



AGENDA ITEM SUMMARY

BACKGROUND

Arthur R. Bowman Dam (Bowman Dam) was completed in 1961 and is located on the Crooked River, approximately 20 miles upstream of Prineville, Oregon. Bowman Dam is a federal facility under the jurisdiction of the Bureau of Reclamation (Reclamation). Ochoco Irrigation District (OID) operates the dam under contract with Reclamation for the purposes of irrigation storage and flood control. In 2016, OID secured a three-year preliminary permit from the Federal Energy Regulatory Commission (FERC) for the addition of a hydroelectric power plant (the Project) at Bowman Dam. This permit was subsequently extended for an additional two years with an ending date of December 2021. The Project would be a new facility with a hydraulic capacity of 80 to 400 cfs, a 1 MW turbine and a 2 MW turbine, and an estimated annual power output of 15,000 MWH. The Project will operate “run of release” using water that is released for irrigation, flood control, and fish and wildlife purposes.

When new hydroelectric projects are proposed, the Oregon Department of Fish and Wildlife (Department) Hydropower Program coordinates agency participation in the consultation process with the Project applicants to ensure that fish and wildlife concerns are addressed in the state water right and any license issued by FERC. In addition to several issues raised in the licensing process by the Department, Bowman Dam is not equipped with upstream or downstream fish passage facilities. Licensing by FERC and issuance of a hydroelectric water right by the Oregon Water Resources Department are “triggers” for required fish passage under ORS 509.585(4). As the license applicant and operator of the dam, OID has chosen to apply for a fish passage waiver. The Oregon Fish and Wildlife Commission (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 in specified circumstances. To enter into such an agreement, the Commission must determine, after opportunity for the Fish Passage Task Force and the public to review and comment, that mitigation proposed by the owner or operator will provide a net benefit to native migratory fish (ORS 509.585(7)(a), (7)(b) and OAR 635-412-0025(1), (2)). Net benefit is defined in statute and rule as “an increase in the overall, in-proximity habitat quality or quantity that is biologically likely to lead to an increased number of native migratory fish after a development action and any subsequent mitigation measures have been completed.” ORS 509.580(7); OAR 635-412-0005(33).

After obtaining input from Department staff on the process to obtain a waiver and the draft waiver application, OID submitted its final fish passage waiver application to the Department on May 7, 2020 (Attachment 2). The Department completed its benefit analysis for the waiver application (Attachment 3). The Department here has provided the staff recommendation and requests action from the Commission on OID’s fish passage waiver request (ORS 509.585(6)).

PUBLIC INVOLVEMENT

The Department issued a news release on June 1, 2020, which opened a required 3-week public comment period for the waiver request and described the proposed action with a link to the waiver documents on the Department's web site (Attachment 4). The Department issued another news release on June 17, 2020 (Attachment 5) announcing the June 26, 2020 Fish Passage Task Force (Task Force) meeting where it was asked to make a recommendation to the Commission on the waiver request. The news releases were sent to all members of the Task Force, the local Soil and Water Conservation Districts, the local Watershed Councils, identified stakeholders, and others who have expressed an interest in fish passage issues or the Bowman Dam waiver request as required by OAR 635-412-0025(12). Information on how the public could participate in the meeting was provided in the news release. During the 3-week public comment period prior to the Task Force meeting, 186 written comments were received and an additional ten verbal comments were received at the Task Force meeting (Attachment 6).

Members of the public have had the opportunity to review the waiver documents on the Department's website, and information on how the public could provide comment to the Commission for their October 9, 2020 meeting was distributed.

ISSUE

Commission decision on OID's fish passage waiver request for Bowman Dam.

ANALYSIS

A description of the fish passage waiver site (Bowman Dam) with the mitigation proposal are contained in OID's waiver application and is included in this packet as Attachment 2. The Department's benefit analysis is included in this packet as Attachment 3.

OID is proposing to:

- 1) Provide potential enhanced salmonid spawning habitat in the Crooked River directly below Bowman dam. Approximately 500 cubic yards of gravel would be placed downstream of Bowman Dam every 3 years, or as needed to replenish the gravel recruitment pile;
- 2) Contribute funding to assist in implementation of an offsite fish passage project on Ochoco Creek that currently does not provide fish passage. OID will provide \$90,500 to the project, which will cover the cost of implementation and provide additional funding for passage design and project management;
- 3) Contribute funding of \$200,000 in habitat restoration at Ochoco Preserve, a 185-acre property on the Crooked River near the confluences with Ochoco and McKay creeks.

The waiver application also includes a proposal to install two Howell Bunger®¹ valves for passing water releases that could reduce total dissolved gas (TDG) in the Crooked River downstream of Bowman Dam. The Department is not able to include this measure in its benefit analysis because the Oregon Department of Environmental Quality (ODEQ) has stated that the Project must reduce TDG levels in waters below Bowman Dam in order to meet the water quality standard (110% TDG) for ODEQ 401 Water Quality Certification for the Project. OAR 635-412-0040(3) provides that “Mitigation shall not include any activity that is a requirement or condition of any other agreement, law, permit, or authorization except if it is also for fish passage mitigation of the same action at the artificial obstruction for a different level of government.”

The Department’s benefit analysis indicates that:

- Providing fish passage at Bowman Dam would:
 - Restore fish passage to approximately 464² miles of habitat for redband trout, 63 miles for steelhead, and 57 miles for spring-run Chinook salmon.
- OID’s proposed fish passage mitigation actions, if implemented, will:
 - Improve an unspecified quantity of potential salmonid spawning habitat in the Crooked River directly below Bowman dam.
 - Contribute to the improvement of 0.4 mile of Ochoco Creek habitat at its confluence with the Crooked River.
 - Contribute to the improvement of 0.4 mile of McKay Creek habitat at its confluence with the Crooked River.
 - Contribute to the improvement of 0.9 mile of mainstem Crooked River habitat at the confluence of Ochoco Creek and the mainstem Crooked River.
 - Contribute to the connectivity of additional 2.25 miles of native migratory fish habitat on Ochoco Creek directly below Ochoco dam.

The quantifiable information suggests that OID’s mitigation would provide a benefit to approximately 3.95 miles of stream habitat for redband trout, steelhead, and spring Chinook salmon.

Department staff finds that despite positive benefits realized in the Crooked River from OID’s proposed mitigation package, when compared to the benefits of providing upstream fish passage at Bowman Dam, the proposed mitigation will not provide a net benefit as required in ORS 509.585(7) and OAR 635-412-0025. Restoring fish passage at Bowman Dam would provide access to a substantial amount of additional habitat for steelhead trout, spring Chinook salmon, and mountain whitefish. Restoring connectivity to this isolated

¹ Howell Bunger ® valve, also known as a Fixed Cone valve and Hollow-Jet valve, is a Free Discharge valve. These valves are used to discharge water at high pressure from reservoirs or full pipes into atmosphere.

² In its initial Benefit Analysis, the Department calculated approximately 498 miles of habitat for Redband Trout, but has subsequently reduced the number of miles based on a public comment identifying two artificial barriers not identified by the Department.

redband trout population will support long-term genetic diversity and population viability. There would likely be additional genetic and population viability benefits for these species.

At its June 26, 2020 meeting, by a vote of 7-2, the Fish Passage Task Force passed a motion to recommend denial of the waiver application in its current form and consider a revised application with additional mitigation. Following the Task Force decision, OID consulted with its other stakeholders and decided to continue to seek approval from the Commission with its current Fish Passage Waiver Request, absent any change or additional measures included in its proposed mitigation plan.

Pursuant to the fish passage statutes (ORS 509.580 *et seq.*) and Oregon Administrative Rules (OAR chapter 635,= division 412), Department staff concludes that the measures proposed by OID will not provide a net benefit to native migratory fish populations compared to providing fish passage at Bowman Dam. The Department recommends that a fish passage waiver not be granted.

OPTIONS

1. Do not approve OID's fish passage waiver request.
2. Approve OID's fish passage waiver request and enter into an Agreement with OID.

STAFF RECOMMENDATION

Do not approve OID's fish passage waiver request.

DRAFT MOTION

1. I move to not approve OID's fish passage waiver request, finding proposed mitigation does not provide a net benefit to native migratory fish species as specifically described in the Department's benefit analysis.

EFFECTIVE DATE:

1. Day of decision