

Exhibit C

Public Correspondence

**Public correspondence received as of
December 27, 2013**

From: Judy Ahmann <ahmannjudy@gmail.com>
Sent: Monday, November 25, 2013 3:49 PM
To: Elizabeth A OsierMoats
Subject: Re: ODFW seeks comment on proposal to waive fish passage at Warm Springs Dam on the Malheur River

I have a question about the name "Dryer Diversion". How was this named? Previously, it has simply been a diversion of the Robbins Ditch. Nowhere in your letter, does the name of the ditch appear. This is a ditch which is represented on all the water master and other maps in Harney county. I strongly believe that the name of the ditch should be represented for future reference. It has been my experience that few people know the history, so it had best be spelled out on a document somewhere.

Also, my husband and I (John & Judy Ahmann) currently own the property on which the diversion is located. It might be well to identify that in some way by a parcel number or something, so that there is no confusion about the location.

We appreciate the opportunity to respond with our questions and suggestions.
Judy Ahmann

From: [ODFW Commission](#)
To: Erica.Maltz@burnspaiute-nsn.gov; [Amanda Mckenzie](#)
Cc: odfw.commission@state.or.us; [Elizabeth A OsierMoats](#)
Subject: FW: Burns Paiute Tribe Comments, Fish Passage Waiver for Warm Springs Hydroelectric Project
Date: Tuesday, December 10, 2013 9:06:31 AM
Attachments: [2013-12-06--BPT--Comments on Passage Waiver_Warmsprings.pdf](#)

Dear Ms. Maltz:

Thank you for your comments regarding the above referenced subject. This issue goes before the Fish and Wildlife Commission at their January 10, 2014 meeting here in Salem.

I am copying Amanda McKenzie in the Fish Division with this email. She will make sure your email and attached letter is included in the Commission's packet for the January 10th meeting. Commission packets are shipped to the Commission two weeks before the meeting; so, they have efficient time to read them.

Sincerely,

Teri Kucera

Executive Assistant to Roy Elicker
Director's Office
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, Oregon 97302
Phone: (503) 947-6033
Fax: (503) 947-6042
Teri.Kucera@state.or.us

From: Erica M. Maltz [mailto:Erica.Maltz@burnspaiute-nsn.gov]
Sent: Monday, December 09, 2013 4:02 PM
To: Elizabeth A OsierMoats
Cc: odfw.commission@state.or.us; estyn_mead@usfws.gov; Steven M Namitz; Shannon Hurn; Carry Porter (Porter@mentorlaw.com); Rieber, Richard W; Davies, Lindsay; robert.austin@uppersnakerivertribes.org; Dach, Robert; Gary Miller (gary_miller@fws.gov)
Subject: Burns Paiute Tribe Comments, Fish Passage Waiver for Warm Springs Hydroelectric Project

Hi Elizabeth,

Please find attached the Burns Paiute Tribe's comments on the Draft Fish Passage Waiver for the proposed Warm Springs Hydroelectric project on the Malheur River, OR.

We have serious outstanding concerns about this agreement, and respectfully request that the ODFW Fish & Wildlife Commission refrain from signature. We outline an alternative strategy for the Commission to consider.

However, we would like to commend ODFW staff on their exceptional coordination with BPT in this matter and on their careful analysis of the issues. Staff have done an excellent job within the narrow constraints and atypical nature of this analysis.

Sincerely,

Erica Maltz
Fisheries Program Manager
Burns Paiute Tribe, Natural Resources Dept.
541-573-8088
maltzem@burnspaiute-nsn.gov



Burns Paiute Tribe

Natural Resources Department

100 Pasigo St

Burns, OR 97720

Phone (541)573-1375

Fax (541)573-7806

December 6, 2013

Ms. Elizabeth Moats
ODFW-Northeast Hydro Coordinator
elizabeth.a.osiermoats@state.or.us

Subject: Burns Paiute Tribe Comments on the Warmsprings Dam Hydroelectric Project
Fish Passage Waiver—Benefit Analysis

Dear Elizabeth:

The Burns Paiute Tribe has reviewed the Benefit Analysis, Fish Passage Waiver Application, and Draft Fish Passage Waiver Agreement for the proposed Warmsprings Dam Hydroelectric Project on the Malheur River, OR. Please refer to attached comments.

We strongly recommend that the ODFW Fish & Wildlife Commission does not sign this Agreement. BPT recommends that a Fish Passage Exemption would be the only prudent type of agreement to be entered into with the Warmsprings Irrigation District because it would allow for periodic review of fish passage requirements throughout the FERC license life. Any consideration of fish passage at Warmsprings Dam must be adaptive and must not directly preclude any future requirement of fish passage upon a change in current instream conditions or documentation of native species' use of the project area. Signature of a Waiver would remove any ability for the State to require that the Warmsprings Irrigation District implement fish passage during the license life, and thus confine native and ESA-listed species to severely disconnected habitat and undermine the ability of the agencies to recover those species. Signature of the Waiver would also directly contradict measures warranted by the federal Bull Trout Recovery Plan and the Subbasin Plan.

Please do not hesitate to contact technical staff with further questions at 541-573-8088 or maltzem@burnspaiute-nsn.gov.

Respectfully,

/s/ ERICA MALTZ

Erica Maltz, Fisheries Program Manager, Burns Paiute Tribe

CC:

Bobby Levy, Chair, ODFW Fish & Wildlife Commission
Shannon Hurn, Oregon Department of Fish and Wildlife
Carry Porter, Mentor Law Group, PLLC
Robert Dach, Bureau of Indian Affairs
Estyn Mead, U.S. Fish and Wildlife Service
Gary Miller, U.S. Fish and Wildlife Service
Steve Namitz, U.S. Forest Service Malheur National Forest
Lindsay Davies, U.S. Bureau of Land Management
Richard Rieber, U.S. Bureau of Reclamation
Robert Austin, Upper Snake River Tribes Foundation

Burns Paiute Tribe's Interests

The Burns Paiute Tribe (BPT) is a sovereign nation and co-manager over fish and wildlife resources with the Oregon Department of Fish and Wildlife (ODFW). The BPT manages property above and below the proposed Warm Springs Hydroelectric Project at the existing Warm Springs Dam on the Malheur River, OR. The continued impacts of the operation and maintenance of the Warm Springs Dam on the Malheur River is a major concern to the health of fishery resources in the Tribe's ancestral homeland. Since its construction in 1919, the Warm Springs Dam has adversely impacted the health and recovery of resident fish communities by impeding connectivity between fish populations and habitat types and by negatively impacting water quality and quantity.

General Comments

The BPT recognizes the narrow constraints placed upon the abilities of ODFW to weigh the biological benefits of fish passage at the proposed Warm Springs Hydroelectric project in comparison to either historic or desired future conditions. Furthermore, BPT understands that ODFW, in adherence to its own policy and to the laws and regulations of the State of Oregon, can only consider the Warm Springs Irrigation District's (WID) Fish Passage Waiver application and self-proposed mitigation against current instream conditions above and below the project area. The BPT also understands that the November 18, 2013 Benefit Analysis has determined that current conditions above and below the project appear to be largely unsuitable for native salmonids, therefore leading ODFW to issue a Draft Waiver Agreement to be entered into with WID.

However, the BPT wishes to reiterate previously and formally expressed concerns¹ on effectively removing any consideration of passage at the proposed Warm Springs Hydroelectric Project for the potential FERC license life, which may last thirty to fifty years.

First, BPT is compelled to highlight to the ODFW Fish & Wildlife Commission that the WID is part owner of the existing 1919 dam, *and* FERC license applicant, *and* potential signatory on the Draft Fish Passage Waiver, *and* that which already economically benefits from water storage at the facility. The BPT also wishes to highlight that this water manipulation, which the Benefit Analysis correctly identifies as shutting off the river from October 15 to April 15 of every year, is the *reason* that habitat below the dam is *currently* unsuitable.

The WID is the dam owner (in part), operator, potential signatory on the Fish Passage Waiver, and has placed a monetary cap on how much mitigation it is willing to do in lieu of fish passage—which BPT considers to be egregiously unethical on the part of WID and does not in any way lead to a *true* analysis of the value of fish passage versus mitigation—and has already

¹ Please also refer to BPT comments, submitted to the FERC on November 20, 2012, on the Draft License Application.

refused to consider applying for the adaptive Fish Passage Exemption despite recommendations to do so. Therefore, BPT emphasizes that this is the *only appropriate* time for the ODFW Fish & Wildlife Commission to address the enduring impacts of this project to native fish species—degradation which has proved to be an asset to WID, in creating the current climate to successfully request that the state waive any and all fish passage requirements. Recovery and future health of native species in the Malheur River is at risk if the ODFW Fish & Wildlife Commission chooses to waive all consideration of fish passage requirements for the license life. Allowing meager mitigation to offset the next thirty to fifty years of fish passage is exceedingly unacceptable.

BPT would also emphasize that the current use by native salmonids above and below the project area is not completely known. Much of the salmonid data used in the Benefit Analysis was collected by BPT; therefore, BPT is acutely aware of its limitations. There have been numerous observations made by the BPT since 2000 that support the supposition that redband trout may overwinter in the Warm Springs Reservoir and migrate to the headwaters to spawn. Additionally, no agency fully understands the downstream extent of bull trout use. What is known is based off potentially antiquated data, and on extremely small sample sizes and extremely limited sampling windows. Therefore, although data or professional judgment of the physical habitat might appear to place little value on fish passage, no entity knows fully the actual use of the area. Long term trade-offs (i.e. potential FERC license life) between eventual fish passage and mitigation cannot be fully analyzed without this context.

The longevity of the potential license life necessitates that fish passage at Warm Springs Hydroelectric project be considered in the context of current recovery efforts for bull trout, redband trout, Chinook salmon, and steelhead and the significance of these efforts for the future of habitat connectivity in the Malheur River. The longevity of the license life requires that the ODFW Fish & Wildlife Commission consider not only the current conditions—the result of the degradation caused to the Malheur River by the existing dam and to continue under proposed modifications—but the voracity of current multi-agency efforts to restore native fish populations in these affected waters. The ODFW Fish & Wildlife Commission must consider the lack of physical connectivity for ESA-listed bull trout, and that the Warm Springs Dam is explicitly referenced in the Recovery Plan to be among the primary factors preventing the recovery of this threatened species.²

The dam is named as one of the primary factors limiting bull trout recovery and yet modifications for a hydroelectric facility at this dam, the federal and state trigger for fish passage requirements, might move forward with an agreement to waive any consideration of such for dozens of generations of bull trout and redband trout. Why was this dam named as a threat in

² Accordingly, the BPT will formally request that the USFWS reserve its Federal Power Act §18 authority to implement fish passage through the life of the FERC license, if issued.

the Recovery Plan if the agencies are not prepared to capitalize on the opportunity to adaptively manage it for eventual fish passage?

Prior to delving into alternative scenarios for fish passage at the proposed hydroelectric facility, there is an important distinction to be highlighted: BPT is not advocating for *immediate* fish passage at the Warm Springs Dam. To that highly specific point of timing, we agree with the Benefit Analysis and maybe even with WID. However, just because passage may not appear to be immediately relevant, the ODFW Fish & Wildlife Commission should not formally preclude its incipient and/or long term relevance by signing a Waiver. If a Waiver is signed now, the Commission will have foregone any authority to mandate passage under improved conditions, and for thirty to fifty years. Land and resources management agencies are striving for improved instream conditions in the Malheur River for the benefit of native and listed species; signing a Waiver would undermine our collective ability to realize the full benefit of that goal by providing the State with fewer authorities to manage connectivity, when appropriate.

Alternatively, a Fish Passage *Exemption* also would not require WID to install *immediate* fish passage. However, unlike the Waiver, an Exemption would allow ODFW to periodically and adaptively review whether changes in current conditions and new documentation of species' use of the project area warrant implementation of fish passage, and would retain ODFW's ability to resolve these issues throughout the FERC license life. Therefore, an Exemption is the preferred agreement type because it would allow for a recurring consideration of fish passage throughout the license life, and the ability to implement when appropriate, while still acknowledging that current conditions may not warrant it; whereas a Waiver completely eliminates consideration of fish passage for the duration of the FERC license, and does not allow for positive changes in instream condition to trigger passage requirements.

Hence, the BPT is advocating for adaptability, either in the form of a Fish Passage Exemption, or by USFWS reservation of §18 authority under the Federal Power Act, or by a reopener in other Terms and Conditions of the FERC license (or combination of all three) to mandate the WID to implement fish passage when—not if—conditions change over the Agreement and license life. The BPT cautions that the Fish & Wildlife Commission will make an erroneous decision in signing the Waiver Agreement, upon poor and incomplete data on habitat quantity, quality, and native species' use of the waters above and below the proposed project.

Lacking the policy-level ability to require passage at some point in the license life directly contradicts the correction of major threats warranted by the Bull Trout Draft Recovery Plan (and likely to be held in the forthcoming Final Recovery Plan). It directly contradicts the decades of collaborative work to restore, enhance, and protect native species in the Malheur River. It directly contradicts the measures recommended in the collaboratively drafted Malheur River Subbasin Assessment and Management Plan (NPCC 2004). The Recovery Plan goes so far as to

name fish passage at Warm Springs Dam as one of the “most critical challenges facing Malheur bull trout.”³

If the Fish and Wildlife Commission chooses to sign this agreement, The BPT considers the disregard of ESA a failure in the Commission’s obligation to keep the best interest of Oregon native species as a priority.

Recommendations

We request that the ODFW Fish & Wildlife Commission does not sign this Waiver and instead reserves any authority to evaluate implementation of fish passage at the proposed Warm Springs Hydroelectric Project in the future and upon changes in current conditions. Such authority could potentially be reserved by a Fish Passage Exemption for this project. If that is not possible, and if there are no additional State authorities to be reserved, we request that the ODFW Fish & Wildlife Commission does not sign this agreement and instead relegate resolution of this matter to the responsible federal agencies, by joining BPT in formally requesting the reservation of §18 authorities under the Federal Power Act.

References

(NPCC) Northwest Power and Conservation Council. 2004. Malheur Subbasin Assessment and Management Plan for Fish and Wildlife Mitigation. Prepared by Malheur Watershed Council and Burns Paiute Tribe with assistance of Watershed Professionals Network, LLC, Boise, Idaho. In *Columbia River Basin Fish and Wildlife Program*, Portland, Oregon. 115 pp.

³ Goal 3 of the Subbasin Plan, entitled “Reduce Effects of Major Dams on Fish Populations: Reduce the effects of major dams (migration barriers, poor quality rearing habitat and entrainment) on native fish populations” includes Strategy 3.3 “Determine feasibility of fish passage at Warm Springs Dam.” This strategy aims to “Initiate feasibility of fish passage at Warm Springs Dam on the Upper Malheur River to reconnect the Malheur Core bull trout populations and other fish species. Little work has been done to date to evaluate fish passage at this facility.” Furthermore, under “Actions Needed, Recovery Measures Narrative,” in the USFWS Recovery Plan for the Malheur Unit, Recovery Strategy 1.2.1 emphasizes the critical need to “Identify and implement opportunities for two-way passage.” The strategy continues to name Warm Springs Dam as one of three major priorities for the basin in establishment of fish passage.



MEMORANDUM

Department of Fish and Wildlife
Intra Departmental

Date: December 12th, 2013

To: Oregon Fish and Wildlife Commission

From: Ken Loffink, Assistant Fish Passage Coordinator *KL*

Subject: **Fish Passage Task Force Comments on the Proposed Fish Passage Waiver at Warm Springs Dam**

Chair Levy and Commissioners,

Please accept the following comments on behalf of the Fish Passage Task Force. One of the Task Forces's primary roles is to advise the Department, and the Commission, on fish passage issues in the State. Our rules directly call out fish passage waivers as a subject that the Task Force is to provide advice and recommendations to the Department and the Commission. For this waiver request, the Fish Passage Task Force was unable to come to an agreement on a position or a recommendation. Therefore, Task Force Members who chose to do so submitted individual comments and recommendations for your consideration.

The following comments were submitted by Task Force Members for the Commission to consider for this project. If you have any questions, please contact me at 503-947-6256, or at ken.j.loffink@state.or.us.

To: Ken Loffink Assistant Fish Passage Coordinator

From: Doug DeHart, Fish Passage Task Force Member Representing Fishing and Conservation

Subject: Comments on Warm Springs and Mason Dam Fish Passage Waivers

Below are my observations on the proposed passage waivers under review for Warm Springs and Mason Dams -

There is a problem with current net benefit analysis in cases like these where connectivity is a primary concern. It is understandably difficult to quantify the magnitude of the benefit of connectivity, but its value in productivity of small semi-isolated populations is scientifically well documented.

The possible conclusion that there is no passage benefit, therefore essentially any off-site enhancement project constitutes a net benefit is basically flawed. If there were truly no possible benefit of passage to any native species we wouldn't even be having the discussion. In order to assess whether one or a series of off-site projects constitute adequate mitigation for foregone passage requires some attempt at quantification.

Mason Dam, in particular, clearly creates discontinuous sub-populations of redband trout which is likely harmful to their productivity. Restoring some degree of connectivity would benefit the populations. Data from alternate sites could be used to estimate the magnitude of the effect lacking data in the Powder Basin.

Both projects clearly disrupt the connectivity of native non-game fish species and likely result in mortality to some fish attempting to move up and down stream. This is probably less critical than effects to species such as redband trout or bull trout due to healthy status of species such as suckers and cyprinids, compared to the conservation status of the two salmonids. I realize the restricted habitat for bull trout in these basins may well eliminate the value of passage for that species under current conditions.

The Mason Dam project is the more problematic for me for two reasons. The value of connectivity for redband under current conditions seems clear to me. Also, the proposed mitigation projects include a culvert modification which does not meet current design standards for passable culverts. This seem to me poor public policy as well as a bad trade.

With improvements to the discussion and analysis for Warm Springs Dam, I may be able to accept the rationale for a waiver there, though we really do need to get issues such as ownership clarified. At this time, I am opposed to the waiver for Mason Dam unless a new net benefit analysis and altered mitigation proposal satisfactorily dealt with the issues above.

DATE: December 12, 2013

TO: Greg Apke, ODFW Fish Passage Coordinator
Ken Loffink, ODFW Assistant Fish Passage Coordinator

FROM: Stuart Myers, ODFW Fish Passage Task Force

SUBJECT: Warmsprings Dam Fish Passage Waiver Request

The purpose of this memorandum is to provide ODFW and the Fish Passage Task Force my feedback regarding the proposed Warmsprings Dam fish passage waiver request resulting from the proposed addition of a small hydroelectric facility at Warmsprings Dam on the Malheur River in Malheur County, Oregon. Application of the State's fish passage law for the proposed hydropower project is associated with the "fundamental change in permit status" of the fish passage barrier (i.e., Warmsprings Dam). The proposed project will require a permitting process with the Federal Energy Regulatory Commission and this is considered a fundamental change in permit status.

While I am strong advocate for providing fish passage at passage barriers that prohibit or limit the volitional movement of Native Migratory Fish to carry out critical life histories, I am not totally comfortable with a fish passage trigger being applied to a site and project when a permit is involved for actions that do not affect a water right, the existing way in which water is managed relative to fish passage, and doesn't affect the physical configuration of the barrier. This concern is heightened when a trigger occurs from a proposal to provide hydroelectric power at an existing barrier and within an existing water right. Nonetheless, the trigger determination was made by ODFW and the project proponents have proposed upstream mitigation via the waiver process rather than provide fish passage at Warmsprings Dam.

I feel that the proposed mitigation at a minimum partially off-sets the adverse effects of the lack of passage at the dam, and question if there would be a true measurable net benefit to Native Migratory Fish (NMF) resulting from implementation of the waiver actions. The proposed Warmsprings Dam fish passage waiver presents a complex application of the State's fish passage law. This is due to how fish passage triggers are defined and based on the actions proposed to mitigate the lack of passage at the dam. Approval of the Warmsprings Dam fish passage waiver presents significant precedents for application of the fish passage waiver process and warrants potential improvement of the waiver net benefit analysis process so that the process is consistently applied from project to project and the intent of the law is carried out.

I support ODFW's approval of the proposed Warmsprings Dam fish passage waiver even though I have concerns regarding the passage trigger and the net benefit from the proposed waiver mitigation. My support is largely based on the proposal involving providing hydroelectric

capabilities to an existing dam without further restricting fish passage, not changing water use patterns, or significantly modifying the dam.

MEMORANDUM

TO: Greg Apke, Fish Passage Coordinator
FROM: Willie Tiffany, Vice-Chair, Fish Passage Task Force
DATE: December 10, 2013
SUBJECT: Warm Springs waiver request.

While this waiver request was presented along with the Mason Dam waiver request and presents similar issues I do believe the proposed projects have fundamental differences. While adhering to the law, when small hydro projects are proposed to be fitted to artificial obstructions by the owner/operator, I believe it is poor policy to require an exemption or waiver for fish passage. Please see my discussion of this issue in my December 6 memo regarding the Mason Dam waiver request. However, I do believe it is technically a fish passage trigger within the law. I am hopeful that the Task Force, Commission, and Legislature will consider potential policy changes to clarify this issue.

With respect to this request, I do believe a waiver is appropriate due to there being a net benefit for fish passage present and the owner of the obstruction is seeking a fundamental change in permit status under ORS 509.585(4). I also believe the Department's net benefit analysis is adequate in this case. Therefore I support the staff recommendation on this request.

MEMORANDUM

TO: Greg Apke, Fish Passage Coordinator

FROM: Harry Rectenwald Chair, Fish Passage Task Force

DATE: December 12, 2013

SUBJECT Comments and Recommendation for the Proposed Fish Passage Waiver at Warm Springs Dam on Malheur River

I support the fish passage waiver at Warm Springs Dam on the Malheur River finding it to be consistent with existing law and legal interpretations triggering fish passage considerations at dam being retrofit with hydroelectric power.

There are some factors in this case making it unusually complicated and very challenging to establish clear accounting for mitigation measures. These factors include among others, Federal Energy Regulatory Commission process, federal involvement with storage and flashboard construction and operation of the dam, severely altered stream flow regime below the dam limiting fish survival and production, and funding limitations of the project proponents along with possible limited economic yield from the hydro project. The proposed mitigation strategy to offset the lack of passage at the dam appears to be a negotiated balance between the need not to unduly disrupt local socio-economic factors, including energy development, while providing an incremental improvement in the remnant fish communities affected by the dam. Restoration opportunities are not feasible because the dam is not operated for fish wildlife production in the river (apparently not a consideration throughout project history). However, measures in the basin that maintain and improve conditions for remnant fish populations, like those proposed in the waiver, can contribute to rebuilding populations in the future should the owners of the dam and/or water storage change operations to consider fish and wildlife production.

Sincerely,

Harry Rectenwald, Chair, Fish Passage Task Force

MEMORANDUM

Date: December 12, 2013

To: Greg Apke, Fish Passage Coordinator

From: Burke O'Brien, Representative Users
Fish Passage Task Force

Re: Warm Springs Dam Hydroelectric Project Fish Passage Waiver- Request

This project seems to not have the ownership issue that Mason Dam has. It is jointly owned by Warm Springs Irrigation District and Bureau of Reclamation. I believe it meets enough of the net benefit analysis to recommend approval of the Waiver for this project.

MEMORANDUM

TO: Oregon Fish and Wildlife Commission

FROM: Dawn J. Nilson, Fish Passage Task Force Member

DATE: December 12, 2013

SUBJECT: Comments and Recommendation for the Proposed Fish Passage Waiver at Warm Springs Dam

I have reviewed the net benefit analysis prepared by ODFW staff on behalf of the waiver request of providing mitigation in lieu of fish passage at Warm Springs Dam. As shown in the analysis, there would be limited benefit to migratory, native fish by providing fish passage at the existing dam, based on existing environmental conditions. The offsite mitigation measures proposed would provide a net benefit to fish protected under fish passage rules; therefore, the mitigation proposed by the applicant satisfies the standard for approving a waiver. I recommend that the Fish and Wildlife Commission accordingly approve the waiver request.

Though I am in favor of granting a waiver for this project, this is based solely on how regulations have been drafted and interpreted by ODFW and its assistant attorney general. I do not believe that the regulations as applied in these small hydro projects (where no change in water flow or water storage levels would be associated with improvements or modifications) adequately interpret the intent of the law. Please note that this project and a few others that have come before the Fish Passage Task Force raise serious policy issues of the fish passage program. It is not unusual for new laws to be "tested" in the real world and once having been tested to find problems with the technical, political, and/or administrative reasonability of the statute or its regulations.

As a participant in the initial crafting and review of the new fish passage law, it was understood by the water supply community that "triggers" were to be applied as a compromise. The water supply community wanted existing projects grandfathered and ODFW wanted all projects to be applicable to fish passage requirements. It was the understanding of the water supply community that triggers were intended to provide opportunities to consider passage when owners/operators of fish passage obstructions were engaged in major improvements (e.g., dam raise/reservoir expansion; large-scale retrofits) that would alter the water regime and therefore alter fish conditions. The idea was that once venturing into major capital improvement projects involving structural changes and large financial commitments, that fish passage could be more readily factored into the improvements.

The small hydropower project proposed at Warm Springs Dam would not alter existing water operations at the dam. This project is only a trigger because it requires a change in the water right (merely to add hydropower as a use) and it requires a FERC license. You will note that the law explicitly does not include water right transfers because transfers do not alter flow rates or storage levels of a water right. I don't think these small hydropower projects, which provide clean energy, offset water distribution costs, and create little to no additional risk to fish or wildlife, were considered when the statute was crafted. Federal and other state agencies are providing financial assistance to these beneficial, small hydropower projects, yet requirements of fish passage or mitigation are rendering more of these projects impractical. Considerable staff time is spent on reviewing waivers and exemptions on a type of project that in all fairness should not be subject to such review. I request that the Commission begin considering alternative policy when addressing small hydropower projects under the fish passage program.

Sincerely,
Dawn J. Nilson