

Exhibit F

**Public Correspondence received as of
July 23, 2015**



July 17, 2015

Dave Stewart
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302
Email: dave.stewart@state.or.us

Re: Comments on Fish Passage Banking Pilot Project

Dear Mr. Stewart,

Please consider the following comments on ODFW's proposed Fish Passage Banking Pilot Project for the North Coast Basin ("Project"). The Native Fish Society and Oregon Wild join WaterWatch of Oregon in making these comments. As discussed below, we have some supportive comments, but we also have numerous concerns and suggestions for the program. We understand the Fish and Wildlife Commission is scheduled to consider the Project at its meeting on August 7, 2015.

SUPPORTIVE COMMENTS

1. We can understand the appeal of a banking concept for fish passage mitigation. Assuming a fixed "pie" of resources for fish passage projects, those resources should be allocated to where they will do the most good. A banking program could help that happen by reducing transaction costs and by connecting waivers with mitigation among a larger number of participants and across a broader geographic area.

2. Also in theory, it make sense to develop an objective, empirical approach for determining whether decisions to waive fish passage in exchange for mitigation create a "net benefit" for native migratory fish. As we understand it, these determinations now are based primarily on the "best professional judgment" of ODFW staff. We respect the expertise of ODFW staff. However, determinations based on "best professional judgment" may have a tendency to become overly subjective, unscientific, and inconsistent across personnel. Developing an objective, empirical methodology could help avoid those problems.

3. The methodology developed for quantifying “credits” and “debits” is thorough and detailed. Also, it is good to see that the Project includes plans to test the accuracy, repeatability, sensitivity and usability of the methodology.

4. We appreciate some of the safeguards and margins for error built into the proposed Project: requiring the “credits” from mitigation work to be at least three times the “debits” from the fish passage waivers; limiting the total number of waivers to 12; and limiting the waivers to stream reaches of one-half mile or less.

CONCERNS

1. In general, our sense is that mitigation “banking” has not worked well in other contexts, including wetlands, air quality and water quality. The programs tend to look good on paper but to not work well in reality. For example, there is a general sense that wetlands “mitigation” banking has failed to prevent an actual net loss of wetlands. We hope that ODFW and its partners have reviewed the problems with these programs and sought to avoid them here.

2. Mitigation “banking” may result in fewer miles of fish habitat overall. Low-priority fish passage projects on small streams would be traded for high-priority fish passage projects on more visible streams. That might be good in the short run because it would make more resources available in the short run for high-priority projects. However, because high-priority problems tend to stay visible, passage projects completed in exchange for waivers (through banks) may be projects that would have been done anyway, even though it would have taken a bit longer and required a bit more work to find the resources. The result may be abandonment of habitat on obscure smaller streams when, in the long run, fish passage problems might have been solved on *both* the high-profile streams *and* the smaller streams that cumulatively contribute a great deal to the health of native migratory fish. We recognize that existing statutes and rules already allow waivers in exchange for mitigation that provides a “net benefit” to native migratory fish. However, it seems clear that a banking program would substantially increase the number of waivers by reducing transaction costs. (Indeed, that is what the Project would be designed to do, albeit with the goal of getting more money to “high-priority” projects.)

3. The banking proposal for this Project is a good example of the concern raised in the previous paragraph. As we understand it, ODFW proposes to let ODOT sacrifice up to six miles of native migratory fish habitat in exchange for ODOT paying for fish passage at an ODFW fish hatchery. While it may be true that ODFW is not legally obligated to provide fish passage at its own diversion dam anytime soon (though arguably it must do so under its Native Fish Conservation and Hatchery Management plans), ODFW could (and should) feel a significant social and political obligation to do that as the guardian of native migratory fish in Oregon. ODFW should perhaps include fish passage in its operation plan for the hatchery and include the cost in its budget, even if it requires sacrificing some hatchery production. Native migratory fish could then have full access to another 21 miles of the Trask River system *and* have full access to another six miles of habitat above ODOT road crossings on smaller streams in the North Coast Basin. Instead, under the pilot Project, the fish will get only the habitat on the Trask.

4. If fish passage mitigation banking does in fact sacrifice habitat on small, dispersed tributaries in exchange for improved passage in watershed cores, this could diminish the resilience of native migratory fish populations by concentrating habitat.

5. Mitigation “banking” for fish passage will shrink the overall “pie” of resources for fish passage. The owner of an obstruction facing a fish passage obligation is likely to put resources into a bank (instead of providing fish passage) only if doing that is less expensive than provide fish passage. That will mean fewer total resources expended for fish passage. (For example, if passage would cost \$100,000, and if theoretically equivalent benefits could be obtained through the bank for \$50,000, fish passage would get \$50,000 instead of \$100,000.) We understand the theory that fewer resources can do more good if directed to the right place. However, in our view, to maximize resources for fish passage, there should be some limits on how much discount banking can provide to the owner of an obstruction who has an obligation to provide fish passage (see “Suggestions” below).

6. Another concern related to reducing the size of the “pie” for fish passage projects is that resources “deposited” to a “bank” (instead of being spent on a fish passage at a waiver location) will be used for the overhead and administration of the banking program instead of for the physical work necessary to provide fish passage.

7. The detriments from waiving fish passage and the benefits from mitigation may not be quantifiable in a way that ensures reliable comparisons. Even if this were theoretically possible, ODFW may not have the staffing necessary to conduct the detailed evaluations suggested in the “calculators” for the Project. Even if the calculators test well for accuracy, repeatability, sensitivity and usability during the Project, they may end up being employed only half-heartedly by busy biologists in the future.

8. Limiting the waivers to sites with no more than one-half mile of upstream habitat may not adequately ensure that significant resources are not lost. One-half mile may be a significant portion of the total on some short coastal streams, or the stretch may have significant resource value despite its short reach.

9. Continuing down the path of banking for high-priority projects may result in local organizations that want to focus on passage in small, local watersheds losing funding or being pushed by ODFW to bank their funds instead of completing their local projects.

10. If future banking allows non-passage projects to create credits for passage waivers, that also would result in less money being spent for fish passage. Theoretically, non-passage projects would not be traded for fish passage waivers unless the non-passage projects did more good than the passage projects. However, we think the comparison may be too “apples to oranges” and that public policy should continue to aspire, in the long run, to create fish passage at all obstructions on all streams presently or historically inhabited by native migratory fish.

SUGGESTIONS

Based on the concerns above, we are not convinced that mitigation banking for fish passage is a good idea. Our biggest concern is that banking will write off cumulatively important habitat on small streams in exchange for projects on more visible streams that would eventually have been done anyway. Our concern is that, in the long run, we will end up with only the high-priority projects when we should be doing them all. To the extent ODFW nevertheless proceeds with the Project, and with mitigation banking in general, we have the following suggestions:

1. Use the bank created with this Project to provide fish passage where there is a less compelling case for requiring the owner of the obstruction to pay for the passage itself. ODFW, of all parties, should be providing fish passage at the obstructions it owns or controls. It should not be diverting resources from other fish passage projects to discharge its own fish passage responsibilities.

2. Include, in the calculation of the “credits” from a fish passage project, some measure of whether the project would have been completed, and the timeframe in which it would have been completed, without resources from the recipient of a fish passage waiver. This would help ensure that banking is providing more fish habitat instead of just changing who pays for the high-priority projects while the small streams get forgotten.

3. Require that resources paid to a “bank” in exchange for a fish passage waiver be some fixed percentage (we are thinking at least 75 percent) of the resources that would have been spent providing fish passage at the waiver site. This will incentivize banking without leaving too much fish passage money “on the table.”

4. Create additional criteria to prevent waivers at sites with valuable upstream habitat. A waiver site may have upstream habitat too valuable to leave inaccessible even if it is less than one-half mile long. One way to address this would be to set a level of “debits” (the quantified effects of not providing passage) at which a waiver would not be allowed. Also, there should be a limit on the portion of a stream that may be left partially or completely inaccessible. We suggest no more than 10 percent.

5. Instead of waiving fish passage requirements entirely in exchange for mitigation banking, some degree of improved fish passage should be required at appropriate waiver sites. The Project, and future mitigation banking, could provide for full waivers, or only partial waivers, depending on such factors as the quality and quantity of the habitat and the cost of improving fish passage somewhat even if it is not brought into full compliance with ODFW fish passage rules.

6. Require that resources deposited into a fish passage mitigation bank be used on actual fish passage work and not for ODFW overhead or administration of the banking program. Overhead and administrative expenses should not become another “straw” in the pool of available resources for fish passage. Allowing mitigation funds to pay overhead and administrative expenses also could risk claims of mismanagement and bad faith down the road.

7. Require that credits for any future banking come from fish passage improvements and not from other restoration work. Assessing the quality of newly accessible habitat makes sense, but allowing money spent on non-passage projects to create credits for fish passage waivers creates too much of an “apples to oranges” comparison problem and leads down a path of doing one of two things (fish passage or other restoration) when both things should be done.

Thank you for considering our comments.

Sincerely,

Brian Posewitz

Brian Posewitz
Staff Attorney, WaterWatch of Oregon

cc (via email): Alan Ritchey; Greg Apke