

Exhibit (C)

**Fish Passage Waiver for
Ochoco Irrigation District's
Proposed Hydroelectric
Project on Bowman Dam,
Crooked River**

**Supplemental
Public Correspondence received
as of October 8, 2020**

Lisa Kingsley

From: Chandra Ferrari <Chandra.Ferrari@tu.org>
Sent: Thursday, October 8, 2020 11:17 AM
To: ODFW.Commission@state.or.us
Subject: Trout Unlimited Written Testimony on Exhibit C: Bowman Dam Hydroelectric Project Fish Passage Waiver
Attachments: TU_ODFW_BowmanWaiver_Testimony_FishandWildlifeCommission.pdf

Hello,

Attached please find TU's written testimony on Exhibit C: Bowman Dam Hydroelectric Project Fish Passage Waiver. Please contact me with any questions.

Thank you!



Chandra Ferrari/ Senior Policy Advisor and Staff Attorney

cferrari@tu.org/916-214-9731

Trout Unlimited
<http://www.tu.org>



October 8, 2020

Oregon Fish and Wildlife Commission
Chair, Mary Wahl
4034 Fairview Industrial Drive SE
Salem, OR 97302-1142

RE: Exhibit C: Bowman Dam Hydroelectric Project Fish Passage Waiver

Dear Chair Wahl and Members of the Commission,

Trout Unlimited (TU) appreciates the opportunity to provide comments on Fish Passage Waiver Application (Application) of Ochoco Irrigation District (OID), the City of Prineville and Crook County (collectively “Applicants”) for a proposed hydroelectric project at Bowman Dam (Project) on the Crooked River. TU is a non-profit organization with a mission to conserve, protect and restore North America’s coldwater fisheries and their watersheds. With more than 300,000 members and supporters nationwide, TU works to restore wild trout, salmon, and steelhead and their watersheds throughout the U.S. TU has over 3000 members in Oregon and over 650 in its local Deschutes Redbands Chapter. Restoring instream flows, connectivity, and suitable aquatic habitat conditions to the Deschutes watershed, including the Crooked River, is a key objective of TU and its members.

TU requests that the Commission support the recommendation of Oregon Department of Fish and Wildlife (ODFW) staff and the Fish Passage Task Force and deny the Application. As noted in TU’s attached comments to the Fish Passage Task Force regarding the Application, the best available information does not support a finding that requirements for a fish passage waiver have been met. Specifically, the mitigation proposed by the Applicant is inadequate to support a determination that its value meets or exceeds that which would be provided by the provision of fish passage and the resultant access to 498 miles of aquatic habitat above Bowman Dam, even if a portion of that habitat is not suitable for anadromous and resident fish. Accordingly, it would be inappropriate for the Commission to grant the Applicants a waiver from fish passage requirements. Please refer to TU’s attached comments for more detailed discussion on this point.

TU remains interested in further constructive dialogue with Applicants, ODFW and other stakeholders regarding how best to collect/share information and develop and implement creative fish passage and/or mitigation solutions in the Crooked watershed. TU respectfully requests that the Commission consider TU's comments (including TU's attached comments to the Fish Passage Task Force) and the recommendation of ODFW staff and the Fish Passage Task Force and deny the Application. Thank you for the opportunity to provide testimony on this issue and please contact us with any questions.



Chandra Ferrari
Senior Policy Advisor/Staff Attorney
Trout Unlimited
cferrari@tu.org
(916) 214-9731



Shaun Pigott
President
Deschutes Redband Chapter of Trout Unlimited
spigott@teleport.com



Mike Tripp
Board Member and former President
Deschutes Redband Chapter of Trout Unlimited
mtripp@bendcable.com

Attachment: TU's June 22, 2020 Comments to the Fish Passage Task Force



June 22, 2020

Sent via email to: ted.g.wise@state.or.us

Ted Wise
East Region Hydropower Program Coordinator
Oregon Department of Fish and Wildlife
61374 Parrell Road
Bend, OR 97702

Re: Fish Passage Waiver Application – Bowman Dam

Trout Unlimited (TU) appreciates the opportunity to provide comments on Fish Passage Waiver Application (Application) of Ochoco Irrigation District (OID), the City of Prineville and Crook County (collectively “Applicants”) for a proposed hydroelectric project at Bowman Dam (Project) on the Crooked River. TU is a non-profit organization with a mission to conserve, protect and restore North America’s coldwater fisheries and their watersheds. With more than 300,000 members and supporters nationwide, TU works to restore wild trout, salmon, and steelhead and their watersheds throughout the U.S. TU has over 3000 members in Oregon and over 650 in its local Deschutes Redbands Chapter. Restoring instream flows, connectivity, and suitable aquatic habitat conditions to the Deschutes watershed, including the Crooked River, is a key objective of TU and its members.

OID seeks a fish passage waiver to aid its efforts to secure a Federal Energy Regulatory Commission (FERC) license for a 3 mega-watt hydroelectric power plant at Bowman Dam. The Project will require structural modifications to Bowman Dam and will “generate power in concert with existing water operations.” Application, p. 2. Bowman Dam is currently a barrier to upstream passage of all fish species and has been identified by the Oregon Fish and Wildlife Commission (Commission) as a Statewide Fish Passage High Priority Barrier. The Applicants have proposed a mitigation package that they contend provides net benefits to Oregon’s native migratory fish (NMF) species that exceeds the value of fish passage as required by Oregon law.

TU appreciates that the Project will provide a new and reliable source of power and funding to OID, that providing fish passage at Bowman is likely an expensive and technically complex undertaking and

that the proposed mitigation will provide some level of benefit to NMF. However, the best available information does not support a finding that requirements for a fish passage waiver have been met. Accordingly, TU concurs with the Oregon Department of Fish and Wildlife (ODFW) recommendation that the Application be denied.

I. The Application does not present a mitigation package that “exceeds” the value of passage

The Application includes mitigation measures to increase spawning habitat availability through gravel augmentation, provide fish passage in Ochoco Creek, and fund habitat restoration at Ochoco Preserve. Additionally, the Application devotes significant attention to an explanation of structural modifications to Bowman Dam that would be made to reduce total dissolved gas (TDG) saturation. However, the Application concedes that the TDG measure cannot be factored into the fish waiver “net benefit” calculation as it constitutes a mitigation requirement for a separate regulatory obligation (401 water quality certification). Accordingly, this measure is only useful context.

The remaining mitigation proposals lack important details and assurances yet comprise the exclusive support for Applicants’ argument that benefit to NMF from mitigation exceeds that provided by fish passage and the resultant access to 498 miles of habitat above Bowman Dam. Granted, some of this habitat is likely not suitable for anadromous species however, given the lack of comprehensive data concerning the quality of habitat above the Dam, the Application appears to significantly overstate the level of unsuitable habitat. Further, the Application does not sufficiently acknowledge that, even where marginal habitat exists, benefits often accrue to resident species such as redband trout. In so doing, the Application proposes a level of mitigation that falls far short of exceeding the ecological benefit the would be provided with fish passage.

Even assuming the Application has correctly identified the extent of suitable habitat above Bowman Dam, it does not sufficiently address how its proposed mitigation measures will address key limiting factors for NMF below Bowman Dam at a meaningful scale over a 30 to 50 year FERC license term. The lower Crooked River historically supported large populations of spring Chinook, steelhead and bull trout. Operation of the recently completed fish ladder at the Opal Springs Hydroelectric Project means these key anadromous fish species can now pass into the habitat below Bowman with increased efficiency. These fish, however, must contend with degraded habitat and water quality conditions particularly during irrigation season as a result of dam operations, water diversions and irrigation practices. The proposed mitigation measures contemplate limited or a one-time financial investment from the Applicants. The mitigation measures for gravel augmentation and habitat restoration lack

biological or habitat objectives/metrics tied to effectiveness monitoring precluding any meaningful determination about their benefit to NMF. For instance, the gravel augmentation measure does not quantify the amount or location of increased juvenile production expected from implementation nor how such production addresses limiting factors for NMF. The remaining mitigation measure for fish passage at Ochoco Creek is beneficial but will only provide NMF access to 2.5 miles of additional habitat. In total, this mitigation is insufficient to meet, let alone exceed, the value to NMF from fish passage.

II. Additional information about habitat quality and fish passage feasibility should be secured and mitigation reevaluated

The new hydroelectric project at Bowman Dam, if approved by FERC, will provide benefits to OID over a period of 30 to 50 years. Given the significant initial investment that OID must make to secure Project construction and regulatory approvals, it is unsurprising that it seeks near-term certainty regarding its mitigation obligations. However, given the long timeframe associated with this Project and the high stakes involved, TU recommends spending more time and resources on the front-end improving the extent and quality of information that informs this discussion. As a first step, the Applicant (and other partners and collaborators) should conduct a more thorough assessment of the habitat quantity and quality above Bowman Dam such that the current and potential carrying capacity of the habitat for various life stages of NMF and resident species can be established. Additionally, a more comprehensive evaluation of fish passage implementation options, including public and private partnership and funding opportunities, is necessary to more fully understand whether fish passage is feasible.

After completion, if the Applicants still determine that fish passage is infeasible, then a new mitigation package should be proposed that clearly presents habitat improvements below the Dam that are proportional to the quantity of suitable habitat that remains inaccessible above the Dam. To ensure that NMF limiting factors in the lower Crooked River are being addressed by the mitigation measures, Applicants should commit to meeting quantifiable targets (financial, biological and habitat). Mitigation possibilities include contributions toward: (1) year-round maintenance of minimum flows below Bowman Dam to improve habitat suitability or accessibility; (2) flows to improve water quality by mitigating temperature exceedances/meet temperature targets; (3) a fund intended to address water quality impacts or habitat restoration targets in the lower Crooked River; (4) efforts by the Bureau of Reclamation (BOR) and/or ODFW to proceed with a secondary water right application to protect instream stored water releases for fish and wildlife from Prineville to Lake Billy Chinook pursuant to

requirements of the Collaborative Water Security and Jobs Act; and (5) habitat improvement projects guided by quantifiable metrics.

Mitigation in the form of a fund contribution should include a commitment of a fixed portion of annual hydropower revenue and should clearly articulate guidelines for how money will be distributed, pursuant to what method and how effectiveness will be assessed. All mitigation measures should include goals, quantifiable metrics and effectiveness monitoring. Quantifiable metrics should be S.M.A.R.T. (Specific, Measurable, Achievable, Relevant, and Timebound).

III. Conclusion

Based on the points noted above, TU concurs with the ODFW recommendation that the Application be denied. However, we hope that constructive dialogue continues. TU looks forward to continued collaboration with the Applicants, ODFW and other stakeholders to collect/share information and develop and implement creative fish passage and/or mitigation solutions in the Crooked watershed. Please contact us with any questions.



Chandra Ferrari
Senior Policy Advisor/Staff Attorney
Trout Unlimited
cferrari@tu.org
(916) 214-9731



Shaun Pigott
President
Deschutes Redband Chapter of Trout Unlimited
spigott@teleport.com



Mike Tripp
Board Member and former President
Deschutes Redband Chapter of Trout Unlimited
mtripp@bendcable.com

Lisa Kingsley

From: Fran Recht <franrecht@gmail.com>
Sent: Thursday, October 8, 2020 3:15 PM
To: odfw.commission@state.or.us
Subject: Bowman Dam fish passage waiver
Attachments: Bowman Dam fish passage waiver request October 8.docx

Please see my letter opposing the granting of a waiver.

Thank you

Fran Recht
541-765-2234

October 8, 2020

Re: Fish Passage Waiver Request at Bowman Dam

Dear Oregon Fish and Wildlife Commissioners:

I am writing to ask you to deny the requested Fish Passage Waiver Request at Bowman Dam on the Crooked River

I support the Fish Passage Task Force's recommendation that the fish passage waiver be denied. I am also in agreement with ODFW staff's determination that the Ochoco Irrigation District's fish passage waiver application that offered less than 4 miles of habitat improvement did not provide enough mitigation to warrant the waiver of Oregon's fish passage requirements that would open up 500 miles of upstream fish passage.

With passage restored, the Crooked River's 500 miles can provide excellent fish habitat.

Please deny the requested waiver.

Thank you for your consideration.

Sincerely,

Fran Recht
P.O. Box 1344
Depoe Bay, OR 97341
541-765-2234

Lisa Kingsley

From: David Moskowitz <theconservationangler@gmail.com>
Sent: Thursday, October 8, 2020 4:12 PM
To: odfw.commission@state.or.us
Cc: Michelle Tate; curt.melcher@state.or.us
Subject: The Conservation Angler Comments on Crooked River Fish Passage
Attachments: TCA Memo to OFWC on Bowman Dam Passage Waiver 10-8-20.pdf

Dear Commissioner Wahl, members of the Commission and Director Melcher:

Please find comments from The Conservation Angler urging that the Commission deny the fish passage waiver application for Bowman Dam. TCA supports the ODFW Staff recommendation.

Sincerely,

David Moskowitz

David A. Moskowitz
Executive Director
971-235-8953 (Direct)
theconservationangler@gmail.com
www.theconservationangler.org



Tout ce qui est impossible reste à accomplir. ~ Jules Verne
All that is impossible remains to be accomplished.



Memorandum

To: Mary Wahl, Chair
Members of the Commission

Cc: Curt Melcher, Director, Department of Fish and Wildlife

Dt: October 8, 2020

Re: Comments to the Oregon Fish and Wildlife Commission Urging A Fish Passage Waiver for Hydropower Improvements at Bowman Dam on the Crooked River

The Conservation Angler remains opposed to granting a waiver to the statutory requirement to provide fish passage at Bowman Dam on the Crooked River triggered by the proposal to construct a hydro power facility.

The project proponents have not met their statutory requirements as provided by Oregon Revised Statute (ORS) 509.585(7)(a) – (L) and Oregon Administrative Rules (OAR) 635-412-0025. This failure is abundantly clear based on the evaluation of the Ochoco Irrigation District's May 2020 proposed fish passage waiver application by Oregon Department of Fish and Wildlife Staff

Existing state law requires that any waiver must show that benefits to Fish and wildlife are greater than the creation of a fish passage. Applicants suggest they will create artificial spawning beds in the Wild & Scenic section of the Crooked River, provide passage at a small dam adjacent to Prineville Golf Club on Ochoco Creek, and donate financial assistance for restoration work at the Deschutes Land Trust's new Ochoco Preserve. While these are all worthwhile improvements, they are not a substitute for a fish passage. Indeed, these improvements should be required, along with a fish passage, to somewhat compensate for all the pass and on-going damage to the public's wildlife and water by the irrigation district.

Bowman Dam blocks over 400 miles of salmon and steelhead habitat and it segments the existing and remaining redband trout population from the necessary migratory interactions it needs to express the greatest range of genetic and life history diversity.

ODFW's analysis demonstrates that the proposed mitigation will not provide a net benefit to native migratory fish populations compared to providing fish passage at Bowman Dam. Passage at Bowman Dam would provide access to over 400 miles of upstream habitat and provide additional ecological benefits even though not all of this habitat would be suitable for anadromous species. The potential benefits would also accrue to resident species as increased genetic exchange between currently isolated populations would enhance overall fitness. Based on this information and analysis provided in the ODFW Staff report, The Conservation Angler urges the Commission to deny the proposed fish passage waiver for the Bowman Dam hydropower project.

While fish passage at this site would be complicated, the ecological benefits of fish passage are significant when considered in the context of the broader investments in fisheries restoration that are occurring throughout the Deschutes River basin, including the Crooked River. These investments will

likely bring growing populations and greater demands for the suite of ecological benefits provided by connected upstream habitat – Bowman Dam must not be a barrier to successful reintroduction of anadromous salmonids. The Conservation Angler urges ODFW and other Deschutes Basin partners develop a comprehensive plan for fish passage to restore the historic distributions of native salmon, trout, and steelhead.

After a complete evaluation exploring both practical and inspirational options, if the collective Basin Partners determine that passage is not possible, then the project applicants can develop an appropriately-scaled mitigation proposal that meets the net benefit requirements under Oregon Revised Statutes and administrative rules.

At a minimum, mitigation should include guaranteed minimum instream flows for fish as determined by ODFW and the establishment of a secondary water right to protect those instream flows from diversion by other water rights holders for the entirety of the accessible Crooked River stream reaches. Fish passage in other parts of the Crooked River watershed may also need to be part of the mitigation package to meet the net benefit requirements.

The Bureau of Reclamation and the Ochoco Irrigation District have operated Bowman Dam for six decades without providing fish passage. Their track record on protecting fish in the Crooked River during this period is less than stellar. This minimal proposal fits with past practices. Perhaps the OID and BOR should consider funding an extensive effort to improve streamflow and water quality in the Crooked River watershed above Bowman and Ochoco Dams – if there was a healthy functioning ecosystem there would be more and cleaner water for native fish and other users.

The Deschutes Basin has been fragmented since Ochoco Dam was built on Ochoco Creek in 1919, Pelton Dam in 1958 on the Deschutes, Bowman Dam on the Crooked River in 1961 and Round Butte Dam in 1964. Oregon fought the construction of the mainstem Deschutes Dams ferociously but lost. Blocked stream reaches are now being re-opened and wild steelhead and chinook salmon deserve access to the mainstem Crooked River. The people of Oregon deserve to see wild steelhead and chinook return to the natal streams they have been denied access to. Native Fish are a public trust resource that have been taken from Oregonians in this watershed and the applicable Oregon laws require that these resources be returned to the citizens.

The Conservation Angler also believes that the proposed mitigation by the applicant should be sufficient to honor citizens like Guy Orcutt and Gene McMullen – anglers and activists who pursued protection, restoration and enjoyment by others for the some of the little streams throughout Oregon – particularly in the Crooked River above Bowman Dam. Oregon must not trade away its public trust resources and must not forget those citizens who made places like the lovely and productive Crooked River forks and tributaries better than they found them.

The Conservation Angler urges the Oregon Commission to adopt the staff recommendation No. 1 to deny this application to waive the requirements for fish passage at Bowman Dam on the Crooked River.

Lisa Kingsley

From: Doyle Nelson <dwnelson15@gmail.com>
Sent: Thursday, October 8, 2020 9:12 PM
To: Oregon Fish and Wildlife Commission
Subject: Bowman Dam Fish Passage Waiver, Agenda Item C

Dear Oregon Fish and Wildlife Commission,

Dear Oregon Fish and Wildlife Commission:

We applaud ODFW for its commitment to ensuring that Oregon's fish passage laws are upheld and that the health of the Crooked River is advanced.

We support ODFW's determination that the Ochoco Irrigation District's fish passage waiver application that offered less than 4 miles of habitat improvement did not provide enough mitigation to warrant the waiver of Oregon's fish passage requirements that would open up 500 miles of upstream fish passage.

We respectfully request that you deny Ochoco Irrigation District's fish passage waiver request that is before you.

The Middle Rogue Steelheaders represent approximately 175 resident fishermen of Josephine and Jackson County. Our mission is to conserve, protect, and restore cold-water fisheries and their watersheds in Southwest Oregon. We operate as a non-profit, non-political, and non-sectarian organization for charitable, educational, and scientific purposes while supporting sports fishing. Over the past many years, the Middle Rogue Steelheaders have annually contributed thousands of dollars and thousands of hours of volunteer work in the support of fisheries conservation and education projects in the Rogue River basin.

Thank you for your consideration.

Doyle Nelson, President
Middle Rogue Steelheaders

Sincerely,
Doyle Nelson
Middle Rogue Steelheaders Po Box 962
Grants Pass, OR 97526

Uwr r rgo gpvcn
Public Correspondence

Received as of October 7, 2020

Gzj kdk'E

**Subject: Fish Passage Waiver for Ochoco
Irrigation District's Proposed
Hydroelectric Project on Bowman Dam,
Crooked River.**

(Attached)

**9 individuals submitted the attached
comment.(List Attached)**

Lisa Kingsley

From: Jerrold Martisak <jmartisak@icloud.com>
Sent: Wednesday, October 7, 2020 8:52 AM
To: Oregon Fish and Wildlife Commission
Subject: Bowman Dam Fish Passage Waiver, Agenda Item C

Dear Oregon Fish and Wildlife Commission,

Dear Oregon Fish and Wildlife Commission:

I applaud ODFW for its commitment to ensuring that Oregon's fish passage laws are upheld, and that the health of the Crooked River is advanced.

I support ODFW's determination that Ochoco Irrigation District's fish passage waiver application that offered less than 4 miles of habitat improvement did not provide enough mitigation to warrant the waiver of Oregon's fish passage requirements that would open up 500 miles of upstream fish passage.

I support the Fish Passage Task Force's recommendation that the fish passage waiver be denied.

I respectfully request that you deny Ochoco Irrigation District's fish passage waiver request that is before you.

Thank you for your consideration.

Sincerely,
Jerrold Martisak
480 19th St NE
Salem, OR 97301

FROM	SUBJECT	RECEIVED	SIZE	C...	MENTION
Date: Wednesday					
Jim Casey Dear Oregon Fish and Wildlife Commission,	Bowman Dam Fish Passage Waiver, Agenda Item C	Wed 10/7/2020 3:00 PM	18 KB		▶
Jeff Perin Dear Oregon Fish and Wildlife Commission,	Bowman Dam Fish Passage Waiver, Agenda Item C	Wed 10/7/2020 8:18 PM	19 KB		▶
Date: Yesterday					
Zachary Barry Dear Oregon Fish and Wildlife Commission,	Bowman Dam Fish Passage Waiver, Agenda Item C	Thu 10/8/2020 9:05 AM	19 KB		▶
Peter Ware Dear Oregon Fish and Wildlife Commission,	Bowman Dam Fish Passage Waiver, Agenda Item C	Thu 10/8/2020 9:12 AM	18 KB		▶
Chuck Gehling Dear Oregon Fish and Wildlife Commission,	Bowman Dam Fish Passage Waiver, Agenda Item C	Thu 10/8/2020 11:46 AM	18 KB		▶
John Davis Dear Oregon Fish and Wildlife Commission,	Bowman Dam Fish Passage Waiver, Agenda Item C	Thu 10/8/2020 2:43 PM	18 KB		▶
Wayne Stewart Dear Oregon Fish and Wildlife Commission,	Bowman Dam Fish Passage Waiver, Agenda Item C	Thu 10/8/2020 9:26 PM	18 KB		▶
alan LHommedieu Dear Oregon Fish and Wildlife Commission,	Bowman Dam Fish Passage Waiver, Agenda Item C	Thu 10/8/2020 9:40 PM	18 KB		▶
s kloff Dear Oregon Fish and Wildlife Commission,	Bowman Dam Fish Passage Waiver, Agenda Item C	Thu 10/8/2020 10:09 PM	17 KB		▶