



Oregon
John A. Kitzhaber, M.D., Governor

Department of Fish and Wildlife

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September 10, 2013

Mr. Nicholas Josten
GeoSense
2742 Saint Charles Ave
Idaho Falls, ID 83404

Subject: Warmsprings Dam Hydroelectric Project (FERC-13570)
Fish Screening Mitigation Requirements

Dear Mr. Josten,

The purpose of this letter is to inform you of the screening mitigation requirements at Warmsprings Dam for the Warmsprings Dam Hydroelectric Project (FERC 13570). On April 15, 2013, Warmsprings Irrigation District filed a license application with the Federal Energy Regulatory Commission (FERC) proposing to retrofit Warmsprings Dam with a hydroelectric facility. The proposal does not include fish screening at the existing intake on Warmsprings Dam. Under Oregon Revised Statute (ORS) 498.306, the Oregon Department of Fish and Wildlife (ODFW) may require the installation, operation and maintenance of screening at water diversions to protect fish populations. Fish screens designed and operated to ODFW criteria will minimize injury and mortality to fish by preventing entry at water diversions while allowing water to be delivered to its intended use. Having the water user install and operate criteria fish screening is ODFW's primary method of minimizing these harmful impacts to fish populations.

When fish screening is required, ORS 498.316¹ allows a pathway for a water user to seek an exemption from installing fish screening by implementing other provisions that are approved by the Oregon Fish and Wildlife Commission (Commission). The water user is required to prove to the Commission the proposed provisions will provide adequate protection of fish in the body of water that is being diverted. The nature and method of the proposed alternative to screening (i.e. mitigation) is the prerogative of the water user. Throughout early 2013, you worked with ODFW staff to develop proposed screening mitigation. In order to proceed with approval by the Commission, a proposal narrative and justification is required that includes (1) an impact or injury assessment; (2) a justification of why screening at the intake is not being pursued; (3) a detailed explanation of the mitigation proposal; and (4) a description of how the proposed mitigation will provide for adequate protection of identified fish in the body of water that is being diverted.

¹ **ORS 498.316 Exemption from screening or by-pass device.** ORS 498.306 does not require the installation of screening or by-pass devices in those water diversions for which the State Fish and Wildlife Commission, by contract or other form of agreement with the person diverting the water, has 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. [Formerly 498.262; 2007 c.625 §6]

The mitigation package will be reviewed by the Fish Screening Task Force (Task Force) prior to submission for Commission approval. The Task Force is comprised of seven members of the public with three members representing agriculture and water users, three representing fishing and fish conservation and one member representing the public at large. The Task Force typically meets three or four times a year throughout the state. These meetings are open to the public, and public input is encouraged. The Task Force will review the proposed mitigation package and provide recommendations to the Commission based on their assessment of the ability of the mitigation package to meet the requirements of ORS 498.316.

The proposed mitigation package will then be presented to the Commission. Project proponents and members of the public will have the opportunity to testify before the Commission on the merits of the proposal. The Commission will determine if the mitigation package will satisfy the requirements of ORS 498.316. If the Commission determines that the proposed mitigation satisfies ORS 498.316, then an exemption may be granted. An agreement between the Commission and the project proponents will be prepared outlining the responsibilities of both parties.

ODFW recommends that you work closely with our staff to ensure important process timelines are met. For hydroelectric projects the process for obtaining a fish screening exemption agreement must be timed to fit within the FERC process for obtaining a license or exemption. This means that the Commission will need to take action on the fish screening exemption request and mitigation proposal prior to ODFW staff development of mitigation measures under FERC's Notice of Ready for Environmental Analysis. ODFW generally needs at least two months after a draft agreement is developed to plan and prepare agenda items for a Commission meeting. If a screening exemption agreement is not in place at the appropriate time in the FERC process, ODFW will need to recommend to FERC that screening be installed.

Given our understanding of FERC's timeline and expected FERC Notice of Ready for Environmental Analysis, we recommend that your proposed screening exemption mitigation package be heard by the Commission at the December 6, 2013, meeting. Since the proposal must be reviewed by the Fish Screening Task Force, we recommend that it be presented at the next Task Force meeting on October 3 and 4, 2013, in Medford, Oregon. Therefore, we request that the complete screening mitigation proposal be submitted to ODFW for staff review by September 20, 2013.

If you have questions regarding this issue, you may contact the Statewide Fish Screening Coordinator, Pete Baki, at (503)947-6217 or pete.a.baki@state.or.us or myself at (541) 962-1832 or elizabeth.a.osiermoats@state.or.us.

Sincerely,



Elizabeth A.O. Moats
Hydropower Coordinator
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