

Agenda Item Summary

BACKGROUND

Warm Springs Irrigation District (WID) has applied to the Federal Energy Regulatory Commission (FERC) to construct a hydroelectric project at the existing Warm Springs Dam on the Malheur River. Warm Springs Dam is jointly owned by WID and the Bureau of Reclamation and is operated for irrigation from April to October. The hydroelectric project would be a new facility with a hydraulic capacity of 425 cfs, a generating capacity of 2.7 MW, and an estimated annual power output of 7,442 MWH. Water that is released from the dam for irrigation purposes will be used to operate the hydroelectric project.

When new hydroelectric projects are proposed the Department's Hydropower Program coordinates agency participation in the consultation process with the project proponents to ensure that fish and wildlife concerns are addressed in the state water right and the license issued by the Federal Energy Regulatory Commission. Two key fishery mitigation issues for water diversion projects are fish screening (ORS 498.306) and fish passage (ORS 509.585). As required by state law, the Department is requesting action from the Oregon Fish and Wildlife Commission (Commission) on fish screening and fish passage requirements associated with the development of the Warm Springs Hydroelectric Project.

Fish Screening: The Department has consulted with WID since 2011 on screening alternatives for the hydroelectric project's intake. These consultations have included the potential to provide other measures for the protection of game fish if the Commission determines they are adequate (ORS 498.316). The Department issued a letter to the project representative (Attachment 2) to further clarify the fish screening statutes that allow the Department to require installation, operation, and maintenance of fish screens at water diversion; or to allow the project developer to seek an exemption from installing fish screening as approved by the Commission.

The Commission is authorized by ORS 498.316 to not require the installation of screening or by-pass devices under ORS 498.306 if by contract or other form of agreement with the person diverting the water, made such other provision as the Commission determines is adequate for the protection of the game fish in the body of water from which water is being diverted. The Department received a letter from WID on September 26, 2013 (Attachment 3) requesting an exemption from fish screening by implementing alternative mitigation. With this agenda item, the Department is including the draft meeting minutes of the Fish Screening Task Force's October 23, 2013 meeting which documents the Task Force's support of the Warm Springs Dam screen exemption proposal (Attachment 5), and a draft agreement for mitigation in lieu of screening (Attachment 6).

Fish Passage: Licensing by FERC and issuance of a hydroelectric water

right by the Oregon Water Resources Department, are “triggers” that initiates consideration of fish passage under ORS 509.585(4). The Commission is authorized by ORS 509.585 to enter into an agreement with the owner or operator of an artificial obstruction that waives the statutory requirements for fish passage. To enter into such an agreement with the owner or operator, the Commission must determine, after opportunity for public review and comment, that mitigation proposed by the owner or operator will provide a net benefit to native migratory fish.

Warm Springs Dam is not equipped with an upstream fish passage facility. The WID submitted its fish passage waiver application, based on negotiations with staff, to the Department on November 1, 2013 (Attachment 7). The Department is submitting its proposed determination of the alternatives to fish passage (Attachment 9) to the Commission for approval (ORS 509.585(6)) and a draft fish passage waiver agreement (Attachment 10).

PUBLIC INVOLVEMENT For the fish screening exemption, the Department presented the proposal as an agenda item at the October 23, 2013 public meeting of the Fish Screening Task Force. The Department issued a news release announcing this meeting on October 10, 2013 (Attachment 4). The recommendation from the Fish Screening Task Force to support the proposal is included in the minutes from the October 23, 2013 meeting (Attachment 5).

For the fish passage waiver, the Department presented the proposal as an agenda item at the November 15, 2013 public meeting of the Fish Passage Task Force. The Department issued a news release announcing the meeting on November 7, 2013 (Attachment 8). The Fish Passage Task Force did not make a motion for a recommendation at the meeting, and indicated that it would make a recommendation after the public comment period ended on December 9, 2013. In addition, the Department issued a news release on November 18, 2013 which opened the 21-day public comment period, described the proposed action, included a link to the waiver documents on the Department’s Web site, and invited the public to the Commission’s January 10, 2014 meeting to provide oral and written comments. The Department also provided a separate notice by email to a broad list of individuals and organizations that have expressed interest in fish passage issues (Attachment 12). This notice was sent to all the members of the Fish Passage Task Force, the local Soil and Water Conservation Districts, and the local Watershed Councils as required by OAR 635-412-0025(12), as well as local tribes and state and federal agencies. Comments received from the public as of December 5, 2013 are included in Attachment 13.

ISSUE 1

FISH SCREENING EXEMPTION

ANALYSIS

The WID is seeking an exemption for fish screening requirements at the Warm Springs Dam Hydroelectric Project (Attachment 3). Fish screening is required under ORS 498.306; however, ORS 498.316 provides an

opportunity for the Commission to grant exemptions to the screening requirements. WID is requesting to enter into an agreement with the Commission to provide for a Warmsprings Reservoir Stocking Supplementation Fund to mitigate for the game fish that may be entrained into the hydroelectric project intake during its operation. The reservoir fishery consists primarily of hatchery rainbow trout and several warmwater species. Bull trout are found in the upper Malheur watershed, but have not been found in the vicinity of the reservoir, and redband trout are not likely to use the reservoir due to poor water quality. The Department stocks fingerling rainbow trout in May which grow and provide a recreational fishery in the reservoir. Hatchery rainbow trout and the warmwater fish are the most likely resource to be affected by entrainment through the penstock. WID is proposing to provide \$3,000 per year, adjusted by three percent annually, to the Department for the duration of the FERC License. Since 1992 the Department has stocked an average of 36,000 fingerling hatchery rainbow trout. Based on current pricing, the average annual cost of the stocking program is approximately \$3,700. The WID's proposal would support approximately 80 percent of the stocking program for the reservoir. The funding may be used for stocking fish into Warmsprings Reservoir as determined appropriate by the Department. In the event stocking does not take place, the funds may be used to implement projects that enhance fish habitat in the Middle Fork of the Malheur River watershed as determined by the Department.

OPTIONS

1. Approve the fish screening exemption request and authorize the Commission to enter into an agreement with the WID.
2. Deny the fish screening exemption request.

**STAFF
RECOMMENDATION**

Staff recommends that the Commission approve an exemption from fish screening for the Warmsprings Hydroelectric Project, and sign the agreement for the proposed measures as described in the agreement.

DRAFT MOTION	I move to approve the Warmsprings Irrigation District an exemption from providing fish screening at the Warmsprings Hydroelectric Project in exchange for implementing the measures described in the agreement and authorize the Chair of the Commission to enter into an agreement with Warmsprings Irrigation District to this effect.
EFFECTIVE DATE	Date of last signature by the Chair of the Oregon Fish and Wildlife Commission and the District Manager of the WID.

ISSUE 2

FISH PASSAGE WAIVER

ANALYSIS

A description of the fish passage waiver site (Warmsprings Dam) and the mitigation site (Dryer Diversion) are contained in the attached waiver application (Attachment 7). The Department's benefit analysis is attached to this packet, as is the draft agreement between the Commission and

WID which specifies the provisions of the waiver (Attachments 9 and 10 respectively).

WID proposes to improve passage conditions at the Dryer Diversion, located on the Middle Fork Malheur River 39 miles upstream of Warm Springs Dam. These passage improvements include:

- Replacing the existing Dryer push-up dam with a permanent rock diversion structure, known as a wing dam that will provide the head (differential water surface elevation) necessary to withdraw water, as well as provide passage around the diversion outside of the irrigation season and when summertime flow amounts allow;
- Installing a headgate structure to regulate water withdrawal into the Dryer Diversion ditch;
- Sizing/designing the wing dam to be stable during high flows to avoid mass failure at the site; and
- Providing long term maintenance of the diversion and fish passage during the lifetime of the hydroelectric project.

The measures described above will address native migratory fish population limitations on the Middle Fork Malheur River by:

- Improving passage conditions for native migratory fish while water is available;
- Supporting full expression of bull trout life histories;
- Maintaining connectivity among native migratory fish populations;
- Limiting excessive diversion of water and fish entrainment during winter months with the new headgate structure; and
- Eliminating the need for annual in-stream disturbance associated with push-up dams.

Department staff have analyzed the benefits of WID's mitigation proposal (Attachment 7) compared to the benefits of providing fish passage at Warm Springs Dam and have concluded that the proposed mitigation measures will provide a net benefit to native migratory fish (Attachment 9). The proposed mitigation provides fish passage improvements that will address multiple populations of native migratory fish. The proposed mitigation will increase accessibility to native migratory fish habitat, improve population fitness, and maintain healthy populations resulting in a benefit to native migratory fish in the Middle Fork Malheur River.

OPTIONS

1. Approve the fish passage waiver request and authorize the Commission to enter into an agreement with the WID.
2. Deny the fish passage waiver request.

STAFF RECOMMENDATION

Staff recommends that the Commission approve a waiver from fish passage at Warm Springs Dam, and sign the waiver agreement for the proposed mitigation measures as described in WID's waiver application.

DRAFT MOTION

I move to approve the Warm Springs Irrigation District a waiver from providing fish passage at Warm Springs Dam in exchange for implementing the mitigation measures described in its application and authorize the Chair of the Commission to enter into an agreement with the Warm Springs Irrigation District to this effect.

EFFECTIVE DATE

Date of last signature by the Chair of the Oregon Fish and Wildlife Commission and the District Manager of the Warm Springs Irrigation District.