



Oregon

Kate Brown, Governor

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Via E-Mail:

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Harmony Burright, Oregon Water Resources Department -

Harmony.S.Burright@oregon.gov



RE: ODFW Comments Regarding the Draft Action Plan and Instream Demand

Dear Adam and Harmony,

Thank you for the opportunity to comment on Oregon's Mid-Coast Water Planning Partnership Draft Water Action Plan (Plan). In our review, we notice that there is very little information on Step 3 results, particularly regarding the Instream Demand, which is an important component for the Oregon Department of Fish and Wildlife (ODFW). ODFW initially provided information for Step 3 that was utilized in the Plan; however, it was understood that the assessment was preliminary and based on available information at the time. ODFW has continued to refine methods for better estimating instream needs when data is limited. We are including here an overview of ODFW's current perspective on instream values and providing a more comprehensive means to understand instream needs across the planning area. We have incorporated some of this information into the September 8, 2021 Plan Draft; please feel free to include this letter as an Appendix in the Plan if the Partnership feels it would provide appropriate context.

As stewards of Oregon's fish and wildlife, ODFW prioritizes the sustainability of healthy ecosystems that support the economy and cultural values upon which Oregonians rely. ODFW supports Oregon's fish, wildlife, and ecosystems in part by identifying instream flow targets and working with stakeholders on voluntary flow restoration and/or protection efforts. These efforts are vital to ODFW's mission to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations.

Supporting healthy freshwater ecosystems provides benefits beyond those important to fish and wildlife. All Oregonians, individuals and businesses alike, rely on healthy aquatic ecosystems for such things as drinking water, flood control, transportation, recreation, purification of human and industrial wastes, habitat for plants and animals, and production of fish and other foods or marketable goods. Therefore, an integrated approach to managing water resources must include the flows necessary to protect all these benefits, and consider impaired flows, reduced water quality, and diminished fish and wildlife as early warning signs of potential impacts to public benefits.

Regional and statewide efforts, such as the Governor's 100-Year Water Vision, Integrated Water Resources Strategy, and Place-based Integrated Water Resources Planning, prioritize the value of instream flow and strive to better balance in and out-of-stream needs in hopes of keeping Oregon healthy and thriving.

Through its Step 2 and Step 3 processes, ODFW assisted the Partnership in performing a preliminary analysis of instream needs. The analysis included a summary of existing instream water rights in the Mid-Coast Planning Area, along with an analysis of how often existing instream water rights are likely to be met. However, ODFW noted that additional data was needed for a more complete understanding of instream needs, because using instream water rights as a proxy for instream need has certain limitations, including:

- Limitations exist in statute and rule that effectively prohibit state agencies from applying for anything beyond the "minimum quantity of water necessary to support the public use requested by an agency" (ORS 537.332(2)). It is important to note that minimum flows do not mean the absolute minimum flow that can sustain a population, but rather the minimum necessary to serve the management objective of the applicant agency. However, this has not been construed to include the full range of flows needed for ecosystem health, and therefore, does not include protection for seasonally varying flows that provide important habitat formation and maintenance functions.
- The Oregon Water Resources Department (WRD), through implementation of their rules, often reduces ODFW's biologically-based instream water right application amounts to the 50th percentile flow, although the rule does indicate that there can be exceptions "where periodic flows that exceed the natural flow or level are significant for the applied public use" (OAR 690-077-0015(4)).
- The allowed methods in ODFW's instream rules (OAR 635-400; last modified in 1989) for determining instream flow amounts do not include a mechanism for developing temperature-based flow targets. However, ODFW recognizes that temperature stresses associated with increasing drought and heat impacts are already negatively affecting native fish and wildlife species, including sensitive, threatened, and endangered (STE) species. In response, ODFW recently adopted a Climate and Ocean Change Policy "...to ensure that the Department prepares for and responds appropriately to the impacts of a changing climate and ocean on fish, wildlife, their habitats, and their use and enjoyment by current and future Oregonians" (OAR 635-900; 2020).

ODFW is pleased to see that the Partnership recognizes the value of instream flows and is committed to acquiring information to fill data gaps - including a full suite of instream needs - and using that information to plan, implement, and monitor pilot projects in high-priority areas that address the limitations noted above. The ODFW Water Quality and Quantity Program's strategic goals include establishing statewide instream flow and temperature protection targets and facilitating streamflow and water temperature restoration on the ground. Therefore, this place-based planning effort provides an opportunity for the Partnership and ODFW to continue working collaboratively to:

1. More fully characterize basin-wide instream needs using ODFW's updated guidance document (expected 2021) to provide a foundational assessment, particularly on streams with STE species that currently lack instream targets.
2. Use outcomes of the updated instream needs assessment, along with existing data, to identify high-priority locations for pilot projects that address instream needs. Existing data may include (but are not limited to):
 - a. ODFW's Aquatic Habitat Prioritization (expected 2021) and other relevant geospatial datasets that will contribute to location prioritization.
 - b. Findings from earlier Mid-Coast place-based planning steps.
 - c. Existing IFIM studies or other studies that address habitat requirements.
 - d. Sites with water temperature data.
 - e. Other relevant data from local, state, tribal, and federal partners, and data from other restoration scientists/practitioners (e.g., NGOs, academia, consultants).
3. Plan, implement, and monitor pilot projects that focus on:
 - a. Seasonally Varying Flow (SVF) Targets

Existing ODFW instream flow targets are based on species-specific instream needs for each life stage (e.g., springtime flows necessary for steelhead spawning, summer flows for juvenile rearing, and fall flows for Chinook and Coho spawning). Streamflows necessary for broader habitat maintenance and formation (e.g., pool development, gravel recruitment, etc.) are not currently incorporated into ODFW instream flow target development. Present methodologies primarily base late fall-early spring instream flow targets on juvenile rearing and/or egg incubation needs, which are typically minimal relative to natural flow conditions during this period of peak annual flows. ODFW intends to identify and develop techniques for the determination of peak channel maintenance and formation flows in the next several years. The Mid-Coast planning area provides an ideal pilot location to test techniques and collect field data.
 - b. Temperature-based Flow Targets

Similar to peak habitat maintenance and formation flows, relationships between water temperature, streamflow, and species thermal limits have not, until recently, been incorporated into ODFW instream flow target development. As climate change progresses, water temperature is anticipated to become a primary limiting factor for cold-water species. ODFW is initiating pilot projects around the state to incorporate relationships between water temperature and streamflow into development of instream flow targets. These assessments typically require several years of paired water temperature and streamflow datasets. ODFW is interested in working with the Partnership to scope potential data collection locations and collaborate on water temperature logger deployment and retrieval. Following several seasons of data collection, ODFW would develop updated water temperature-based

instream flow targets for study sites, which could aid in prioritizing Actions listed in the Plan.

c. Instream Water Right Monitoring

ODFW has applied for the vast majority of instream water rights in Oregon, with the intent of identifying and legally protecting the flows necessary for the health of aquatic ecosystems. However, in many parts of the state, these instream water rights are junior to most out-of-stream water rights (senior rights in terms of prior appropriation) and, therefore, result in minimal actual protection of instream flows. Coastal Oregon is an exception to this norm, where some instream water rights have sufficiently senior priority dates to provide some protection of instream flows from diversion by upstream, junior out-of-stream water right holders. ODFW is interested in collaborating with OWRD and the Partnership to develop a monitoring framework that assesses gaps in stream gage coverage and identifies priority locations for additional gages to improve protection of streamflows afforded by the senior instream water rights on the Mid-Coast.

ISWRs continue the Department's work to conserve the state's fish and wildlife resources for the benefit of present and future generations and are a critical part of maintaining habitat for those resources in the face of an uncertain water future. ODFW looks forward to continued collaboration and assisting the Partnership when time and resources allow.

Sincerely,



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