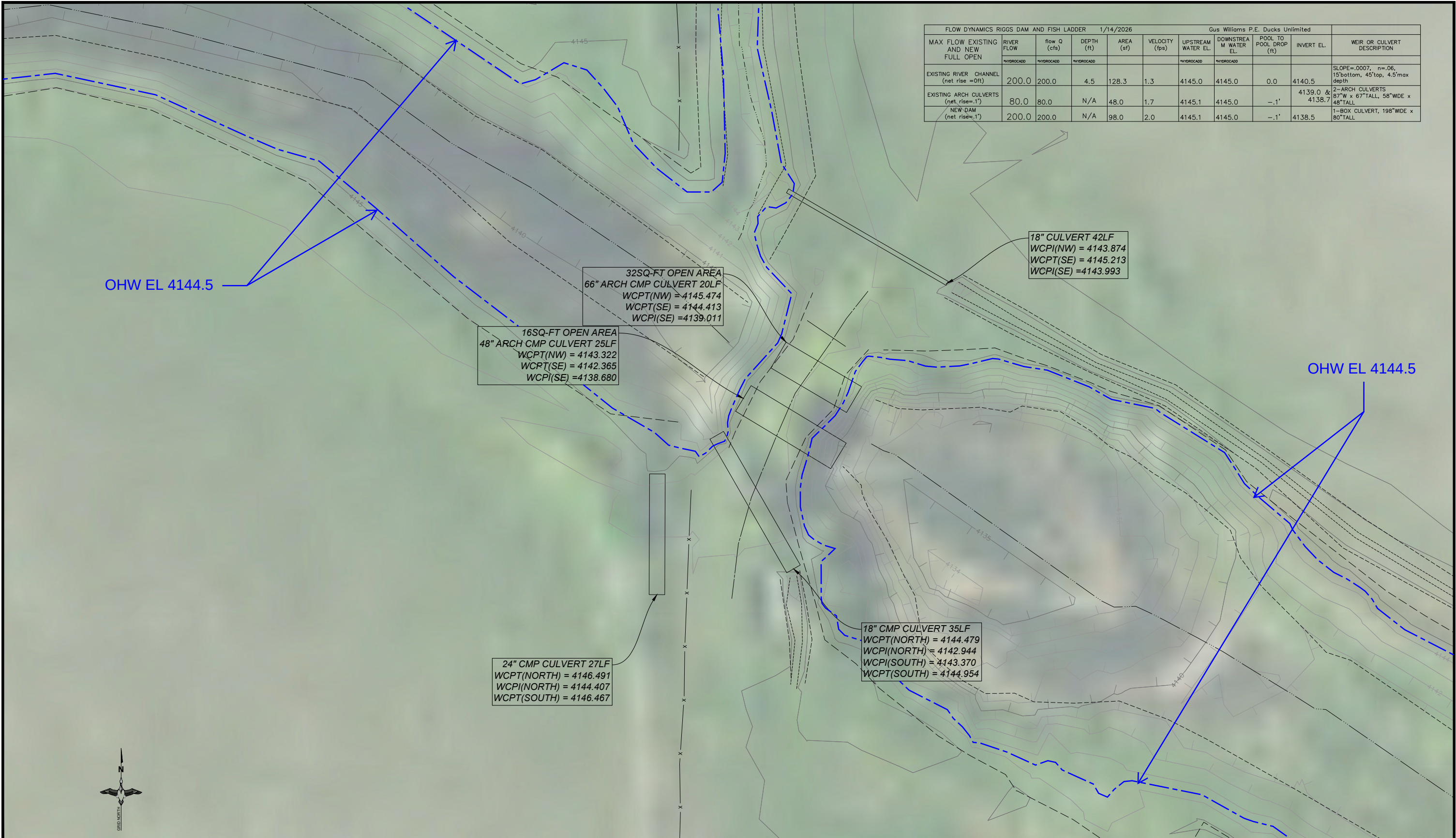


Unauthorized Changes & Uses
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REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
1			
2			
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PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM CHECK DAM & FISH LADDER		DRAWN BY: RGR
		SURVEYED BY: BMM
		CHECKED BY: -
		SHEET NO. 4 of 14



FLOW DYNAMICS RIGGS DAM AND FISH LADDER					1/14/2026		Gus Williams P.E. Ducks Unlimited				
MAX FLOW EXISTING AND NEW FULL OPEN	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREAM WATER EL.	POOL TO POOL DROP (ft)	INVERT EL.	WEIR OR CULVERT DESCRIPTION	
	HYDROCAD	HYDROCAD	HYDROCAD			HYDROCAD	HYDROCAD				
EXISTING RIVER CHANNEL (net rise =0ft)	200.0	200.0	4.5	128.3	1.3	4145.0	4145.0	0.0	4140.5	SLOPE=.0007, n=.06, 15'bottom, 45'top, 4.5'max depth	
EXISTING ARCH CULVERTS (net rise=.1')	80.0	80.0	N/A	48.0	1.7	4145.1	4145.0	-.1'	4139.0 & 4138.7	2-ARCH CULVERTS 87"W x 67'TALL, 58"WIDE x 48'TALL	
NEW DAM (net rise=.1')	200.0	200.0	N/A	98.0	2.0	4145.1	4145.0	-.1'	4138.5	1-BOX CULVERT, 198"WIDE x 80'TALL	

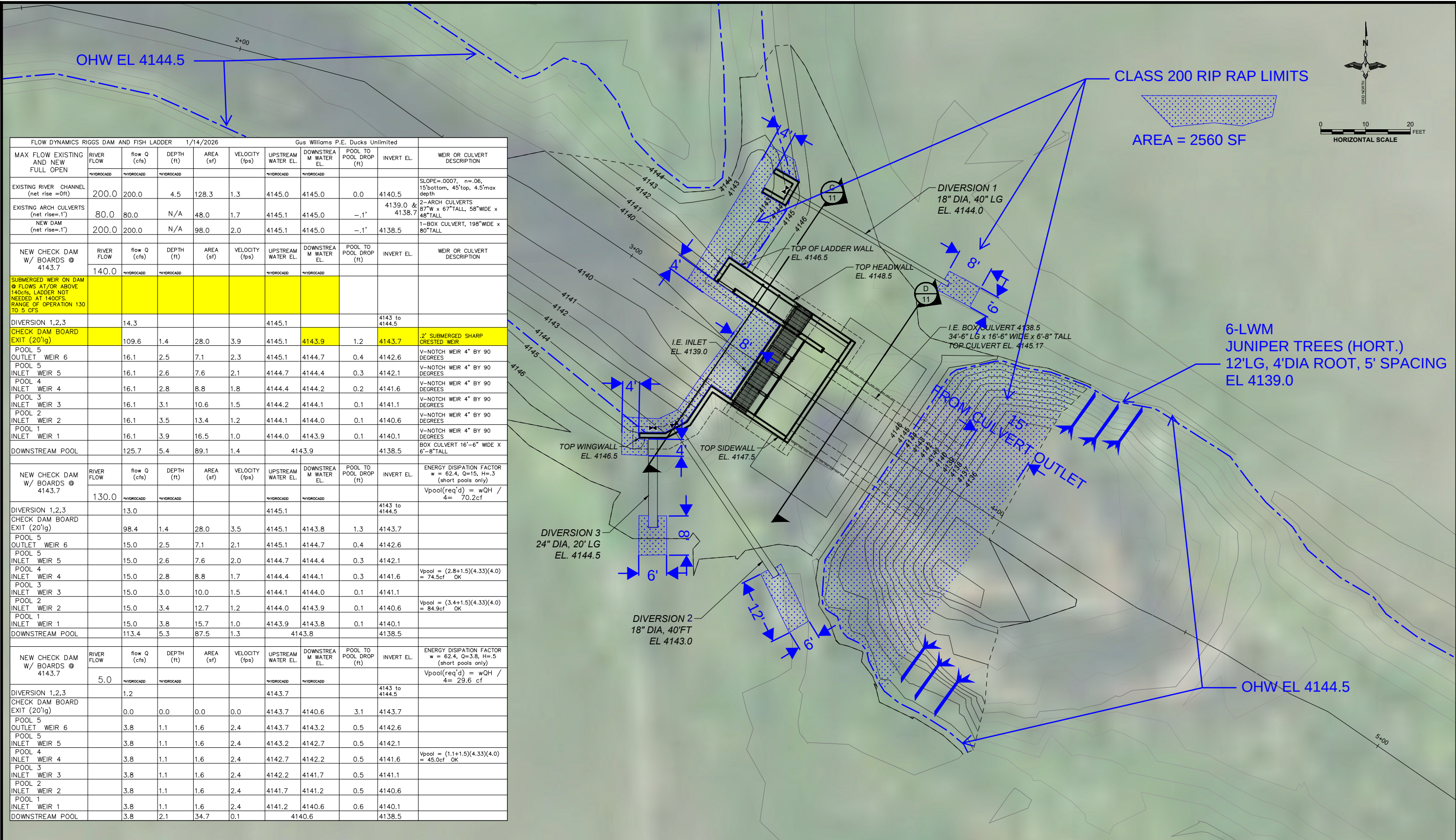


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REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
1			
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PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
		CHECKED BY: -
PLAN EXISTING CHECK DAM		SHEET NO. 5 of 14



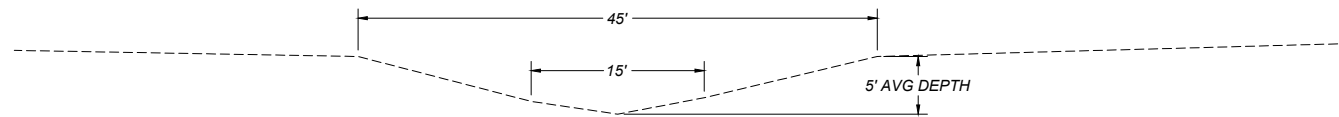
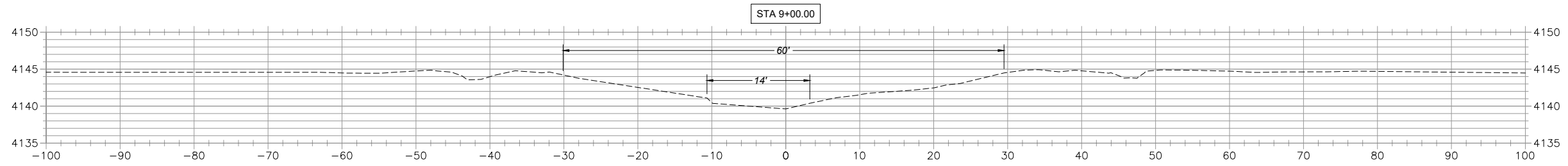
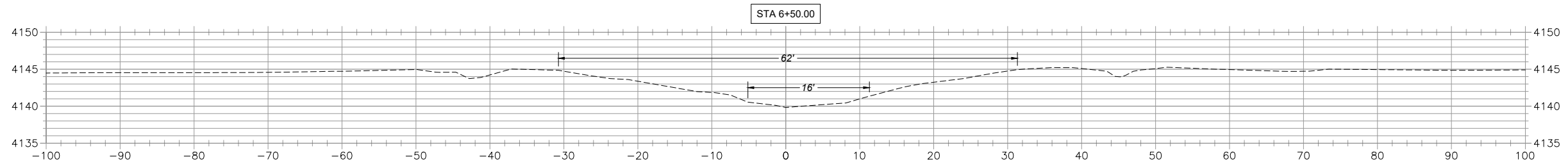
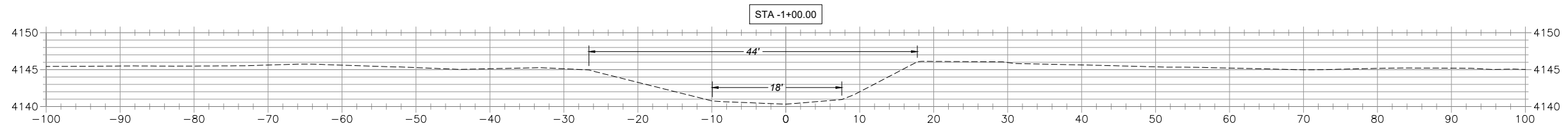
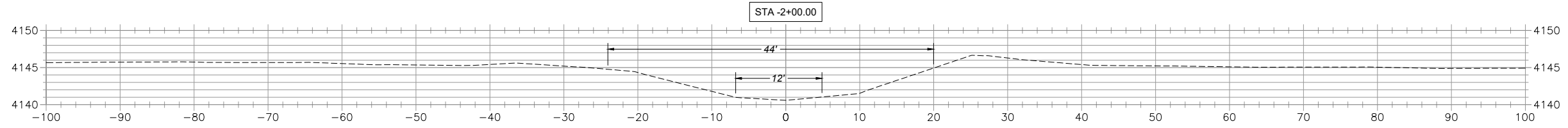
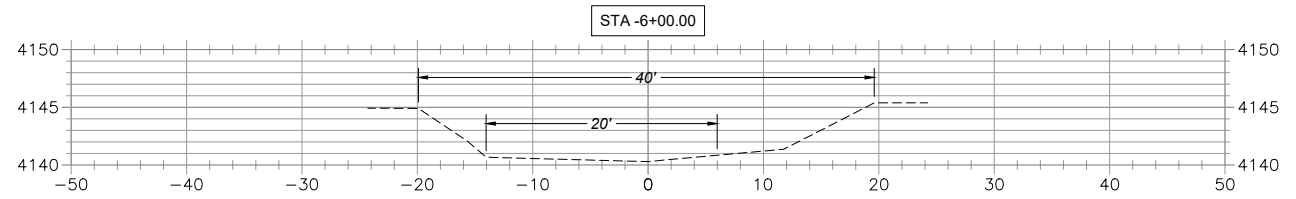
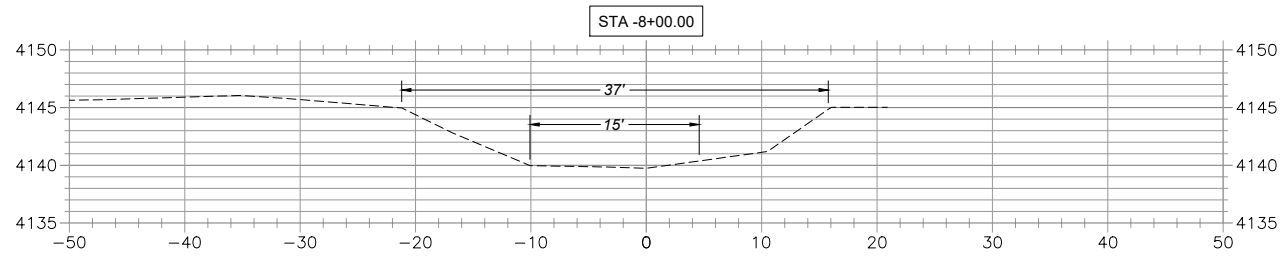
FLOW DYNAMICS RIGGS DAM AND FISH LADDER 1/14/2026									
Gus Williams P.E. Ducks Unlimited									
MAX FLOW EXISTING AND NEW FULL OPEN	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREA M WATER EL.	POOL TO POOL DROP (ft)	WEIR OR CULVERT DESCRIPTION
EXISTING RIVER CHANNEL (net rise =0ft)	200.0	200.0	4.5	128.3	1.3	4145.0	4145.0	0.0	SLOPE=.0007, n=.06, 15'bottom, 45'top, 4.5' max depth
EXISTING ARCH CULVERTS (net rise=.1')	80.0	80.0	N/A	48.0	1.7	4145.1	4145.0	-.1'	2-ARCH CULVERTS 87"W x 67"TALL, 58"WIDE x 48"TALL
NEW DAM (net rise=.1')	200.0	200.0	N/A	98.0	2.0	4145.1	4145.0	-.1'	1-BOX CULVERT, 198"WIDE x 80"TALL
NEW CHECK DAM W/ BOARDS @ 4143.7	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREA M WATER EL.	POOL TO POOL DROP (ft)	WEIR OR CULVERT DESCRIPTION
	140.0								
SUBMERGED WEIR ON DAM @ FLOWS AT/OR ABOVE 140cfs. LADDER NOT NEEDED AT 140CFS. RANGE OF OPERATION 130 TO 5 CFS									
DIVERSION 1,2,3		14.3				4145.1		4143 to 4144.5	
CHECK DAM BOARD EXIT (20'lg)		109.6	1.4	28.0	3.9	4145.1	4143.9	1.2	.2' SUBMERGED SHARP CRESTED WEIR
POOL 5 OUTLET WEIR 6		16.1	2.5	7.1	2.3	4145.1	4144.7	0.4	V-NOTCH WEIR 4" BY 90 DEGREES
POOL 5 INLET WEIR 5		16.1	2.6	7.6	2.1	4144.7	4144.4	0.3	V-NOTCH WEIR 4" BY 90 DEGREES
POOL 4 INLET WEIR 4		16.1	2.8	8.8	1.8	4144.4	4144.2	0.2	V-NOTCH WEIR 4" BY 90 DEGREES
POOL 3 INLET WEIR 3		16.1	3.1	10.6	1.5	4144.2	4144.1	0.1	V-NOTCH WEIR 4" BY 90 DEGREES
POOL 2 INLET WEIR 2		16.1	3.5	13.4	1.2	4144.1	4144.0	0.1	V-NOTCH WEIR 4" BY 90 DEGREES
POOL 1 INLET WEIR 1		16.1	3.9	16.5	1.0	4144.0	4143.9	0.1	V-NOTCH WEIR 4" BY 90 DEGREES
DOWNSTREAM POOL		125.7	5.4	89.1	1.4		4143.9		BOX CULVERT 16'-6" WIDE X 6'-8" TALL
NEW CHECK DAM W/ BOARDS @ 4143.7	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREA M WATER EL.	POOL TO POOL DROP (ft)	ENERGY DISIPATION FACTOR w = 62.4, Q=15, H=.3 (short pools only) Vpool(req'd) = wQH / 4= 70.2cf
	130.0								
DIVERSION 1,2,3		13.0				4145.1		4143 to 4144.5	
CHECK DAM BOARD EXIT (20'lg)		98.4	1.4	28.0	3.5	4145.1	4143.8	1.3	
POOL 5 OUTLET WEIR 6		15.0	2.5	7.1	2.1	4145.1	4144.7	0.4	
POOL 5 INLET WEIR 5		15.0	2.6	7.6	2.0	4144.7	4144.4	0.3	
POOL 4 INLET WEIR 4		15.0	2.8	8.8	1.7	4144.4	4144.1	0.3	Vpool = (2.8+1.5)(4.33)(4.0) = 74.5cf OK
POOL 3 INLET WEIR 3		15.0	3.0	10.0	1.5	4144.1	4144.0	0.1	
POOL 2 INLET WEIR 2		15.0	3.4	12.7	1.2	4144.0	4143.9	0.1	Vpool = (3.4+1.5)(4.33)(4.0) = 84.9cf OK
POOL 1 INLET WEIR 1		15.0	3.8	15.7	1.0	4143.9	4143.8	0.1	
DOWNSTREAM POOL		113.4	5.3	87.5	1.3		4143.8		
NEW CHECK DAM W/ BOARDS @ 4143.7	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREA M WATER EL.	POOL TO POOL DROP (ft)	ENERGY DISIPATION FACTOR w = 62.4, Q=3.8, H=.5 (short pools only) Vpool(req'd) = wQH / 4= 29.6 cf
	5.0								
DIVERSION 1,2,3		1.2				4143.7		4143 to 4144.5	
CHECK DAM BOARD EXIT (20'lg)		0.0	0.0	0.0	0.0	4143.7	4140.6	3.1	
POOL 5 OUTLET WEIR 6		3.8	1.1	1.6	2.4	4143.7	4143.2	0.5	
POOL 5 INLET WEIR 5		3.8	1.1	1.6	2.4	4143.2	4142.7	0.5	
POOL 4 INLET WEIR 4		3.8	1.1	1.6	2.4	4142.7	4142.2	0.5	Vpool = (1.1+1.5)(4.33)(4.0) = 45.0cf OK
POOL 3 INLET WEIR 3		3.8	1.1	1.6	2.4	4142.2	4141.7	0.5	
POOL 2 INLET WEIR 2		3.8	1.1	1.6	2.4	4141.7	4141.2	0.5	
POOL 1 INLET WEIR 1		3.8	1.1	1.6	2.4	4141.2	4140.6	0.6	
DOWNSTREAM POOL		3.8	2.1	34.7	0.1		4140.6		

Unauthorized Changes & Uses
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REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED



PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
PROPOSED SITE PLAN CHECK DAM & FISH LADDER		CHECKED BY: -
		SHEET NO. 6 of 14



TYPICAL CHANNEL SECTION

Unauthorized Changes & Uses
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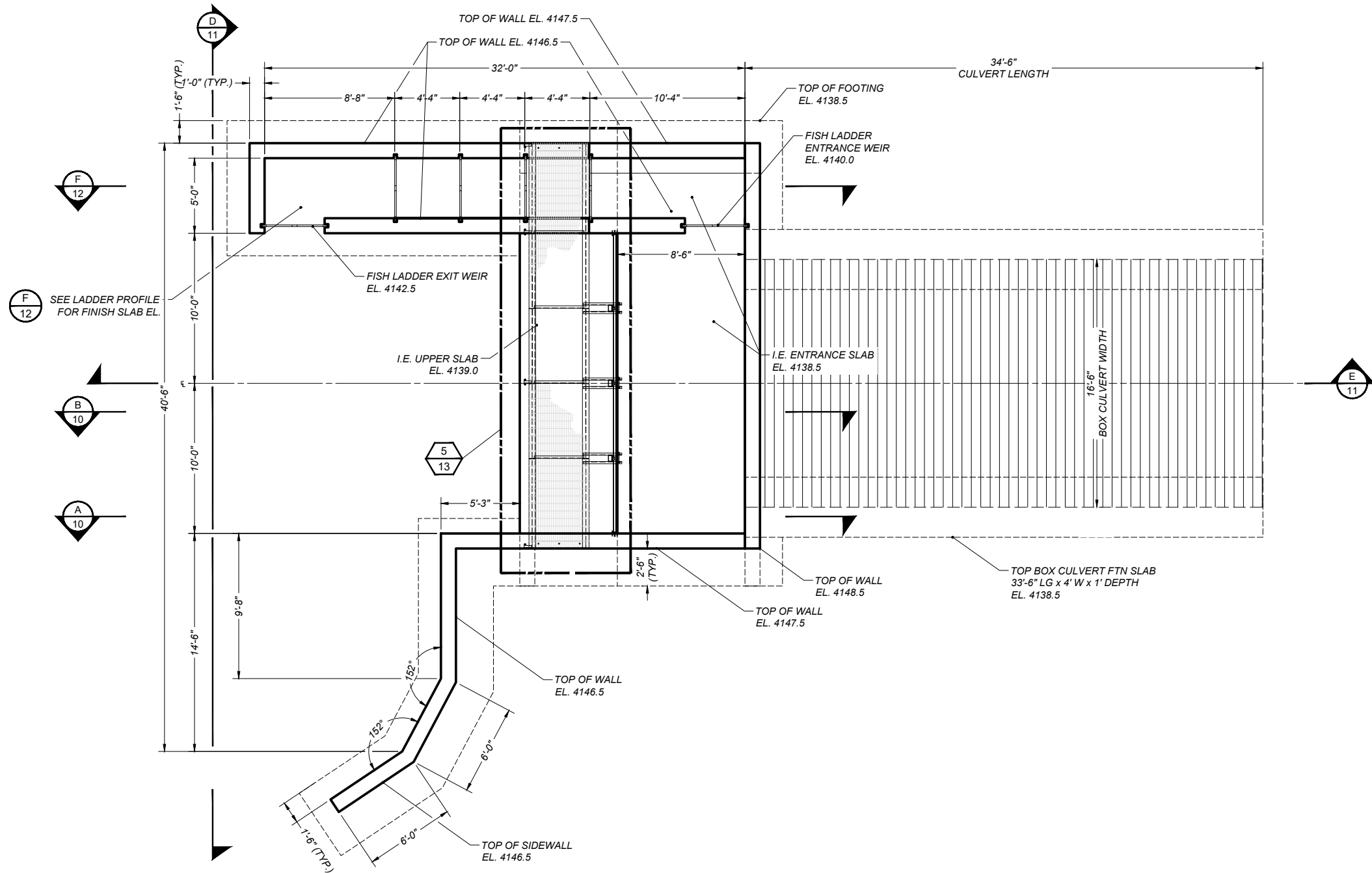
REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
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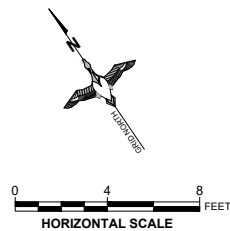
PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
		SURVEYED BY: BMM
		CHECKED BY: -
		SHEET NO. 7 of 14

PERMIT SET

EXISTING STREAM CROSS SECTIONS



1 DAM DETAIL
1"=8'



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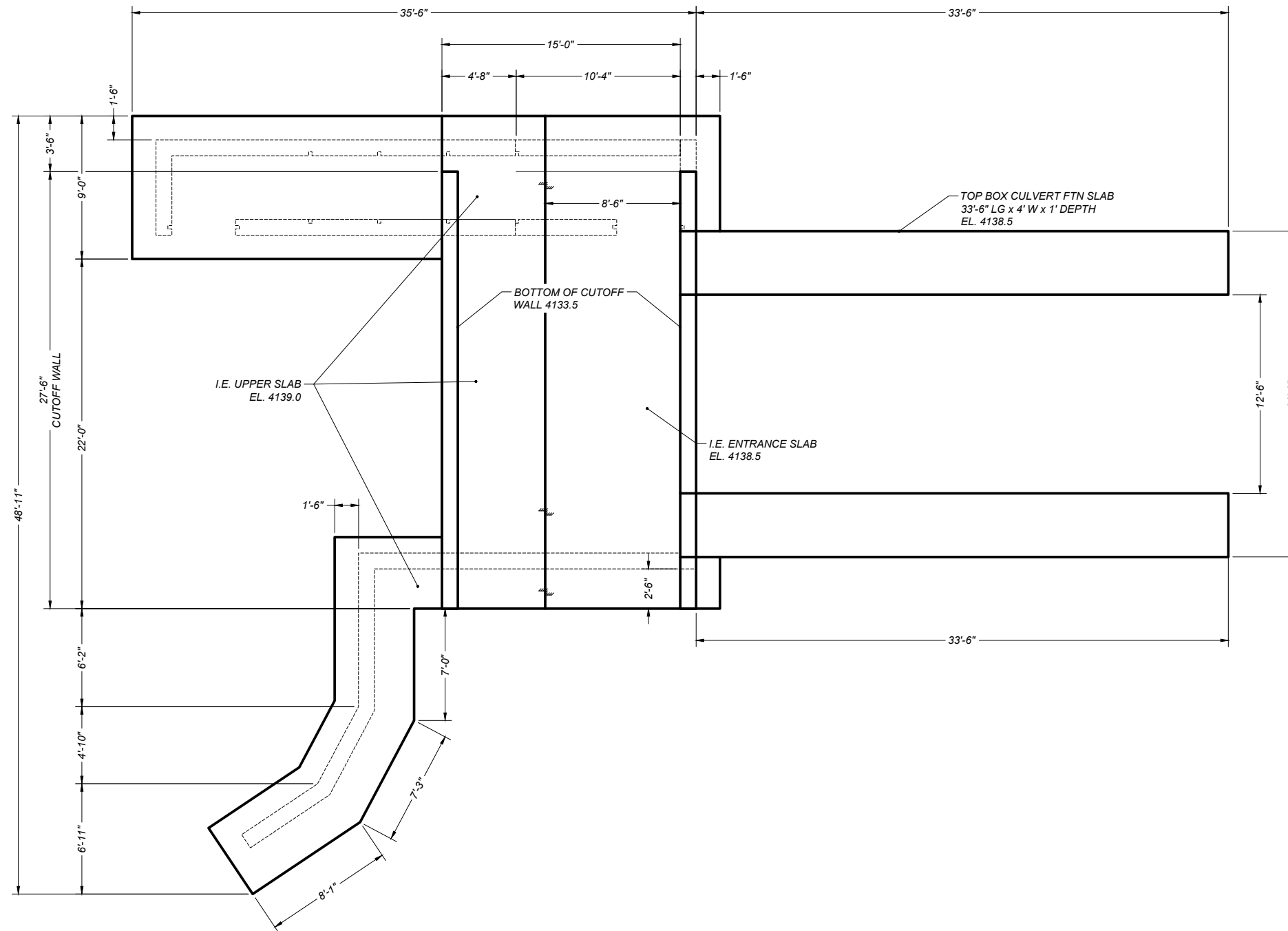
NWP-2026-00049

PERMIT SET

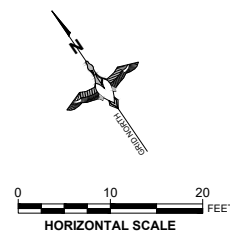
REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
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PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
		CHECKED BY: -
PLAN VIEW DAM, BOX CULVERT & FISH LADDER		SHEET NO. 8 of 14



2 FOUNDATION DETAIL
1"=8'



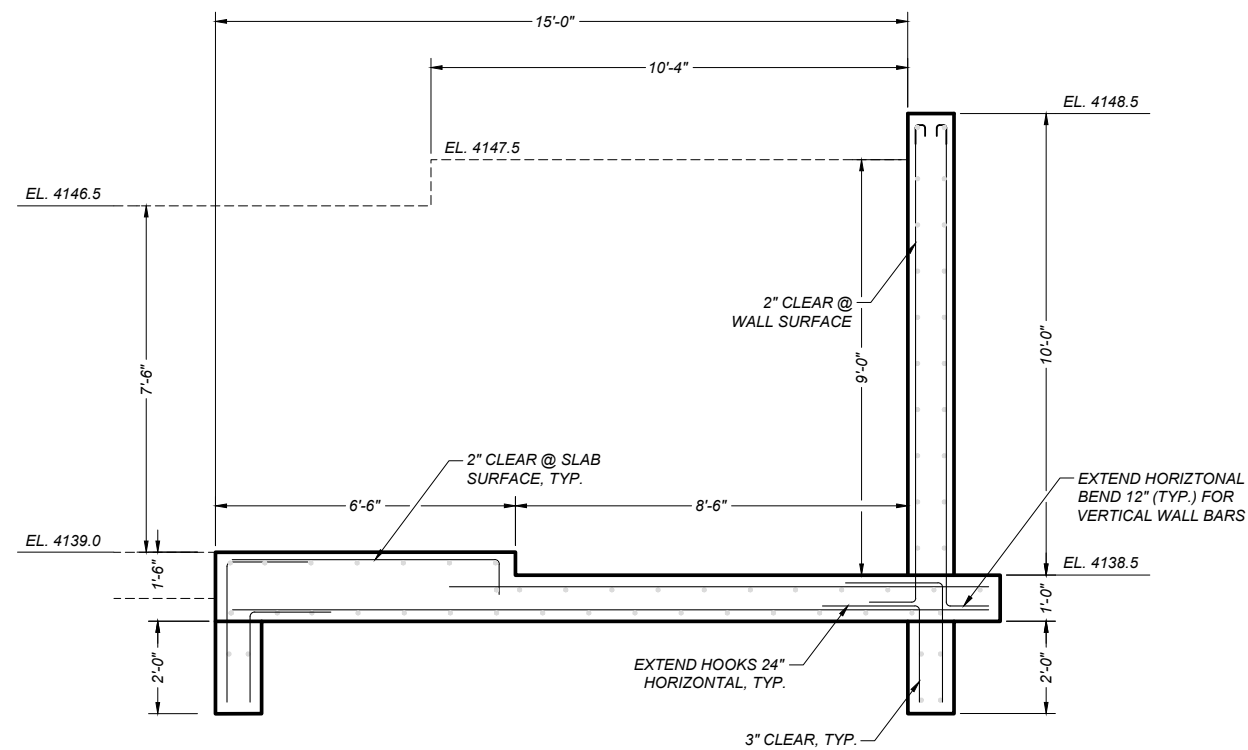
Unauthorized Changes & Uses
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REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
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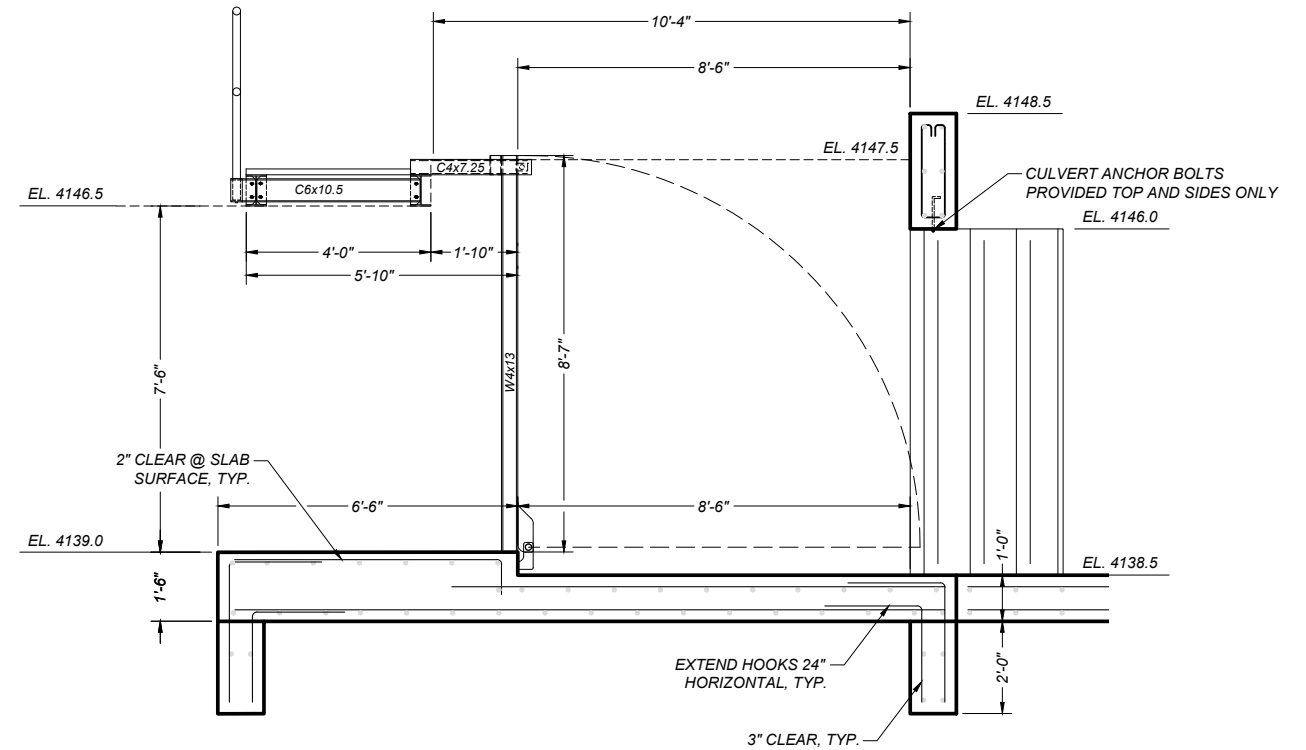


PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
		CHECKED BY: -
PLAN VIEW FOUNDATION		SHEET NO. 9 of 14

PERMIT SET



A DECK AND SLAB AT WALL INTERSECTION
1"=4'



B DECK AND SLAB AT CULVERT INTERSECTION
1"=4'

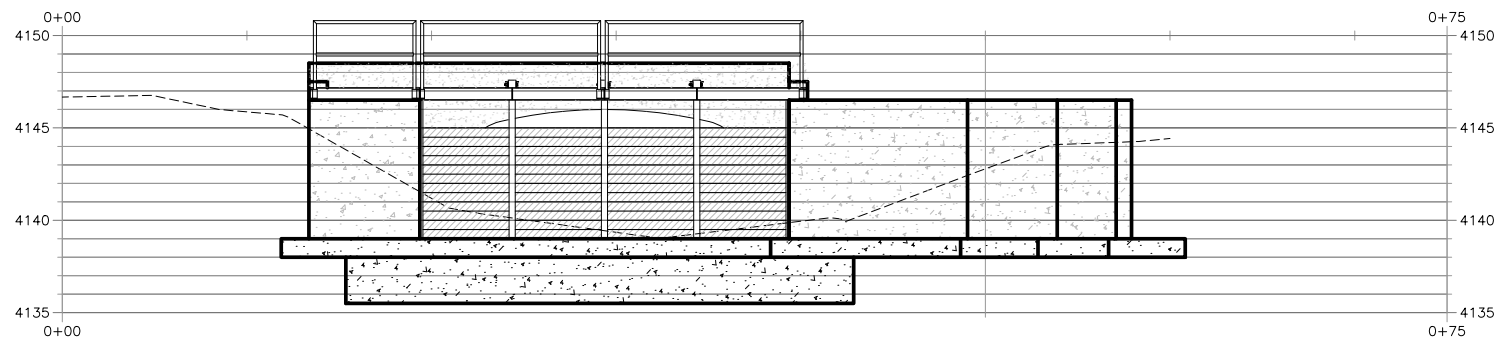
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REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
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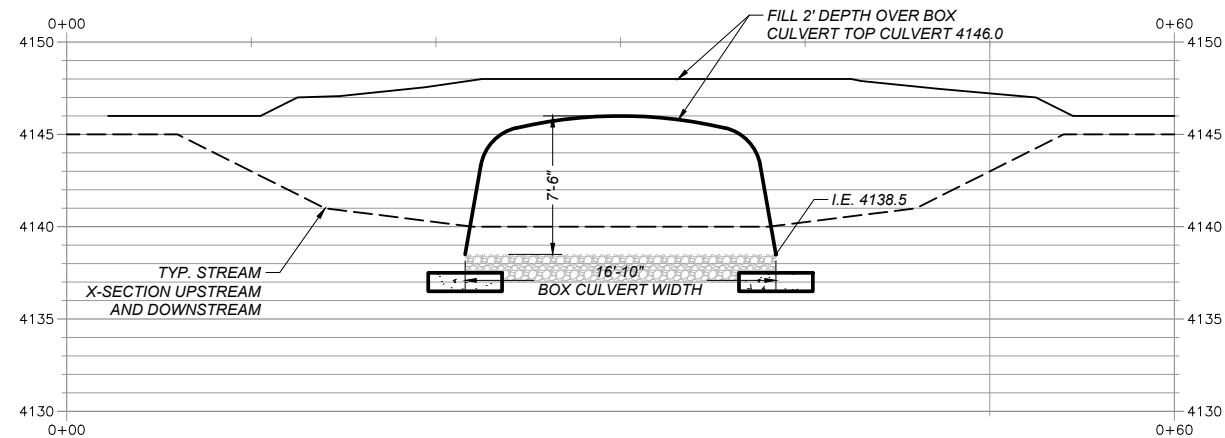


PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
		CHECKED BY: -
DECK AND SLAB REINFORCEMENT		SHEET NO. 10 of 14

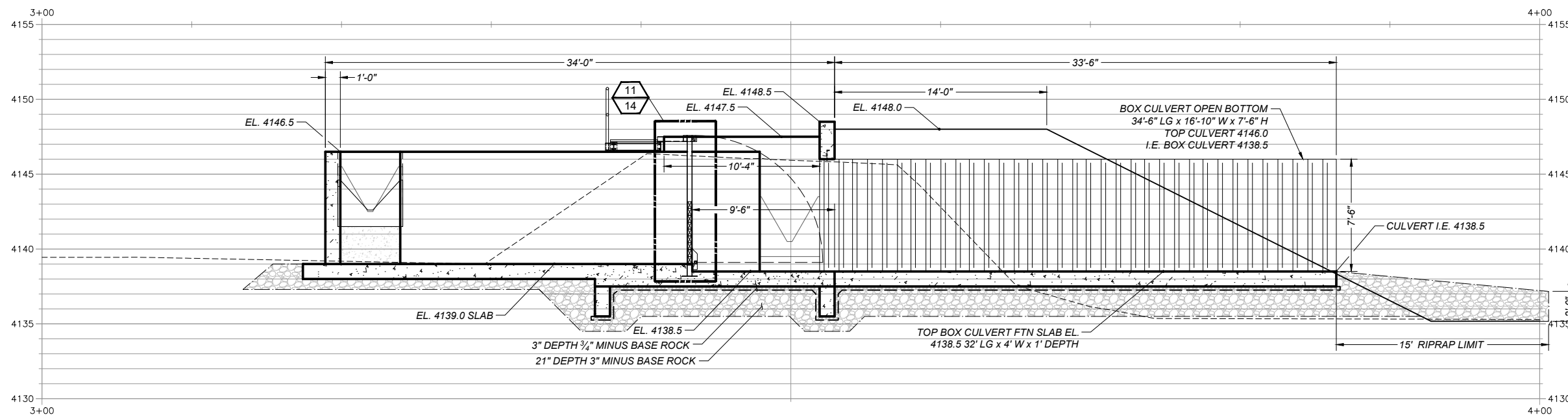
PERMIT SET



C SECTION ENTRANCE
1"=10'



D SECTION AT BOX CULVERT CROSSING
1"=10'



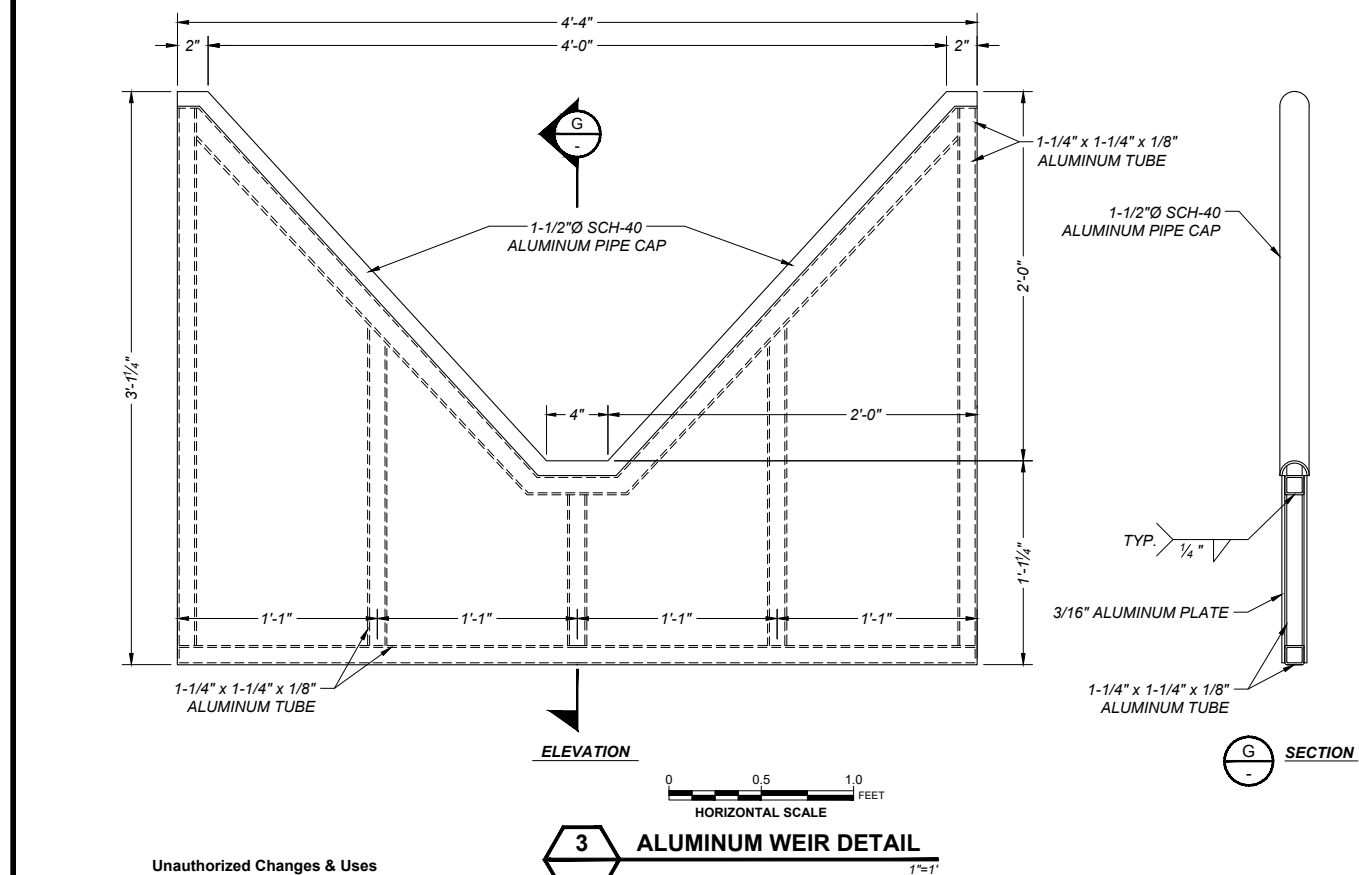
E SECTION VIEW WEIR STRUCTURE
1"=8'

Unauthorized Changes & Uses
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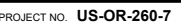
REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
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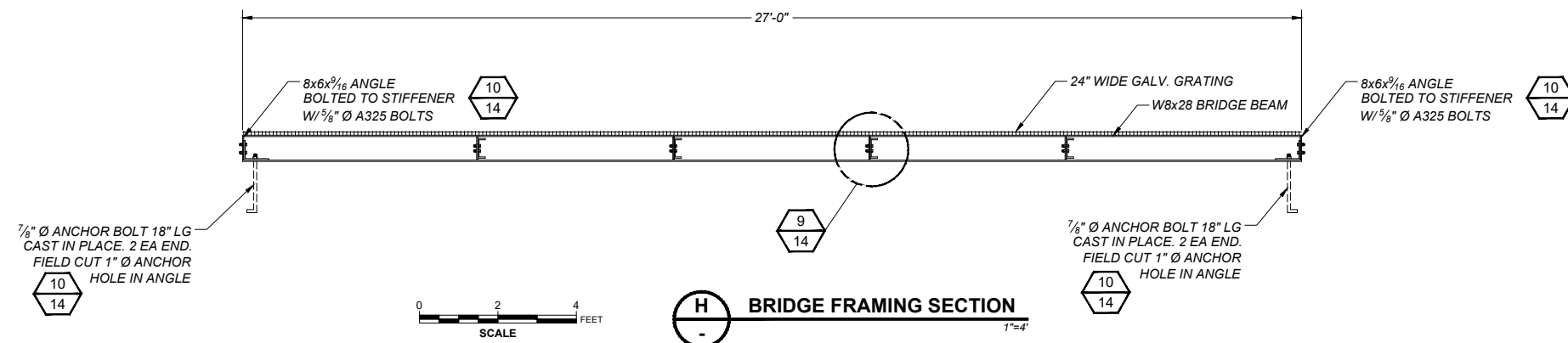
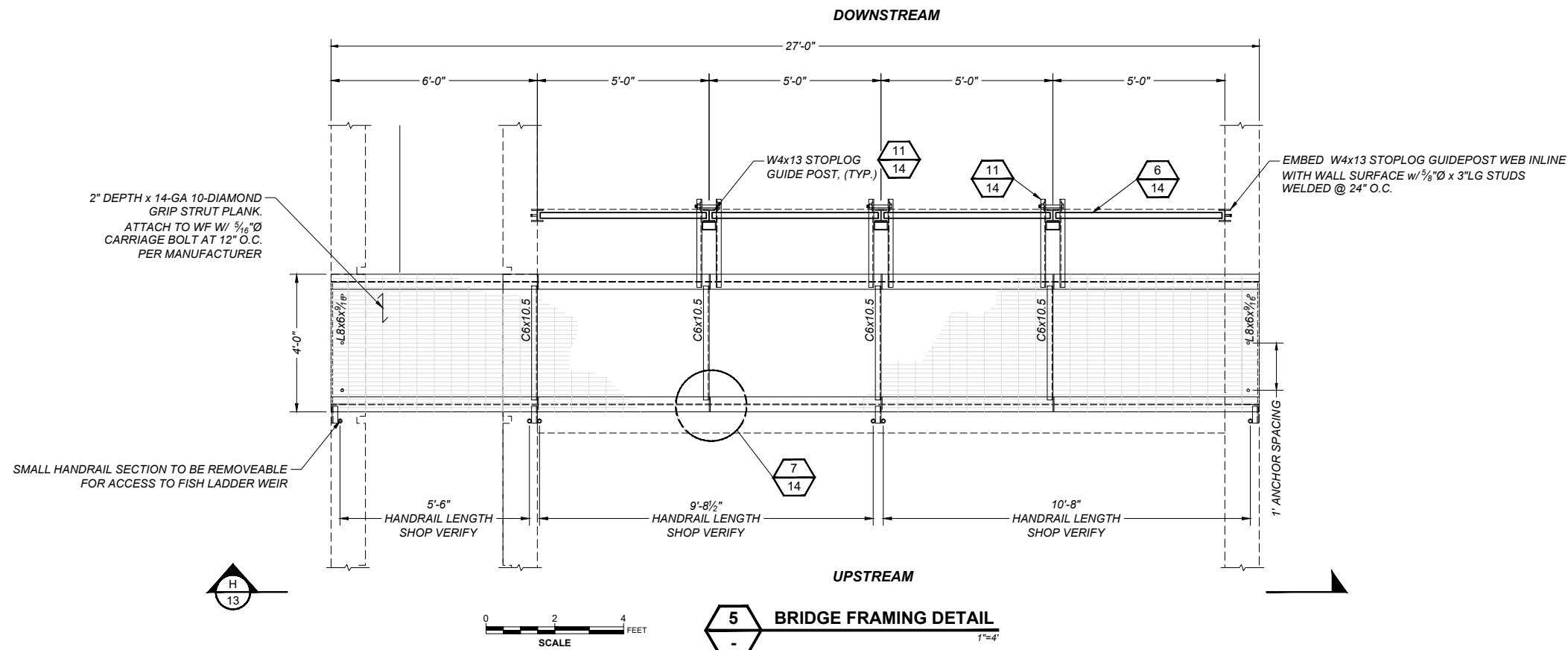


PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
		CHECKED BY: -
DAM ELEVATION AND PROFILE		SHEET NO. 11 of 14



FLOW DYNAMICS RIGGS DAM AND FISH LADDER					1/14/2026		Gus Williams P.E. Ducks Unlimited					
MAX FLOW EXISTING AND NEW FULL OPEN	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREAM WATER EL.	POOL TO POOL DROP (ft)	INVERT EL.	WEIR OR CULVERT DESCRIPTION		
	HYDROCAD	HYDROCAD	HYDROCAD			HYDROCAD	HYDROCAD					
EXISTING RIVER CHANNEL (net rise =0ft)	200.0	200.0	4.5	128.3	1.3	4145.0	4145.0	0.0	4140.5	SLOPE=.0007, n=.06, 15'bottom, 45'top, 4.5'max depth		
EXISTING ARCH CULVERTS (net rise=.1')	80.0	80.0	N/A	48.0	1.7	4145.1	4145.0	-.1'	4139.0 & 4138.7	2-ARCH CULVERTS 87"W x 67'TALL, 58"WIDE x 48'TALL		
NEW DAM (net rise=.1')	200.0	200.0	N/A	98.0	2.0	4145.1	4145.0	-.1'	4138.5	1-BOX CULVERT, 198"WIDE x 80'TALL		
NEW CHECK DAM W/ BOARDS @ 4143.7	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREAM WATER EL.	POOL TO POOL DROP (ft)	INVERT EL.	WEIR OR CULVERT DESCRIPTION		
SUBMERGED WEIR ON DAM @ FLOWS AT/OR ABOVE 140cfs. LADDER NOT NEEDED AT 140CFS. RANGE OF OPERATION 130 TO 5 CFS	140.0	HYDROCAD	HYDROCAD			HYDROCAD	HYDROCAD					
DIVERSION 1,2,3		14.3				4145.1			4143 to 4144.5			
CHECK DAM BOARD EXIT (20'lg)		109.6	1.4	28.0	3.9	4145.1	4143.9	1.2	4143.7	2' SUBMERGED SHARP CRESTED WEIR		
POOL 5 OUTLET WEIR 6		16.1	2.5	7.1	2.3	4145.1	4144.7	0.4	4142.6	V-NOTCH WEIR 4" BY 90 DEGREES		
POOL 5 INLET WEIR 5		16.1	2.6	7.6	2.1	4144.7	4144.4	0.3	4142.1	V-NOTCH WEIR 4" BY 90 DEGREES		
POOL 4 INLET WEIR 4		16.1	2.8	8.8	1.8	4144.4	4144.2	0.2	4141.6	V-NOTCH WEIR 4" BY 90 DEGREES		
POOL 3 INLET WEIR 3		16.1	3.1	10.6	1.5	4144.2	4144.1	0.1	4141.1	V-NOTCH WEIR 4" BY 90 DEGREES		
POOL 2 INLET WEIR 2		16.1	3.5	13.4	1.2	4144.1	4144.0	0.1	4140.6	V-NOTCH WEIR 4" BY 90 DEGREES		
POOL 1 INLET WEIR 1		16.1	3.9	16.5	1.0	4144.0	4143.9	0.1	4140.1	V-NOTCH WEIR 4" BY 90 DEGREES		
DOWNSTREAM POOL		125.7	5.4	89.1	1.4		4143.9		4138.5	BOX CULVERT 16'-6" WIDE X 6'-8"TALL		
NEW CHECK DAM W/ BOARDS @ 4143.7	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREAM WATER EL.	POOL TO POOL DROP (ft)	INVERT EL.	ENERGY DISIPATION FACTOR w = 62.4, Q=15, H=.3 (short pools only)		
	130.0	HYDROCAD	HYDROCAD			HYDROCAD	HYDROCAD			Vpool(req'd) = wQH / 4= 70.2cf		
DIVERSION 1,2,3		13.0				4145.1			4143 to 4144.5			
CHECK DAM BOARD EXIT (20'lg)		98.4	1.4	28.0	3.5	4145.1	4143.8	1.3	4143.7			
POOL 5 OUTLET WEIR 6		15.0	2.5	7.1	2.1	4145.1	4144.7	0.4	4142.6			
POOL 5 INLET WEIR 5		15.0	2.6	7.6	2.0	4144.7	4144.4	0.3	4142.1			
POOL 4 INLET WEIR 4		15.0	2.8	8.8	1.7	4144.4	4144.1	0.3	4141.6	Vpool = (2.8+1.5)(4.33)(4.0) = 74.5cf OK		
POOL 3 INLET WEIR 3		15.0	3.0	10.0	1.5	4144.1	4144.0	0.1	4141.1			
POOL 2 INLET WEIR 2		15.0	3.4	12.7	1.2	4144.0	4143.9	0.1	4140.6	Vpool = (3.4+1.5)(4.33)(4.0) = 84.9cf OK		
POOL 1 INLET WEIR 1		15.0	3.8	15.7	1.0	4143.9	4143.8	0.1	4140.1			
DOWNSTREAM POOL		113.4	5.3	87.5	1.3		4143.8		4138.5			
NEW CHECK DAM W/ BOARDS @ 4143.7	RIVER FLOW	flow Q (cfs)	DEPTH (ft)	AREA (sf)	VELOCITY (fps)	UPSTREAM WATER EL.	DOWNSTREAM WATER EL.	POOL TO POOL DROP (ft)	INVERT EL.	ENERGY DISIPATION FACTOR w = 62.4, Q=3.8, H=.5 (short pools only)		
	5.0	HYDROCAD	HYDROCAD			HYDROCAD	HYDROCAD			Vpool(req'd) = wQH / 4= 29.6 cf		
DIVERSION 1,2,3		1.2				4143.7			4143 to 4144.5			
CHECK DAM BOARD EXIT (20'lg)		0.0	0.0	0.0	0.0	4143.7	4140.6	3.1	4143.7			
POOL 5 OUTLET WEIR 6		3.8	1.1	1.6	2.4	4143.7	4143.2	0.5	4142.6			
POOL 5 INLET WEIR 5		3.8	1.1	1.6	2.4	4143.2	4142.7	0.5	4142.1			
POOL 4 INLET WEIR 4		3.8	1.1	1.6	2.4	4142.7	4142.2	0.5	4141.6	Vpool = (1.1+1.5)(4.33)(4.0) = 45.0cf OK		
POOL 3 INLET WEIR 3		3.8	1.1	1.6	2.4	4142.2	4141.7	0.5	4141.1			
POOL 2 INLET WEIR 2		3.8	1.1	1.6	2.4	4141.7	4141.2	0.5	4140.6			
POOL 1 INLET WEIR 1		3.8	1.1	1.6	2.4	4141.2	4140.6	0.6	4140.1			
DOWNSTREAM POOL		3.8	2.1	34.7	0.1		4140.6		4138.5			

<table border="1"> <thead> <tr> <th>REV. NO.</th> <th>DESCRIPTION</th> <th>DATE</th> <th>APPROVED:</th> </tr> </thead> <tbody> <tr><td>△</td><td></td><td></td><td></td></tr> <tr><td>△</td><td></td><td></td><td></td></tr> <tr><td>△</td><td></td><td></td><td></td></tr> <tr><td>△</td><td></td><td></td><td></td></tr> <tr><td>△</td><td></td><td></td><td></td></tr> <tr><td>△</td><td></td><td></td><td></td></tr> </tbody> </table> 					REV. NO.	DESCRIPTION	DATE	APPROVED:	△				△				△				△				△				△				PROJECT NO. US-OR-260-7 RIGGS DAM CHECK DAM & FISH LADDER DATE: 3/13/2026 DESIGNED BY: GW DRAWN BY: RGR SURVEYED BY: BMN CHECKED BY:	
REV. NO.	DESCRIPTION	DATE	APPROVED:																															
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					FISH LADDER PROFILE & FLOW DYNAMICS 12 of 14																													

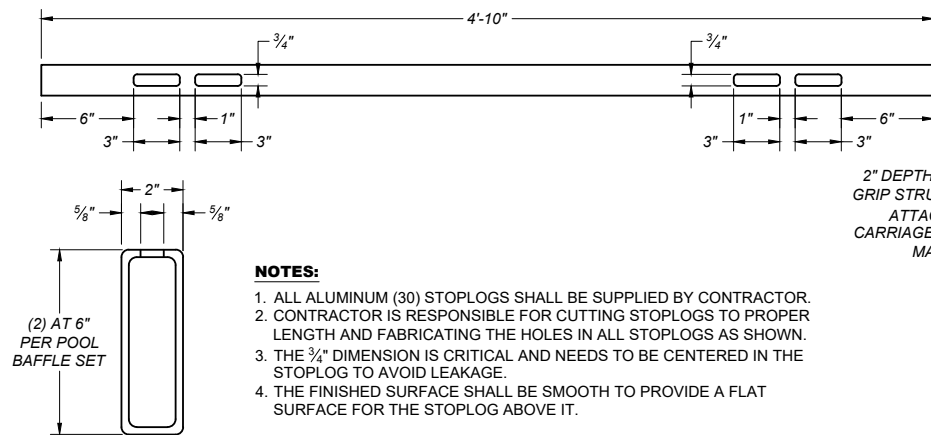


Unauthorized Changes & Uses
The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes must be in writing and must be approved by the preparer of these plans.

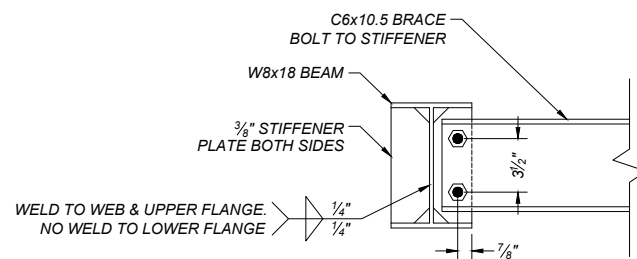
REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
1			
2			
3			
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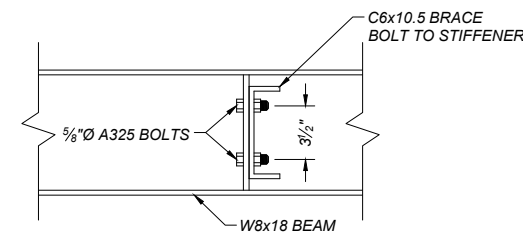
PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
		CHECKED BY: -
WALKWAY FRAMING DETAILS		SHEET NO. 13 of 14



6 ALUMINUM STOPLOG DETAIL
1"=1'

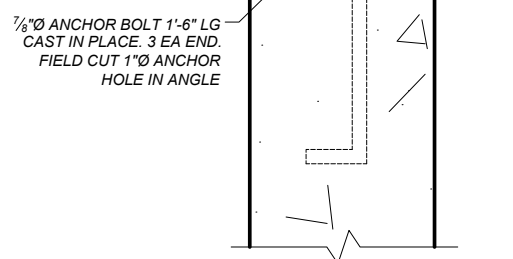


8 DECKING BRACE STIFFENER DETAIL
1"=1'

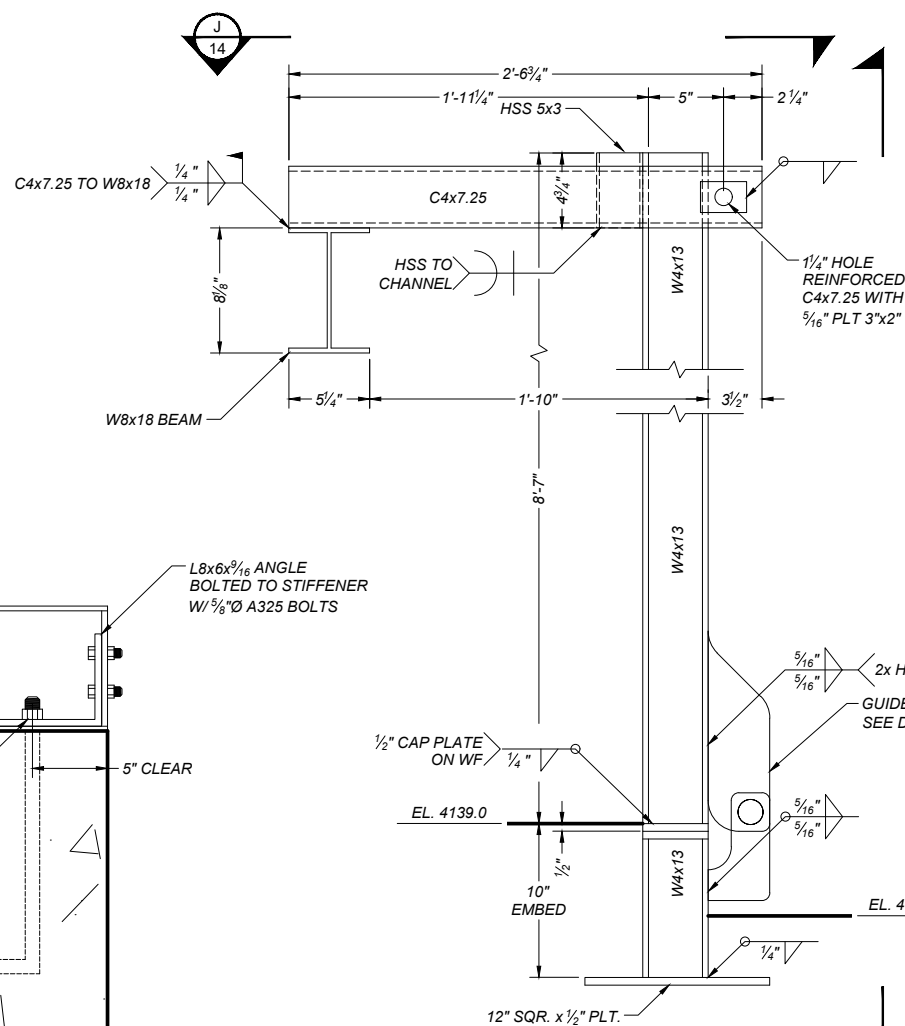


9 DECKING BRACE DETAIL
1"=1'

NOTE:
ALL SECTIONS & DETAILS THIS SHEET SCALE AS SHOWN BELOW UNLESS OTHERWISE NOTED

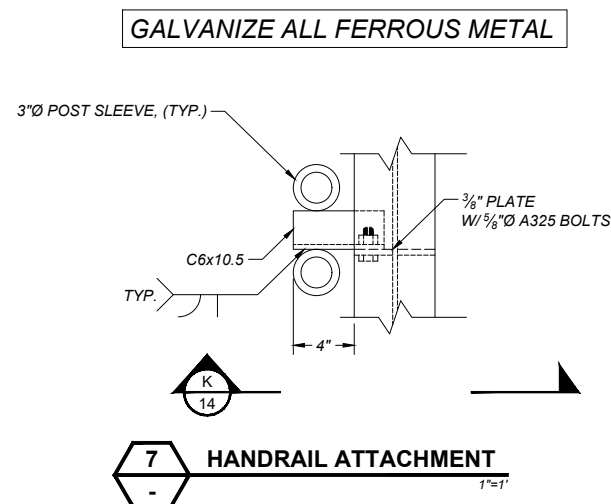


10 BRIDGE ATTACHMENT DETAIL
1"=1'

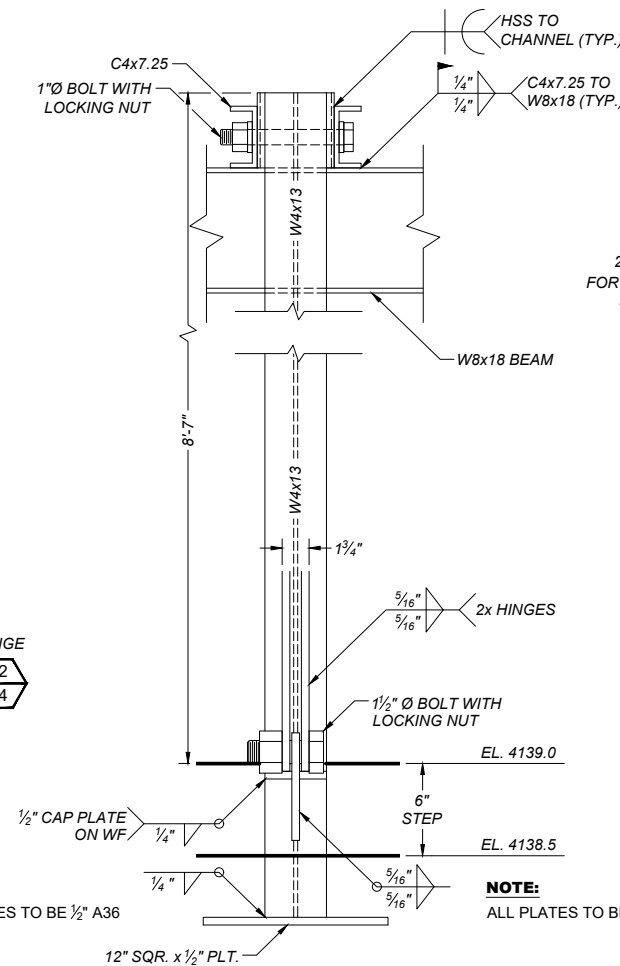


11 STOPLOG ARTICULATING GUIDEPOST
1"=1'

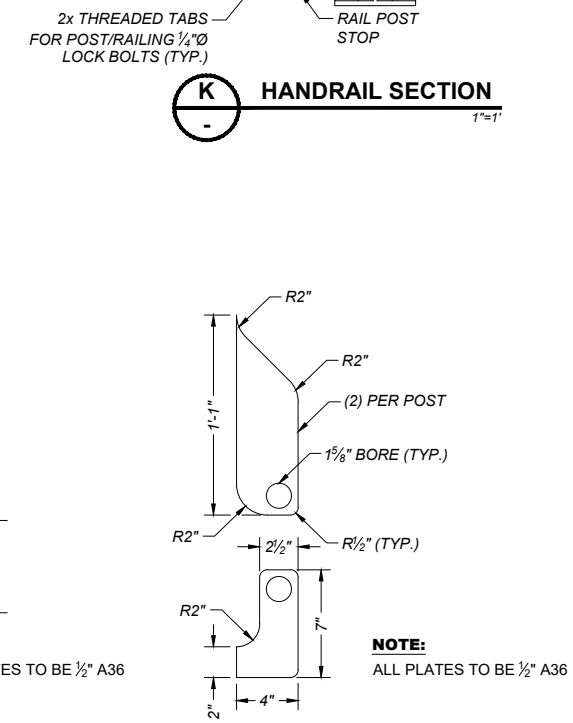
NOTE:
ALL PLATES TO BE 1/2" A36



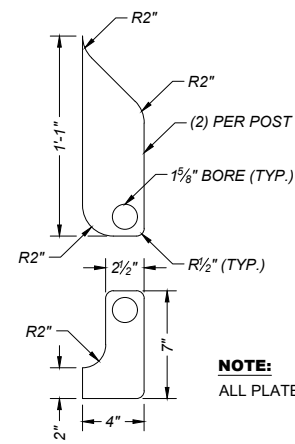
7 HANDRAIL ATTACHMENT
1"=1'



12 GUIDEPOST HINGE DETAIL
1"=1'



K HANDRAIL SECTION
1"=1'



12 GUIDEPOST HINGE DETAIL
1"=1'

PERMIT SET

REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
1			
2			
3			
4			
5			



PROJECT NO. US-OR-260-7	DATE: 3/13/2026	DESIGNED BY: GW
RIGGS DAM		DRAWN BY: RGR
CHECK DAM & FISH LADDER		SURVEYED BY: BMM
		CHECKED BY: -
		SHEET NO. 14 of 14

STEEL DETAILS

Unauthorized Changes & Uses
The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes must be in writing and must be approved by the preparer of these plans.



US Army Corps
of Engineers®
Portland District

Nationwide Permit 60

Terms and Conditions

Effective Date: March 15, 2026

-
- A. Description of Activities Authorized by Nationwide Permit 60
 - B. Nationwide Permit General Conditions
 - C. District Engineer's Decision
 - D. Further Information
 - E. Nationwide Permit Definitions
 - F. Portland District Regional Conditions
 - G. Portland District Nationwide Permit-Specific Regional Conditions
 - H. Portland District Regional Conditions Definitions
-

In addition to any special conditions that may be required on a case-by-case basis by the District Engineer, the following terms and conditions must be met, as applicable, for a Nationwide Permit authorization to be valid in Oregon.

A. Description of Activities Authorized by Nationwide Permit (NWP) 60

60. *Activities to Improve Passage of Fish and Other Aquatic Organisms.* Discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States for activities that restore or enhance the ability of fish and other aquatic organisms to move through aquatic ecosystems. Examples of activities that may be authorized by this NWP include, but are not limited to: the construction, maintenance, modification, or expansion of conventional/technical and nature-like fishways; the construction, maintenance, modification, or expansion of fish bypass channels around existing in-stream structures; the replacement of existing structures (e.g., culverts, low-water crossings) with structures planned, designed, and constructed to restore or enhance passage of fish and other aquatic organisms; the installation of fish screens and other devices to minimize entrainment and entrapment of fish and other aquatic organisms in irrigation ditches and other features; devices to guide fish and other aquatic organisms through passage features; fish lifts and fish bypass pipes; the modification of existing in-stream structures, such as dams or weirs, to improve the ability of fish and other aquatic organisms to move past those structures.

The activity must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize dam removal activities. This NWP also does not authorize the construction or installation of new culverts at crossings of waterbodies where there are not existing culverts.

Notification: For activities resulting in the loss of greater than 1/10-acre of waters of the United States, the permittee must submit a preconstruction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities:

Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act)

B. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas*. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds*. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. *Suitable Material*. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. *Water Supply Intakes*. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects from Impoundments*. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows*. To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The activity must not restrict or impede the passage of normal or high flows, including tidal flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains*. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment*. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to preconstruction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil reaeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

12. *Soil Erosion and Sediment Controls*. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark

or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. *Removal of Temporary Structures and Fills.* Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The affected areas must be revegetated, as appropriate.

14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. *Single and Complete Project.* The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. *Wild and Scenic Rivers.* (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered

species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. *Migratory Birds and Bald and Golden Eagles.* The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. *Historic Properties.* (a) No activity is authorized under any NWP which may have the potential to cause effects on properties listed, or eligible for listing, in the National

Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the nonfederal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects on historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees,

the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the nonfederal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. *Discovery of Previously Unknown Remains and Artifacts.* Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activities authorized by NWPs, must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement,

maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not

necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. *Safety of Impoundment Structures.* To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate

that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. *Water Quality.* (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires preconstruction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

(b) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States for that single and complete project cannot exceed that specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14 (which has an acreage limit of 1/3 acre in tidal waters), with associated bank stabilization authorized by NWP 13 (which does not have a specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the specified acreage limits of each of those NWPs. For example, if a commercial development is constructed under NWP 39 (which has a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. *Compliance Certification.* Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The successful completion of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. *Activities Affecting Structures or Works Built by the United States.* If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. *Pre-Construction Notification.* (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district

engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, federal permittees

must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (FWS, state natural

resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases where the prospective permittee is not a federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

C. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the

NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add activity-specific conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed NWP activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. However, compensatory mitigation shall not be required for activities authorized by NWP 27 because those activities must result in net increases in aquatic resource functions and services (see the text of NWP 27). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal when determining whether the net adverse environmental effects of the proposed NWP activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the proposed activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results

in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed NWP activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN review period (unless additional time is required to comply with general conditions 16, 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

D. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

E. Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which

remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Nontidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWP, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Preconstruction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where preconstruction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Reestablishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: (1) held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal

circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a “water of the United States.” If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

F. Portland District Regional Conditions

1. *Notification:* For permittees that received written NWP verification, upon starting the authorized activities, you shall notify the Corps, Portland District, Regulatory Branch that the work has started. Notification shall be provided by e-mail to cenwp.notify@usace.army.mil and the email subject line shall include the Corps project number and the name of the county where the project is located.

2. *Aquatic Resources of Special Concern:* Pre-construction notification to the district engineer is required for all activities proposed in waters of the United States within, or directly affecting, an aquatic resource of special concern. Aquatic resources of special concern are resources that are difficult to replace, unique, and/or have high ecological function. For the purpose of this regional condition, aquatic resources of special concern are native eel grass (*Zostera marina*) beds, mature forested wetlands, bogs, fens, vernal pools, alkali wetlands, wetlands in dunal systems along the Oregon coast, estuarine wetlands, Willamette Valley wet prairie wetlands, kelp beds, and rocky substrate in tidal waters.

In addition to the content requirements of NWP General Condition 32, the pre-construction notification must include a statement explaining why the effects of the proposed activity are no more than minimal. Written approval from the district engineer must be obtained prior to commencing work.

3. *Cultural Resources and Human Burials-Inadvertent Discovery Plan:* Permittees that discover any previously unknown historic, cultural or archeological remains, artifacts, or burial sites while accomplishing the activity authorized by an NWP shall implement the procedures in the *Inadvertent Discovery Plan* available on the Portland District Regulatory website (<https://www.nwp.usace.army.mil/Missions/Regulatory/Apply/>).

Also see NWP General Condition 20. Notify the Portland district engineer as soon as possible following discovery but in no case later than 24 hours. Notification may be sent electronically (cenwp.notify@usace.army.mil) and shall identify the Corps project number and clearly specify the purpose is to report an inadvertent discovery. The permittee shall also notify the Corps representative (by email and telephone) identified in the NWP verification letter.

4. *Essential Fish Habitat:* Activities which may adversely affect essential fish habitat, as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), are not authorized by NWP until essential fish habitat requirements have been

met by the applicant and the Corps. Non-federal permittees must submit a pre-construction notification to the district engineer if essential fish habitat may be affected by, or is in the vicinity of, a proposed activity and shall not begin work until notified by the district engineer in writing that the requirements of the essential fish habitat provisions of the MSA have been satisfied and the activity is authorized. The notification must identify the type(s) of essential fish habitat (e.g., Pacific coast salmon, Pacific coast groundfish, and/or Coastal-pelagic species) managed by a Fishery Management Plan that may be affected. Information about essential fish habitat is available on NOAA Fisheries' website (<http://www.westcoast.fisheries.noaa.gov/>).

5. *Bank Stabilization*: Permittee shall include the use of nature-based solutions and natural materials in the project design to the maximum extent practicable and shall minimize the use of rock. Nature-based solutions for bank stabilization include those that increase the strength and structure of soils with a combination of biological and mechanical elements (e.g., vegetation, root wads and woody debris, rock structures). Riparian plantings shall be included in all project designs unless the permittee can demonstrate that such plantings are not practicable.

6. *Work Area Isolation and Dewatering*: Appropriate practices shall be implemented to prevent erosion and to prevent sediments from entering waters of the United States.

- a. All in-water work shall be isolated from the active channel or conducted during low seasonal stream flows to the maximum extent practicable;
- b. Cofferdams shall be constructed of non-erosive material, such as concrete blocks, sand and/or gravel bags, or water bladders. Constructing a cofferdam by pushing material from the streambed or sloughing material from the streambanks is not authorized;
- c. Cofferdams shall be lined with a plastic liner or geotextile fabric to reduce permeability and prevent sediments and/or construction materials from entering waters of the United States;
- d. Upstream and downstream flows shall be maintained by routing flows around the construction site;
- e. When dewatering is necessary for construction, a sediment basin, or other applicable method, shall be used to settle sediments prior to releasing the water back into the waterbody. Settled water shall be returned to the waterbody in such a manner as to avoid erosion. Sediment basins shall be placed in uplands; and
- f. Fish and other aquatic species must be salvaged (i.e., safely captured and relocated away from the project or development site) prior to dewatering. Contact the Oregon Department of Fish and Wildlife for additional information regarding fish salvage.

Note: See Regional Condition 10 regarding timeframes for temporary fills and temporary activities.

7. *Sediment Suitability*: For activities that involve dredging or excavating of sediment from waters of the United States and/or the discharge of dredged material into waters of the United States, the permittee shall ensure that any necessary sediment characterization regarding size, composition, and potential contaminants is completed prior to conducting the activity. Sediment characterization must be conducted per the *Sediment Evaluation Framework for the Pacific Northwest* available on the Portland District website (<https://www.nwp.usace.army.mil/Missions/Environmental-Stewardship/DMM/>).

Note: Dredged material means material that is excavated or dredged from waters of the United States. The return water from a contained disposal area is defined as a discharge of dredged material at 33 CFR § 323.2 and requires separate authorization from the district engineer (e.g., by NWP 16).

8. *Mechanized Equipment*: In addition to the requirements in NWP General Condition 11, permittee shall implement the following practices to prevent or minimize impacts to the aquatic environment from mechanized equipment:

- a. Operate equipment from above the ordinary high water mark or high tide line, unless specifically authorized by the district engineer; and
- b. Spill prevention and containment materials shall be maintained and be readily accessible at vehicle staging areas. The amount of spill response materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials, shovels, brooms, and containment bags) maintained on-site must be appropriate for the size of the authorized activity.

9. *Erosion Control*: During construction and until the site is stabilized, the permittee shall ensure all practicable measures are implemented and maintained to prevent erosion and runoff. Temporary stockpiles of excavated or dredged material shall be stabilized to prevent erosion. Once soils or slopes have been stabilized, permittee shall completely remove all non-biodegradable components of installed control measures.

10. *Temporary Fills and Temporary Activities*: To ensure no more than minimal adverse environmental effects from temporary fills and temporary activities to waters of the United States:

- a. Temporary fills and/or activities in waters of the United States shall not exceed six months unless otherwise approved by the district engineer;
- b. Temporary fills or activities in waters of the United States shall not exceed ½-acre unless otherwise approved by the district engineer;

- c. Native soils and/or sediments removed from waters of the United States for project construction shall be stockpiled and used for site restoration to the maximum extent practicable; and
- d. Waters of the United States affected by temporary fills or temporary activities shall be restored to pre-construction contours and elevations after construction. The permittee shall appropriately revegetate temporarily filled or impacted areas with native, noninvasive herbs, shrubs, and/or tree species sufficient in number, spacing, and diversity to replace affected aquatic functions.

Note: The Corps will determine compensatory mitigation requirements for temporary fills and impacts on a case-by-case basis depending on the duration and nature of the temporary fill or impact and the type of aquatic resource affected.

11. *Water Quality.* For activities where the U.S. Environmental Protection Agency (EPA), Region 10 has previously certified compliance of the NWP with Section 401 of the Clean Water Act, the permittee must comply with the certification general conditions and any NWP-specific certification conditions. The list of NWPs where EPA Region 10 has provided Section 401 certification and the respective conditions are available on the Portland District Regulatory website (<https://www.nwp.usace.army.mil/Missions/Regulatory/Apply/>). See NWP General Condition 25 for additional information.

12. *Coastal Zone Management.* For activities in the coastal zone of Oregon where the Oregon Department of Land Conservation and Development (DLCD) has previously provided state coastal zone management consistency concurrence for the NWP, the permittee must comply with DLCD's coastal zone conditions and any NWP-specific coastal zone conditions. The list of NWPs where DLCD has provided coastal zone management consistency concurrence and the respective conditions, including any exclusions, are available on the Portland District Regulatory website (<https://www.nwp.usace.army.mil/Missions/Regulatory/Apply/>). See NWP General Condition 26 for additional information.

13. *Contractor Notification of Permit Requirements:* The permittee shall provide a copy of the NWP verification letter (when written approval obtained), all conditions, and the permit drawings to all contractors and any other parties performing the authorized work, prior to the commencement of any work in waters of the United States.

14. *Inspection of the Project Site:* The permittee shall allow representatives of the district engineer to inspect the authorized activity to confirm compliance with nationwide permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative the option to be on site during the inspection.

G. Portland District Nationwide Permit-Specific Regional Conditions

None.

H. Portland District Regional Conditions Definitions

a. *Alkali Wetlands*: Alkali wetlands are wetlands as defined in 33 CFR § 328.3(c)(1) that occur in arid regions east of the Cascade Range and have saline or alkaline conditions where evaporation tends to concentrate salts in soils and water. Vegetation consists of plants adapted to saline or alkaline conditions.

b. *Bogs*: Bogs are wetlands as defined in 33 CFR § 328.3(c)(1) with acidic organic soils (pH of <5.5) with no significant inflow or outflow of surface or ground water and generally receive water from direct precipitation. Bogs are characterized by vegetation able to grow in acidic conditions and are often covered by mosses, sedges, and evergreen shrubs and may also have an over story of evergreen trees.

c. *Estuarine Wetlands*: Estuaries are areas where rivers or streams meet the ocean and freshwater and saltwater mix. Estuarine wetlands are wetlands as defined in 33 CFR § 328.3(c)(1) where ocean derived salts measure greater than 0.5 parts per thousand during the period of average annual flow.

d. *Fens*: Fens are wetlands as defined in 33 CFR § 328.3(c)(1) that have organic soils that generally receive drainage from surrounding mineral soils and may include a surface water inlet and outlet. Soils in fens are generally less acidic (pH of >5.5) than bogs and receive waters rich in dissolved minerals. Vegetation in fens typically consists of grasses, sedges evergreen shrubs and may have an over story of evergreen trees.

e. *Kelp Beds*: Kelp beds form on rocky substrate located in shallow subtidal areas, typically in waters between 5 and 25 meters. Kelp stalks are anchored to rocks by a holdfast, which is connected by a flexible stem-like feature to the blades. Gas-filled bladders keep the blades close to the surface where the blades fan out forming a canopy cover. Kelp beds occur when the kelp covers 30% or more of the substrate.

f. *Mature Forested Wetlands*: Mature forested wetlands are wetlands as defined in 33 CFR § 328.3(c)(1) that consist of trees with an aerial cover of 30% or more of the wetland where the average age of trees is 80 years or older or have an average diameter of 18 inches or greater diameter at breast height.

g. *Native Eelgrass (Zostera marina) Beds*: *Zostera marina* is a species of submerged aquatic vegetation that grows on substrates in intertidal and shallow subtidal marine waters. *Z. marina* is a rhizomatous, perennial flowering plant and exhibits both vegetative growth and reproduction by seed germination. *Z. marina* may form beds that are continuous, semi-continuous to patchy. A *Z. marina* eelgrass bed is defined as a minimum of 3 shoots per 0.25 square meter (1/4 square meter) within 1 meter of any adjacent shoots. To identify the bed boundary, proceed in a linear direction and find the last shoot that is within 1 meter of an adjacent shoot along that transect. The bed boundary (edge) is defined as the point 0.5 meters past that last shoot, in recognition of

the average length of the roots and rhizomes extending from an individual shoot¹.

h. *Rocky substrate in tidal waters*: Areas of rocky substrates consist of stones, boulders or bedrock that cover 75% or greater of an area where vegetation and/or macro algae cover less than 30% of the area. Rocky substrates may occur in both intertidal and subtidal marine waters.

i. *Vernal Pools*: Vernal pools are seasonally inundated depressions underlain by an impermeable claypan or hardpan layer. A vernal pool is usually a closed depression without a naturally-occurring inlet or outlet that ponds water in the cool, low evaporation periods of winter and spring in regions with cool moist winters, and dries out during the hot dry summers.

j. *Wetlands in dunal systems along the Oregon coast*: Dunes are ridges and hills of sand formed by the influence of wind and water. Dunal systems along the Oregon coast consist of a complex assembly of beaches, foredunes, hummocks, deflation plains, and transvers, oblique and parabolic dunes located between the Pacific Ocean and the foothills of the Coast Range. Wetlands in the dunal system along the Oregon coast are wetlands as defined in 33 CFR § 328.3(c)(1) that may occur in the deflation plains, depressions, swales or low areas.

k. *Willamette Valley wet prairie wetlands*: Wet prairie wetlands are wetlands as defined in 33 CFR § 328.3(c)(1) that are a type of wetland located in the Willamette Valley characterized by a seasonally high water table or perched water table on clay-rich soils. Wet prairie wetlands are dominated primarily by graminoids, including tufted hairgrass (*Deschampsia caespitosa*), camas (*Camassia quamash*), dense sedge (*Carex densa*), and lateral sedge (*Carex unilateralis*).

¹ Washington Department of Natural Resources. 2012. Technical Memorandum: Operational Definition for Determining Edge of Eelgrass (*Zostera marina*) Presence. A Summary of Workgroup Discussion and Related Analysis. November 2012.
https://www.dnr.wa.gov/Publications/aqr_hcp_2014_app_j_defn_eelgrass_beds.pdf



Oregon

Tina Kotek, Governor

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April 28, 2026

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RE: 401 Water Quality Certification Approval for Project 2026-49, Riggs Diversion Replacement Project

The U.S. Army Corps of Engineers (USACE) has determined that your project will be authorized under Nationwide Permit (NWP) category #60. As described in the application package received and reviewed by the Oregon Department of Environmental Quality (DEQ), the project qualifies for the expedited 401 Water Quality Certification (WQC), subject to the conditions outlined below. If you cannot meet all conditions of this 401 WQC, you may apply for a standard 401 WQC. A standard 401 WQC will require additional information, a public notice that includes a comment period, and a higher review fee.

Certification Decision: Based on information provided by the USACE and the Applicant, DEQ has determined that implementation of eligible activities under the proposed NWP will be consistent with water quality requirements, including applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules (OAR) Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the federal permit and strictly adhered to by the Applicant.

Duration of Certification: This 401 WQC for impacts to waters, including dredge and fill activities, is valid for the duration of the USACE permit.

In addition to all USACE national and regional permit conditions, the following 401 WQC conditions apply to all NWP categories that qualify for the expedited 401 WQC.

401 General Certification Conditions

- 1) **Responsible Parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and subcontractors, as well as any other entity that performs work related to this 401 WQC.

Authority: OAR 340-048-0015

Justification: DEQ must be aware of responsible parties to ensure compliance.

- 2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the federal permit application and additional application materials (hereafter "the permit application materials"), unless otherwise authorized by DEQ. If the project is operated in a manner that is

not consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.

Authority: OAR 340-048-0015

Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.

- 3) **401 WQC On-Site:** A copy of this 401 WQC must be kept on the job site and readily available for reference by the Applicant and its contractors and subcontractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other state and local government inspectors.

Authority: OAR 340-012

Justification: All parties must be aware of and comply with the 401 WQC, including on-site contractors.

- 4) **Revocation:** DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes, if the project changes or project activities are having an adverse impact state water quality or beneficial uses, or if the Applicant is otherwise in violation of the conditions of this certification. This condition also fully applies to applicable on-site/off-site mitigation plans.

Authority: OAR 340-048-0050

Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.

- 5) **Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each Applicant must submit findings prepared by the local land use jurisdiction that demonstrates the activity's compliance with the local comprehensive plan. Such findings can be submitted using Section 11 of the Joint Permit Application and must be signed by the appropriate local planning official indicating:

- a. "This project is consistent with the comprehensive plan and land use regulations;" or,
- b. "This project will be consistent with the comprehensive plan and land use regulations when the following ... local approvals are obtained," accompanied by the obtained local approvals.
- c. Rarely, "This project is not regulated by the comprehensive plan and land use regulations" will be acceptable.

In lieu of submitting Section 11 of the Joint Permit Application, the Applicant may use DEQ's Land Use Compatibility Statement form found at: [DEQ Land Use Compatibility Form](#)

Authority: OAR 340-048-0020(2) (i), OAR 340-018

Justification: DEQ must ensure compliance with water quality land use laws at the local level.

- 6) **Access:** The Applicant and its contractors must allow DEQ access, with or without prior notice, to the project site, including staging areas and mitigation sites, to monitor compliance with these 401 WQC conditions, including:

- a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;
- b. To inspect best management practices (BMPs), monitoring, equipment, or methods; and
- c. To collect samples or monitor any discharge of pollutants.

Authority: OAR 340-048

Justification: DEQ must inspect facilities for compliance with all state rules and laws.

- 7) **Enforcement:** Failure to comply with this order may result in enforcement, including the issuance of civil penalties or other actions. The Applicant is liable for any violations of this Order caused by the work of its contractors and subcontractors, as well as any other entity that performs work related to this 401 WQC.

Authority: OAR 340-012, OAR 340-048

Justification: If the project is not being constructed or operated as proposed, it may not be consistent with water quality requirements.

For Projects That Propose Construction, The Following General Conditions Apply

- 8) **Erosion and Sediment Control:** During construction, erosion control measures must be implemented to prevent soil from entering waters of the state. The Applicant is required to develop and implement an effective erosion and sediment control plan. Refer to DEQ's Oregon Sediment Erosion Control Manual, February 2021 at:
<https://www.oregon.gov/deq/wq/Documents/wqpBMPManual.pdf>
- a. A project that disturbs more than one acre may be required to obtain a National Pollutant Discharge Elimination System (NPDES) 1200-C construction stormwater general permit. Contact the DEQ Stormwater Program for more information at:
<https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx>
 - b. Unless otherwise authorized by DEQ in writing, the Applicant must:
 - i. Maintain an adequate supply of materials necessary to control erosion at the construction site.
 - ii. Prohibit erosion of stockpiles. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours.
 - iii. Inspect erosion control measures daily and maintain erosion control measures as often necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized.
 - 1. If monitoring or inspection shows that the erosion and sediment controls are ineffective, the Applicant must act immediately to make repairs, install replacements, or install additional controls as necessary.
 - 2. If sediment has reached one-third of the exposed height of a sediment or erosion control, the Applicant must remove the sediment to its original contour.
 - iv. Use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction, unless otherwise authorized by DEQ. Tire mats, creosote-treated wood, and other deleterious waste materials are prohibited.

- v. Flag or fence off wetlands not specifically authorized to be impacted to protect them from disturbance and/or erosion.
- vi. Place dredged or other excavated material on upland areas (outside of the ordinary high-water mark or wetland boundary) with stable slopes to prevent materials from eroding back into waterways or wetlands.
- vii. Place clean aggregate at all construction entrances and utilize other BMPs, including, but not limited to, truck or wheel washes, when earth-moving equipment is leaving the site and traveling on paved surfaces. Vehicles are prohibited from tracking sediment off site.
- viii. Upon completion of construction activities, stormwater facilities must be inspected and adequately prepared for post-construction stormwater treatment.
- ix. Upon completion of construction activities, stormwater facilities must be tested to ensure they are working and adequately prepared for post-construction stormwater treatment.

Authority: OAR 340-041-0007(8), ORS 468B.025, ORS 468B.050, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways.

- 9) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically deleterious materials and construction debris where it could enter waters of the state, including wetlands (wetlands are waters of the state). This includes but is not limited to petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt, and waste concrete.

The Applicant must:

- a. Cure concrete, cement, or grout for at least 24 hours before any contact with waters of the state;
- b. Use only clean fill, free of waste and polluted substances;
- c. Employ all practicable controls to prevent discharges of spills of deleterious materials to surface or groundwater;
- d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event;
- e. Remove all foreign materials, refuse, and waste from the project area; and
- f. Employ general good housekeeping practices at all times.

Authority: OAR 340-041-0007(8), ORS 468B 0.25, ORS 468B.050

Justification: DEQ must ensure that pollution does not enter waterways.

- 10) **Spill Prevention:** The Applicant must have a spill prevention and control plan. The Applicant must fuel, operate, maintain, and store vehicles, equipment, and construction materials in

areas that will not disturb habitat directly or have the potential to result in discharges. In general, reasonable precautions and controls must be used to prevent any discharges of petroleum products or other harmful or toxic materials from entering the water due to any in-water activities. In addition, the following specific requirements apply:

- a. Vehicle and motorized equipment staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area 150 feet or more from any waters of the state, including wetlands (wetlands are waters of the state). DEQ may approve in writing exceptions to this distance if all practical prevention measures are employed and this distance is not possible because of any of the following site conditions:
 - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
 - ii. Natural resource features would be degraded as a result of this setback; or
 - iii. Equal or greater spill containment and effect avoidance is provided even if the staging area is less than 150 feet away from waters of the state, including wetlands (wetlands are waters of the state).
- b. If the staging areas are within 150 feet of any waters of the state, as allowed under subsection (a)(iii) of this condition, full containment of potential contaminants must be provided to prevent soil and water contamination, as appropriate.
- c. All vehicles operated within 150 feet of any waters of the state must be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected in the vehicle-staging area must be repaired before the vehicle resumes operation.
- d. Before operations begin and as often as necessary during operation, equipment must be steam cleaned (or undergo an approved equivalent cleaning) until all visible oil, grease, mud, and other visible contaminants are removed if the equipment will be used below the bank of a waterbody.
- e. All stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state must be covered by an absorbent mat to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state.
- f. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to contain spills must be maintained at the project construction site and deployed as necessary.
- g. All equipment operated in state waters must use bio-degradable hydraulic fluid.
- h. A maintenance log documenting equipment maintenance inspections and actions must be kept on-site and available upon request.

Authority: ORS 466.645(1); ORS 468B.025, OAR 340-142-0030(1)(b)(B), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.

11) Spill and Incident Reporting:

- a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters or onto land with a potential to enter state waters, the Applicant must report the discharge to the Oregon Emergency Response Service (OERS, 1-800-452-0311) within 24 hours. The Applicant must immediately begin containment and complete cleanup as soon as possible.
- b. If the project operations cause a water quality problem that results in distressed or dying fish, the operator must immediately cease operations, take appropriate corrective measures to prevent further environmental damage, collect fish specimens and water samples, and notify DEQ, ODFW, and other appropriate regulatory agencies.

Authority: ORS 466.645(1), ORS 468B.025, OAR 340-142-0030(1)(b)(B), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.

12) Vegetation Protection and Site Restoration:

- a. The Applicant must protect riparian, wetland, and shoreline vegetation not proposed for impact in the authorized project area (as defined in the permit application materials) from disturbance through one or more of the following:
 - i. Minimization of project and impact footprint;
 - ii. Designation of staging areas and access points in open, upland areas;
 - iii. Fencing and other barriers demarking construction areas; and
 - iv. Use of alternative equipment (e.g., spider hoe or crane).
- b. If authorized work results in vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent to or better than before the disturbance. The standard for success is 80 percent cover for native plant species. The vegetation must be reestablished by the completion of authorized work and include:
 - i. Restoring damaged streambanks to a natural slope, pattern, and profile suitable for establishment of permanent woody vegetation, unless precluded by pre-project conditions (e.g., a natural rock wall);
 - ii. Replanting or reseeding each area requiring revegetation before the end of the first planting season following construction;
 - iii. Planting disturbed areas with native plants and trees in all cases except where the use of non-native plant materials may be essential for erosion control; and
 - iv. The use of invasive species to reestablish vegetation is prohibited.
- c. Pesticides (including herbicides) and fertilizers must be applied per manufacturer's instructions by a professionally licensed applicator. If chemical treatment is necessary,

the Applicant is responsible for ensuring that pesticide application laws, including with the NPDES System 2300-A general permit, are met. Please review the information on the following website for more information: [Pesticide Applications into Surface Waters](#)

- i. For pesticide application within stormwater treatment facilities or within 150 feet of waters of the state, the Applicant must adopt an Integrated Pest Management (IPM) plan that describes pest prevention, monitoring, and control techniques with a focus on prevention of inputs to waters of the state, or coverage under an NPDES permit, if required.
 - ii. Pesticides must only be applied during the dry season and direct water application must be avoided.
 - iii. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.
 - iv. Install wildlife-friendly fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons.
- d. Minimize soil compaction, especially in areas that are designated for replanting. If soils are compacted, decompact staging areas and work construction areas prior to replanting. Leave topsoil when possible. Chip materials from clear and grub operation and spread on soil surface, unless cleared areas contained invasive species.

Authority: OAR 340-041, OAR 340-048, ORS 468B.025

Justification: Riparian, wetland, and shoreline vegetation help ensure excess sediment does not enter a waterway and help offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 13) **Post-Construction Buffers:** The Applicant must provide an undisturbed buffer to all remaining waters of the state on site that averages 50-feet from the delineated boundary, unless a smaller buffer is proposed, necessary, and approved as part of the project. If a local jurisdiction has a more stringent buffer requirement, that requirement will take the place of this certification requirement.

Authority: OAR 340-041, ORS 468B.025

Justification: Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway and help offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 14) **Previously Contaminated Soil and Groundwater:** If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site, as well as local, state and federal regulations. The Applicant must notify the Environmental Cleanup Section of DEQ at 1-800-452-4011.

Authority: OAR 340-041, ORS 468B.025, OAR 340-122, OAR 340-040

Justification: DEQ must ensure that pollution does not enter waterways. As sediments are disturbed, pollutants could become redistributed.

FOR PROJECTS THAT PROPOSE IN-WATER WORK

- 15) **Fish Protection and ODFW Timing:** The Applicant must perform in-water work only within the ODFW preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources* ([ODFW In-Water Work Timing Guidance](#)) or as authorized otherwise under a Department of State Lands (DSL) removal/fill permit. Exceptions

to the timing window must be recommended by ODFW or the NMFS as appropriate and approved by DSL when applicable.

Authority: OAR 340-041-0011

Justification: DEQ must be protective of all water quality standards, including beneficial uses such as fish.

- 16) **Aquatic Life Movements:** Any activity that may disrupt the life cycle movements of aquatic life in the waterbody, including those species that normally migrate through the area, is prohibited. The Applicant must provide unobstructed fish passage at all times during any authorized activity, unless otherwise approved authorized as part of the approved application or authorized by DEQ.

Authority: OAR 340-041-0016; OAR 340-041-0028

Justification: DEQ must be protective of all water quality standards, including beneficial uses such as fish.

- 17) **Isolation of In-Water Work Areas:** The Applicant must isolate in-water work areas from the active flowing stream before in-water work begins, unless otherwise authorized as part of the approved application or authorized by DEQ.

Authority: OAR 340-041, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways.

- 18) **Cessation of Work:** The Applicant must cease project operations under high-flow conditions that will result in inundation of the project area. Only efforts to avoid or minimize turbidity or other resource damage as a result of inundation of the exposed project area are allowed during high-flow conditions.

Authority: OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 19) **Turbidity:** The Applicant must implement BMPs to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10 percent above natural stream turbidities is prohibited, except as specifically provided below:

- a. **Monitoring:** Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two-hour intervals each day when in-water work is being conducted, including while dewatering or work area isolation measures are in place. Monitoring shall begin at the start of all in-water work activities and continue at two-hour intervals thereafter. A properly calibrated turbidimeter is required **unless another monitoring method is proposed and authorized by DEQ in writing.**
 - i. **Representative Background Point:** The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area approximately 100 feet up-current from the in-water disturbance unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable), and time must be recorded immediately prior to monitoring down-current at the compliance point described below.
 - ii. **Compliance Point:** The Applicant must monitor every two hours approximately 100 feet directly down-current from the disturbance, at approximately mid-depth of the waterbody, *and within any visible plume*. The turbidity, location, date, tidal stage (if applicable), and time must be recorded for each measurement.

- b. **Compliance:** The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two-hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances are allowed as follows:

MONITORING WITH A TURBIDIMETER EVERY 2 HOURS	
<i>TURBIDITY LEVEL</i>	<i>RESTRICTIONS TO DURATION OF ACTIVITY</i>
0 to 4.99 NTU above background	No restrictions
5 to 29.99 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29.99 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4.99 above background.
30 to 49.99 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49.99 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4.99 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

The activity must stop immediately and remain stopped for the remainder of that 24-hour work period if an exceedance reaches 50 NTU or more above background, 30 NTU above background for two hours, or 5NTU above background for four hours.

c. **Reporting:**

- i. Record all turbidity monitoring required by subsections (a) and (b) above in daily logs, which must include calibration documentation; background NTUs; compliance point NTUs; comparison of the background and compliance points in NTUs; and the location, date, time, and tidal stage (if applicable) for each reading.
- ii. Keep records on file for the duration of the permit cycle.
- iii. Prepare a narrative discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. The Applicant must make available copies of daily logs for turbidity monitoring to regulatory agencies including DEQ, USACE, NMFS, USFWS, and ODFW upon request. An example turbidity log is attached to this certification.

If turbidity monitoring cannot be conducted due to dry conditions, the Applicant must provide photo documentation with a date and time stamp.

- d. **BMPs to Minimize In-stream Turbidity:** The Applicant must implement the following BMPs, unless authorized in writing by DEQ:
- i. Sequence and phasing of work: The Applicant must schedule work activities to minimize in-water disturbance and duration of in-water disturbances.

- ii. Bucket control: All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be conducted in a matter that will minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume speed or both of the load, or using a closed-lipped environmental bucket must be implemented.
- iii. The Applicant must limit the number and location of stream-crossing events. The Applicant must establish temporary crossing sites as necessary in the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate to prevent the discharge of sediments in the waterbody.
- iv. Machinery may not be driven into the flowing channel unless authorized in writing by DEQ.
- v. Excavated material must be placed so that it is isolated from the water edge or wetlands. Excavated materials may not be placed where it could re-enter waters of the state in an uncontrolled manner.
- vi. Containment measures such as silt curtains, geotextile fabric, and silt fences must be in place and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

Authority: OAR 340-041-0036, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

Specific Conditions for Post-Construction Stormwater Management

- 20) **Post-Construction Stormwater Management:** For projects that propose new impervious surfaces or the redevelopment of existing surfaces, the Applicant must submit a post-construction stormwater management plan to DEQ. The plan must be reviewed and approved prior to construction to ensure compliance with water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including construction, operation, and maintenance. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ in writing.

In lieu of a complete stormwater management plan, the Applicant may submit documentation of acceptance of the stormwater into a DEQ-permitted NPDES Phase I Municipal Separate Storm Sewer System (MS4).

Authority: ORS 468B.025, ORS 468B.050, OAR 340-045, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 21) **Stormwater Management and System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. These include but are not limited to:
- a. Protecting stormwater treatment facilities from degradation during construction.

- b. Monitoring facilities for signs of groundwater interception and reconstructing the facilities as needed to prevent interception of sub-surface flow.
- c. Maintenance techniques and frequency for each system component must follow appropriate recommendations in accepted manuals.
- d. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of entity listed in the post-construction stormwater management plan unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.

Maintenance of stormwater treatment facilities subject to an MS4 permit is regulated by the permit.

Authority: ORS 468B.025, ORS 468B.050, OAR 340-045, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 22) **Corrective Action May Be Required:** DEQ retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.

Authority: ORS 468B.025, OAR 340-041, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

Category-Specific Conditions

In addition to all national and regional conditions of the USACE permit and the 401 WQC general conditions above, the following conditions apply to the noted specific categories of authorized activities.

NWP 7 – Outfall Structures and Associated Intake Structures:

- 7.1) The following actions are denied expedited 401 WQC:

- a. Discharge outfalls that are not subject to an NPDES permit; and
- b. Outfalls that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.

Authority: OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.

- 7.2) If an Applicant cannot obtain an NPDES permit or submit a post-construction stormwater management plan that meets DEQ's Guidelines found at: <http://www.oregon.gov/deq/FilterDocs/401wqcPostCon.pdf>, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.

NWP 13 – Bank Stabilization:

- 13.1) Projects that do not include bioengineering are denied an expedited 401 WQC, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the *only* way to protect an *existing* structure.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

- 13.2) To apply for certification for a project without bioengineering, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

NWP 14 – Linear Transportation Projects:

- 14.1) For projects that include bank stabilization, bioengineering must be a component of the project, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the *only* means of protection.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

NWP 16 – Return Water from Upland Contained Disposal Areas: Water quality criteria and guidance values for toxics, per OAR 340-041-0033, are available in Tables 30, 31, and 40 at: [OAR 340-041 Water Quality Standards](#).

- 16.1) A Modified Elutriate Test (MET) is required for return water in areas with known sediments with contaminants of concern (CoCs). Discharge of return water from contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is prohibited.

Authority: OAR 340-041-0053(b)(A), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 16.2) Water removed with contaminated dredged material that could or does exceed chronic water-quality criteria must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration.

Authority: OAR 340-041-0053(b)(A), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 16.3) If a MET is performed for the known CoCs and CoC concentrations are below DEQ chronic water-quality criteria, return water discharge is not limited, provided that the following conditions are met:

- a. The MET must be performed before dredging.
- b. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.

- c. DEQ must review the results and provide approval of discharge from return water in writing prior to dredging.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 20 – Response Operations for Oil or Hazardous Substances:

- 20.1) Coordination with DEQ's Emergency Response Program is required. See: [DEQ Emergency Response Program](#)

Authority: OAR 340-142-0130(3), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 22 – Removal of Vessels:

- 22.1) Coordination with DEQ's Emergency Response Program is required. See: [DEQ Emergency Response Program](#).

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Vessels may contain various fuels, lubricants, and other possible sources of pollution.

NWP 31 – Maintenance of Existing Flood Control Facilities:

- 31.1) Projects in streams with Temperature TMDLs which result in a net reduction of riparian shade are prohibited.

Authority: OAR 340-041-0028, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 38 – Cleanup of Hazardous and Toxic Waste:

- 38.1) For removal of contaminated material from waters, dredging methods are limited to diver-assisted hydraulic suction, hydraulic suction, closed-lipped environmental bucket, or excavation in the dry, unless otherwise authorized by DEQ.

- a. Dredged material disposal must be upland or at a landfill permitted to accept hazardous waste. A DEQ Solid Waste Letter of Authorization or clean fill determination is required, which may include contaminant specific limitations.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 38.2) Discharge to waters of the state resulting from dewatering during dredging or release of return water from an upland facility is prohibited except as provided below:

- a. All water removed with sediment must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration; or
- b. A Modified Elutriate Test (MET) must be performed for the known Contaminants of Concern (CoCs), and if CoC concentrations are below DEQ chronic water-quality criteria, return water discharge is not limited, provided that the following conditions are met:

- i. The MET must be performed before dredging.
- ii. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.
- iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: [DEQ Hazardous Waste Program](#)) or Solid Waste (see: [DEQ Solid Waste Program](#)).

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 38.4) The new in-water surface must be managed to prevent exposure or mobilization of contaminants.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 41 – Reshaping Existing Drainage and Irrigation Ditches:

- 41.1) To the extent practicable, the Applicant must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 41.2) Following authorized work, the Applicant must establish in-stream and riparian vegetation on reshaped channels and side channels using native plant species. Plantings must be targeted to address water quality improvement (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options may include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.

Authority: OAR 340-041-0004(5)(a)

Justification: Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

NWP 42 – Recreational Facilities:

- 42.1) For facilities that include turf maintenance actions, the Applicant must develop and implement an Integrated Pest Management Plan (IPM) that describes pest prevention, monitoring, and control techniques with a focus on prevention of chemical and nutrient inputs to waters of the state, including maintenance of adequate buffers for pesticide application near salmonid streams, or coverage under an NPDES permit, if required (information is available at: [Pesticide Applications into Surface Waters](#)).

Authority: OAR 340-041-0033, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways, including excess pesticides and fertilizers.

NWP 43 – Stormwater Management Facilities:

43.1) Projects that propose the following elements are denied expedited certification:

- a. In-stream or wetland stormwater facilities; or,
- b. Discharge outfalls not subject to an MS4 NPDES permit.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

43.2) To apply for certification for a project with stormwater facilities proposed in wetlands or waters without an NPDES permit or without submittal of an approvable post-construction stormwater management plan per DEQ's Guidelines (at: [DEQ Post-Construction Stormwater Management Guidance](#)), the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

NWP 44 – Mining Activities:

44.1) Projects that do not obtain an NPDES 700-PM or Individual Permit are denied expedited certification.

Authority: OAR 340-045-0033, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways. Excess turbidity can be considered pollution.

44.2) To apply for certification for a project without an NPDES 700-PM or Individual Permit, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways.

44.3) The State of Oregon requires an In-Water Blasting Permit to be obtained per OAR 635-425-0000. The Applicant is advised to contact the nearest ODFW office for further information at: [ODFW In-water Timing / Blasting](#)

Authority: OAR 340-041-0011

Justification: DEQ must be protective of all water quality standards, including beneficial uses such as fish.

NWP 51 – Land-Based Renewable Energy Generation Facilities:

51.1) For proposals that include directionally-bored stream or wetland crossings:

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, and recycled or disposed of to prevent entry into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable.

- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures, and report the spill to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.
- d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways

NWP 53 – Removal of Low-Head Dams:

- 53.1) Projects that do *not* go through a Portland Sediment Evaluation Team (PSET) review if sediments are being dispersed are denied expedited 401 WQC.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.

- 53.2) To apply for certification for a project without a PSET review, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.

NWP 54 – Living Shorelines:

- 54.1) Projects that do not include bioengineering are denied expedited certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the *only* means of protection.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion in the system.

- 54.2) To apply for certification for a project without bioengineering, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

NWP 57 – Electric Utility Line and Telecommunications Activities:

- 57.1) For proposals that include directionally-bored stream or wetland crossings:

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, and recycled or disposed of to prevent entry

into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable.

- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures, and report the spill to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.
- d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

Authority: OAR 340-142-0030, OAR 340-142-0040(1)

Justification: Drilling equipment and fluids that enter a waterbody would likely cause contamination of that waterbody.

- 57.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways

NWP 58 – Utility Line Activities for Water and Other Substances:

- 58.1) For proposals that include directionally-bored stream or wetland crossings:

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, and recycled or disposed of to prevent entry into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable.
- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures, and report the spill to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.
- d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

Authority: OAR 340-142-0030, OAR 340-142-0040(1)

Justification: Drilling equipment and fluids that enter a waterbody would likely cause contamination of that waterbody.

- 58.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

- 58.3) For proposals that include new water in-take facilities and withdrawals, a thermal modeling plan must be submitted to DEQ.

Authority: OAR 340-041-0028

Project Name: Riggs Diversion Replacement Project
Project Number: 2026-49

Justification: DEQ must protect designated temperature-sensitive, beneficial uses, including specific salmonid life cycle stages in waters of the State.

If the Applicant is dissatisfied with the conditions contained in this certification, a hearing may be requested. Such a request must be made in writing to DEQ's Office of Compliance and Enforcement at 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232 within 20 days of the mailing of this certification.

The DEQ hereby certifies that this project complies with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact 401certifications@deq.oregon.gov or at the address on this letterhead.

Sincerely,

Benjamin Benninghoff

Theresa Burcsu,
Water Quality Manager
Northwest Region

ec: Danielle Erb, USACE
Mike Schmeiske, DSL
April Zohn, Ducks Unlimited



Project Name:		USACE Project #	DSL Project #
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Name of Inspector(s): Turbidimeter Model: Calibration Standard Type (Circle One) Formazin Solution or Gelex Calibration Standard Expiration Date:			
Sampling Date:	Calibration Values:	*Upstream (Background) Point Location:	
	_____ NTU (Standard) = _____ NTU (Reading)	Latitude:	*Downstream (Compliance) Point Location:
	_____ NTU (Standard) = _____ NTU (Reading)	Longitude:	
	_____ NTU (Standard) = _____ NTU (Reading)		

In-Water Work Start Time:	In-Water Work End Time:	Description of In-Water Work:
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Up-stream Sample		Down-stream Sample		Change in Turbidity (NTU)	Observation of waterbody		NOTES (Describe any modifications made to BMPs)
Time	Turbidity (NTU)	Time	Turbidity (NTU)		Tidal Stage	Note any plume, sheen, floatables, color	



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** Include a figure with the turbidity sampling forms showing the sampling locations.*

Turbidity: The Applicant must implement appropriate Best Management Practices (BMPs) to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidity is prohibited except as specifically provided below:

Monitoring: Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two-hour intervals each day when in-water work is being conducted, including while dewatering or work area isolation measures are in place. Monitoring shall begin at the start of all in-water work activities and continue at two-hour intervals thereafter. A properly calibrated turbidimeter is required unless another monitoring method is proposed and authorized by DEQ.

Representative Background Point: The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet up-current of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable), and time must be recorded immediately prior to monitoring down-current at the compliance point described below.

Compliance Point: The Applicant must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet directly down-current from the disturbance at approximately mid-depth of the waterbody and within any visible plume. The turbidity, location, date, tidal stage (if applicable), and time must be recorded for each measurement.

Compliance: The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two-hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances of the turbidity water quality standard are allowed as shown in the monitoring table shown here.

Reporting: The Applicant must record all turbidity monitoring required by Condition #19 in daily logs that are kept on file for the duration of the permit cycle. The daily logs must include calibration documentation, background NTUs, compliance point NTUs, comparison of the points in NTUs, location, date, time, and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. The Applicant must make available copies of daily logs for turbidity monitoring to DEQ, USACE, NMFS, USFWS, and ODFW upon request.

BMPs to Minimize In-stream Turbidity: The Applicant must implement the following BMPs, unless otherwise accepted by DEQ:

- Sequence/Phasing of Work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
- Bucket control – All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume and/or speed of the load, or using a closed-lipped environmental bucket must be implemented;
- The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary in the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;
- Machinery may not be driven into the flowing channel, unless authorized by DEQ; and
- Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.

U.S. Army Corps of Engineers (USACE) CERTIFICATION OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT For use of this form, see Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act; the proponent agency is CECW-COR.		Form Approved - OMB No. 0710-0003 Expires 2027-10-31
The Agency Disclosure Notice (ADN)		
The Public reporting burden for this collection of information, 0710-0003, is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.		
PURPOSE: This form is used by recipients of U.S. Army Corps of Engineer Regulatory permits to certify compliance with the permit terms and conditions. Your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.		
Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the U.S. Army Corps of Engineers, _____ <u>Portland</u> _____ District, Regulatory Office.		
The certification can be submitted by email at _____ <u>cenwp.notify@usace.army.mil</u> or by mail at the below address:		
Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the U.S. Army Corps of Engineers, _____ <u>Portland</u> _____ District, Regulatory Office.		
U.S. Army Corps of Engineers _____ <u>Portland</u> _____ District Office Street Address: <u>P.O. Box 2946</u> City: <u>Portland</u> State: <u>OR</u> Zip Code: <u>97208-2946</u>		
COMPLETED BY THE CORPS		
Corps Action Number: _____ <u>NWP-2026-00049</u> Permit Type: <u>General Permit</u> General Permit Number and Name (<i>if applicable</i>): <u>NWP 60 Activities to Improve Passage of Fish</u> Name of Permittee: _____ <u>Pauline Braymen</u> Project Name: _____ <u>Riggs Diversion Structure Replacement</u> Project Location (<i>physical address</i>): _____ <u>3 miles east of Burns, Harney County</u> _____ _____		
PERMITTEE'S CERTIFICATION		
Date Work Started: _____ Date Work Completed: _____ Enclose photographs showing the completed project (<i>if available</i>). I _____ <u>Enter FName LName</u> _____ hereby certify that the work authorized by the above referenced permit has been completed in accordance with all of the permit terms and conditions, and that any required compensatory mitigation has been completed in accordance with the permit conditions.		
Name	Date	Signature