

Testimony of:

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Presented to:

Oregon Fish and Wildlife Commission
4034 Fairview Industrial Drive SE
Salem, OR 97302

Date: August 7, 2015

Regarding:

FISH PASSAGE MITIGATION BANKING PILOT PROJECT

I present this testimony on behalf of the ODFW Fish Passage Task Force for which I have been an active member for eight years. Prior to being a member I often attended task force meetings as an interested stakeholder. I am intimately familiar with the full legislative history of the fish passage statute. I have followed the development and application of the current fish passage rules and regulations since the late 90's, and I worked with water users in providing comments and proposed text as the rule was being crafted.

It is quite customary for rules and regulations to be modified after they have been applied for several years, since there is no such thing as legal perfection, especially over time. The Task Force understands the issues and complexities involved in administering the fish passage rules and regulations. We have reviewed numerous projects where members have expressed concerns in either the limitation of or the excess of the rules. What we have all agreed on is the need for flexibility in applying the rules given the extent of obstructions throughout the State, the timeliness of fish recovery, limited funds, inexact science, and often conflicting priorities. The proposed Mitigation Banking Pilot Project conforms to the guidance that the Task Force has given the Department over many years.

The Task Force recommends that the Commission approve the Fish Passage Mitigation Pilot Project. We have tracked the entire development of the Pilot Project and have provided extensive comments and recommendations along the way. We find that the Project is based on sound scientific principles and that it affords administrative certainty. We requested that the Project also demonstrate replicability among users and our request has been incorporated into the Project. We are not without some reservations or concerns, and that is why it's a pilot project and not something proposed to be rolled out throughout the State. It needs to be proven and refined before such a proposal is made. It's not perfect, but it is indeed a step in the right direction of addressing fish recovery priorities and limited funds, and the net benefit tool associated with it is the best tool that the State has had to date. Such a tool will address any public concerns that ODFW may be "arbitrary and/or capricious" in the manner that net benefit assessments are conducted. Such a tool will also be helpful in establishing the next priority listing of obstructions, as required by law.

Public comment has suggested that *"mitigation banking, in general, has not worked well. That the programs tend to look good on paper but to not work well in reality."* Wetlands are cited as an example and it is stated that *"there is a general sense that wetlands "mitigation" banking has failed to prevent*

Fish Passage Banking Pilot Project

ODOT Testimony for ODFW Commission Mtg. 8/7/15

The infrastructure problem facing the state of Oregon

- Both Federal and State transportation funding are decreasing
- The need to repair failing culverts is increasing: 1/3 of all State highway culverts - more than 11,000 pipes, are in poor or critical condition
- The increasingly serious condition of the State's culvert infrastructure and the lack of adequate funding to address the issue - necessitate innovative solutions like fish passage banking

The collaborative development of our fish passage banking pilot

- ODOT would like to thank ODFW, The Nature Conservancy and Willamette Partnership for their hard work to collaboratively to resolve the technical and policy development issues for this project
- ODOT believes this project exemplifies good governance. This Pilot Project is great example of two State Agencies working together collaboratively to solve problems for the State of Oregon and enhance their respective missions.

ODOT's significant commitment and accomplishments providing fish passage (Oregon Plan commitment)

- Between 1997 and 2013 ODOT's fish passage program:
 - completed 142 projects
 - restored access to 461 miles of habitat for Native Migratory Fish use
- This summer there are 3 high priority fish passage projects in construction (Ladd, Fraser, and Neahkahnne Creeks) - for a total of 15.5 miles of habitat access restored

ODOT's track record of establishing and managing successful mitigation banks

- ODOT has 4 mitigation banks that are providing significant high quality habitat and all ODOT banks are exceeding their regulatory performance standards.
- ODOT's Mitigation banking program has been nationally recognized by the Federal Highway Administration for Environmental Excellence for the establishment of the Vernal Pool Mitigation and Conservation Bank
- ODOT established the Vernal Pool Bank as the first conservation bank in Oregon and is successfully managing the bank in partnership with The Nature Conservancy
 - Like Fish Passage Banking, this was a heavy lift in terms of technical and policy development but was the best mitigation solution for this rare habitat and the listed species that depend on it
 - ODOT is committed to finding the best ecological solution available.

Conclusions:

- The fish passage banking approach allows ODOT and ODFW to prioritize limited funding to address the most important fish passage barriers in the State.

WITNESS REGISTRATION

Oregon Fish and Wildlife Commission

August 7, 2015, ODFW 4034 Fairview Industrial Dr SE, Salem, OR

EXHIBIT F

PUBLIC HEARING ON: **EXHIBIT F: ODFW Fish Passage Mitigation Banking Pilot Project**

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