



Oregon Fish and Wildlife Commission Minutes

Meeting:
Friday, October 9, 2020 – 8:00 AM
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Dr SE
Virtual Meeting
Salem, OR 97302

1 *Commission minutes are considered draft until approved by the Commission.*

2
3 Notice of these meetings had been made by press release of statewide media circulation.
4 Those attending part or all of the meeting included:
5

Mary Wahl, Commission Chair	Curt Melcher, Director
Greg Wooley, Commission Vice- Chair	Erica Kleiner, Deputy Director
Bob Spelbrink, Commissioner	Shannon Hurn, Deputy Director
Mark Labhart, Commissioner	Bruce Eddy, East Region Manager
Jill Zarnowitz, Commissioner	Bernadette Graham-Hudson, West Region Manager
Becky Hatfield-Hyde, Commissioner	Anika Marriott, Assistant Attorney General
	Erin Donald, Assistant Attorney
	Michelle Tate, Executive Assistant
	Cedric Cooney, Acting Fish Division Administrator
	Doug Cottam, Wildlife Division Administrator

6 **MEETING**

7
8 On Friday October 9, 2020 at **8:00 AM**, **Chair Wahl called the Oregon Fish and Wildlife**
9 **Commission** (the Commission) meeting to order.

10 **DIRECTOR'S REPORT**

11
12
13 Field Reports – in written form only; *this report is available in the meeting materials and at*
14 [https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/October%20Field%20](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/October%20Field%20Report%202020.pdf)
15 [Report%202020.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/October%20Field%20Report%202020.pdf)

16 Expenditure Report

17 Staff: Erica Kleiner, Deputy Director for Administration

18 Erica provided the Commission with a report including information about revenue from
19 license sales remains healthy; expenditures through the end of August remain below
20 budgeted projections; the Governor's Budget will be released in December 2020.
21

22
23 *This report is available in the meeting materials and at*

24 [https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Commission%20Finan](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Commission%20Financial%20Report%20October%202020.pdf)
25 [cial%20Report%20October%202020.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Commission%20Financial%20Report%20October%202020.pdf)

26
27

1 **Adopt Temporary Rules**

2 Curt Melcher, Director, requested the Commission ratify the following temporary rules. The
3 [seventeen \(17\) temporary rules](#) were previously adopted by the director under his
4 emergency action authority.

5
6 **1. 635-041-0075**

7 **Set Treaty Indian Fall Commercial Gillnet Fishery**

8 Adopted September 12, 2020: effective September 12, 2020 through December 31, 2020
9 These amended rules extend fall Treaty commercial gillnet fishing periods in the Columbia
10 River mainstem. Modifications are consistent with action taken September 10, 2020 by the
11 Departments of Fish & Wildlife for the States of Oregon and Washington in cooperation
12 with the Columbia River Treaty Tribes at a meeting of the Columbia River Compact
13

14 **2. 635-042-0060**

15 **Non-Treaty Columbia River Commercial Mainstem Fall Salmon Fishery**

16 Adopted September 12, 2020: effective September 12, 2020 through December 31, 2020
17 This rule authorizes a late fall non-Treaty commercial gillnet fishery in Zones 4 and 5 of
18 the lower Columbia River. Modifications are consistent with action taken September 10,
19 2020 by the Departments of Fish and Wildlife for the States of Oregon and Washington at
20 a meeting of the Columbia River Compact.
21

22 **3. 635-418-0000, 0010, 0020**

23 **Establishes regional dry maintenance time periods for removal of sediment in dry
24 traditionally maintained channels**

25 Adopted: September 18, 2020 – Effective Dates: September 18, 2020 through March 16,
26 2021

27 HB2437 (2019) directed the Department to establish regional dry maintenance time
28 periods for removal of sediment in dry traditionally maintained channels for agricultural
29 drainage. This temporary rule defines the dry regional maintenance time period for
30 removal of sediment in watersheds across the state.
31

32 **4. 635-067-0030**

33 **Extend the 2020 bighorn sheep hunting season for West Deschutes River No. 1**

34 Adopted: September 18, 2020 – Effective Dates: September 18, 2020 through October 2,
35 2020

36 The first season for Bighorn Sheep Controlled Hunting in the West Deschutes River hunt
37 area (543C1) is from September 12 – 20, 2020. The hunt area is currently compromised
38 due to extremely hazardous air quality index conditions stemming from active wildfires
39 throughout other areas in Oregon. This amendment to extend the hunt season through
40 October 2, 2020 is necessary to allow additional opportunity for the hunters possessing
41 valid, once in a lifetime, bighorn sheep tags, to hunt after air quality improves.
42

43 **5. 635-023-0130**

44 **2020 Recreational Salmon Fisheries Allowed**

45 Adopted September 18, 2020: effective September 19, 2020 through December 31, 2020
46 This amended rule modifies recreational salmon fisheries from Buoy 10 upstream to the
47 Highway 395 Bridge. From Saturday, September 19 through Thursday, December 31,

1 retention of Chinook and coho salmon is allowed. All coho retained downstream of the
2 Hood River Bridge must be hatchery fish. All steelhead must be released through October
3 31 downstream of The Dalles Dam and through December 31 from The Dalles Dam
4 upstream to OR/WA border, upstream of McNary Dam. The daily adult bag limit is two
5 salmon (coho and Chinook only) of which only one can be a Chinook. Revisions are
6 consistent with action taken September 17, 2020 by the Departments of Fish and Wildlife
7 for the States of Oregon and Washington.

8
9 **6. 635-041-0075**

10 **Set Treaty Indian Fall Commercial Gillnet Fishery**

11 Adopted September 18, 2020: effective September 18, 2020 through December 31, 2020
12 These amended rules extend fall Treaty commercial gillnet fishing periods in the Columbia
13 River mainstem. Modifications are consistent with action taken September 16, 2020 by the
14 Departments of Fish & Wildlife for the States of Oregon and Washington in cooperation
15 with the Columbia River Treaty Tribes at a meeting of the Columbia River Compact.

16
17 **7. 635-043-0175, 635-066-0010, 635-067-0004**

18 **Amend animal parts check-in requirements for hunter harvested bear/cougar, &**
19 **Roadkill Salvage Permit animals**

20 Adopted: September 21, 2020 – Effective Dates: September 21, 2020 through March 19,
21 2021

22
23 Due to continued Department office closures in response to the COVID-19 Emergency
24 and the expected increase of harvested animals with the fall hunting seasons, Temporary
25 Rules are needed to continue compliance with CDC guidelines for social distancing and
26 Governor Kate Brown’s Emergency Declaration and directives designed to reduce the
27 spread of COVID-19 by reducing social contact.

28
29 **8. 635-039-0085**

30 **Add Two Open Days for Columbia River Subarea Recreational Halibut Fisheries**

31 Adopted September 22, 2020: effective September 22, 2020 through October 25, 2020
32 This amended rule will open the recreational halibut fisheries in the Columbia River
33 Subarea (Leadbetter Point, WA to Cape Falcon, OR) all-depth season on Monday,
34 September 28, 2020 and Tuesday,
35 September 29, 2020.

36
37 **9. 635-042-0032, 635-042-0060**

38 **Set Columbia River Commercial Mainstem Fall Salmon Fisheries**

39 Adopted September 24, 2020: effective September 24, 2020 through December 31, 2020
40 This rule authorizes late fall non-Treaty commercial tangle net fisheries in the lower
41 Columbia River, including 11 tangle net fishing periods in Zones 1-3. Sturgeon may not be
42 retained. Modifications are consistent with action taken September 23, 2020 by the
43 Departments of Fish and Wildlife for the States of Oregon and Washington at a meeting of
44 the Columbia River Compact.

1 **635-023-0095**

2 **2020 Recreational Sturgeon Fisheries Allowed**

3 Adopted September 24, 2020: effective September 26, 2020 through October 3, 2020

4 This amended rule allows recreational retention of white sturgeon on the mainstem lower
5 Columbia River for 3-days from the Wauna power lines upstream to Bonneville Dam.

6 Revisions are consistent with action taken September 23, 2020 by the Departments of
7 Fish and Wildlife for the States of Oregon and Washington.

8
9 **10.635-041-0075**

10 **Set Treaty Indian Fall Commercial Gillnet Fishery**

11 Adopted September 25, 2020: effective September 28, 2020 through December 31, 2020

12 These amended rules extend fall Treaty commercial gillnet fishing periods in the Columbia
13 River mainstem. Modifications are consistent with action taken September 24, 2020 by the
14 Departments of Fish & Wildlife for the States of Oregon and Washington in cooperation
15 with the Columbia River Treaty Tribes at a meeting of the Columbia River Compact.

16
17 **11.635-019-0090**

18 **Open Grande Ronde River Coho Salmon Fishery**

19 Adopted September 28, 2020: effective October 1, 2020 through December 31, 2020

20 These amended rules open a coho salmon fishery on a portion of the Grande Ronde River
21 from October 1 to November 30, 2020.

22
23 **12. 635-023-0130**

24 **Increase Chinook Salmon Bag Limit in Columbia River**

25 Adopted September 30, 2020: effective October 1, 2020 through December 31, 2020

26 This amended rule modifies recreational salmon fisheries from Buoy 10 upstream to the
27 Highway 395 Bridge. From Thursday, October 1 through Thursday, December 31,
28 retention of Chinook and coho salmon is allowed. All coho retained downstream of the
29 Hood River Bridge must be hatchery fish. All steelhead must be released through October
30 31 downstream of The Dalles Dam and through December 31 from The Dalles Dam
31 upstream to OR/WA border, upstream of McNary Dam. The daily adult bag limit is two
32 salmon (coho and Chinook only). Revisions are consistent with action taken September
33 30, 2020 by the Departments of Fish and Wildlife for the States of Oregon and
34 Washington.

35
36 **13.635-018-0090**

37 **Angling regulation modifications in the Deschutes and John Day rivers, and Eagle
38 Creek.**

39 Adopted October 1, 2020: effective October 1, 2020 through December 31, 2020

40 The modified rules 1) close steelhead retention in the lower John Day River from
41 September 1 through December 31 consistent with regulations for the adjacent section of
42 the mainstem Columbia River, and 2) reduces the daily bag limit for hatchery steelhead to
43 one fish when retention is allowed in the summer and fall for Eagle Creek, and the
44 Deschutes and John Day Rivers.

1 **14. 635-008-0080**

2 **Close Denman Wildlife Area to hunting except for Youth Upland Bird Hunt**
3 **Scheduled by**
4 **Department**

5 Adopted: September 30, 2020 – Effective Dates: October 1, 2020 through October 15,
6 2020

7 The September 19-20, 2020 scheduled Youth Upland Bird Hunt was postponed due to
8 predicted air quality issues resulting from numerous severe wildfires in western Oregon.
9 This amendment will close hunting on the Denman Wildlife Area to the general public in
10 order to allow for youth participation in a re-scheduled Youth Upland Bird Hunt at the
11 wildlife area on October 10-11, 2020. A standard component of these events for safety of
12 the participants is to not allow concurrent hunting activities to overlap the youth hunt.

13
14 **15. 635-041-0075**

15 **Set Treaty Indian Fall Commercial Gillnet Fishery**

16 Adopted October 2, 2020: effective October 5, 2020 through December 31, 2020¹

17 These amended rules extend fall Treaty commercial gillnet fishing periods in the Columbia
18 River mainstem. Modifications are consistent with action taken October 1, 2020 by the
19 Departments of Fish & Wildlife for the States of Oregon and Washington in cooperation
20 with the Columbia River Treaty Tribes at a meeting of the Columbia River Compact.

21
22 **16. 635-042-0060**

23 **Set Columbia River Commercial Mainstem Fall Salmon Fisheries**

24 Adopted October 7, 2020: effective October 7, 2020 through December 31, 2020¹

25 This rule authorizes five late fall non-Treaty commercial gillnet periods in the lower
26 Columbia River in Zones 4-5. Sturgeon may not be retained. Modifications are consistent
27 with action taken October 6, 2020 by the Departments of Fish and Wildlife for the States of
28 Oregon and Washington at a meeting of the Columbia River Compact.

29
30 ¹: *A current temporary rule for this section expired, so this rule was refiled for the*
31 *remainder of the period.*

32
33 Action:

34 Commissioner Zarnowitz moved to ratify the 17 temporary rules set forth in the today's
35 agenda. Commissioner Wolley seconded the motion, and the motion carried unanimously,
36 six (6) in favor.

37
38 Monitoring and Management of Wild Steelhead on the Oregon Coast: Status
39 Update

40 Jamie Anthony, Monitoring Coordinator

41 *This presentation is available in the meeting materials and at*

42 [https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Coastal%20Steelhead](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Coastal%20Steelhead%20Update-Oct%209%202020.pdf)
43 [%20Update-Oct%209%202020.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Coastal%20Steelhead%20Update-Oct%209%202020.pdf)

44
45 The Willamette Wildlife Mitigation Program overview

46 Kelly Reis; Willamette Fish and Wildlife Policy and Program Manager

47 Dorie Welch, BPA

1 *This presentation is available in the meeting materials and at*
2 [https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_WWMP](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_WWMP%20ODFW%20Commission%2010-9-20.pdf)
3 [%20ODFW%20Commission%2010-9-20.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_WWMP%20ODFW%20Commission%2010-9-20.pdf) ; and
4 [https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_BPA%20](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_BPA%20WWMP%20Update%20for%20Oregon%20FW%20Commission%2010-9-20.pdf)
5 [0WWMP%20Update%20for%20Oregon%20FW%20Commission%2010-9-20.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_BPA%20WWMP%20Update%20for%20Oregon%20FW%20Commission%2010-9-20.pdf)
6

7 **OTHER BUSINESS**

8 **COMMISSION ITEMS**

9 **Exhibit A: COMMISSION MINUTES**

10 Action:

11 Commissioner Wolley moved to approve the Corrected September 11, 2020
12 meeting minutes with continued authority to correct grammar and punctuation.
13 Commissioner Spelbrink seconded the motion and the motion was carried six (6) in favor.
14
15

16 **Exhibit B: AMENDMENTS TO WILDLIFE CONTROL OPERATOR RULES**

17 The Commission approved amendments to the Wildlife Control Operator (WCO) rules
18 adding wild turkey as an allowed species under the WCO permit.

19 Staff: Rick Boatner, Invasive Species/Wildlife Integrity Coordinator; and
20 Mikal Cline, Upland Game Bird Coordinator

21 *Presentation:* Rick and Mikal provided the Commission with a presentation on
22 Wildlife Control Operator background and on the proposed amendments.
23
24

25 *This presentation is located in the commission material and can be viewed at*
26 [https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/B/Exhibit%20B_Prese](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/B/Exhibit%20B_Presentation_WCO_10-9-20.pdf)
27 [ntation_WCO_10-9-20.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/B/Exhibit%20B_Presentation_WCO_10-9-20.pdf)
28

29 No Public Testimony
30 Rulemaking
31

32 Action:

33 Commissioner Hatfield-Hyde adopt staff recommendations to amend OAR Chapter
34 635, Division 435 as proposed by staff to amend actions and requirements of Wildlife
35 Control Operator permittees. Commissioner Spelbrink seconded the motion and the
36 motion was carried six (6) in favor.
37

38 Wildlife Connectivity, Existing Corridors in OR and Federal Engagement
39 Dr. Rachel Wheat, Wildlife Connectivity Coordinator
40 Michael O'Casey Theodore Roosevelt Conservation Partnership
41 Laurel Williams, the Pew Charitable Trusts

42 *This presentation is available in the meeting materials and at*
43 [https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_OCAMP](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_OCAMP%2010-9-20.pdf)
44 [%2010-9-20.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_OCAMP%2010-9-20.pdf) ; and
45 [https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_OAT%20](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_OAT%20ODFW%20Migration%20Presentation%2010-9-20.pdf)
46 [0ODFW%20Migration%20Presentation%2010-9-20.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_OAT%20ODFW%20Migration%20Presentation%2010-9-20.pdf)

1 **Exhibit C: BOWMAN DAM HYDROELECTRIC PROJECT FISH PASSAGE WAIVER**

2 The Commission denied the Ochoco Irrigation District for a fish passage waiver
3 at its proposed hydroelectric project to be located on Bowman Dam, near Prineville on
4 the Crooked River

5 Staff: Alan Ritchey, Fish Screens and Passage Program Manager

6 Dr. Anna Pakenham-Stevenson, Water Quality and Quantity Program
7 Manager

8 Presentation: Alan and Anna provided the Commission with a presentation on the
9 Opal Springs Dam and Fish Passage Facility; the Bowman Hydro Project, Federal
10 and State Permits, Fish Passage Policy, Fish Passage Triggers, Fish Passage
11 Options, and Fish Passage Waiver. The presentation also included information on
12 the current native migratory fish, Deschutes steelhead habitat, the applicant's
13 proposed mitigation actions, gravel augmentation, Ochoco Creek passage, and the
14 Deschutes Land Trust Ochoco Preserve. Staff provided a comparison of habitat
15 above Bowman Dam versus the proposed mitigation actions. Instream Flow
16 Restoration; Fish Passage Restoration; Habitat Restoration; and Conservation
17 Fund were suggested as additional mitigation measures for Bowman Dam.

18
19 *This presentation is located in the commission material and can be viewed at*
20 https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/C/Exhibit%20C_Presentation.pdf
21
22

23 Public Testimony

1.	Bruce Scanlon	
2.	Vikki Breese- Iverson, Prineville	Representative
3.	Eric Klann	
4.	Steve Uffelman	
5.	Sean Gibbs	
6.	Marty Vaughn	
7.	Ian Courter	
8.	Steve Forrester	
9.	Rod Berreth, Molalla	
10.	Jeff Wieland, Sunriver	Sunriver Anglers (SRA); Provided written testimony
11.	Mike Taylor, LA Pine	
12.	Craig Lacy, Bend	
13.	Kimberley Priestley, Portland	Waterwatch
14.	Henry Mottl, Prineville	
15.	Tod Heisler, Bend	
16.	Chris Gannon, Pineville	
17.	Bill Cunningham, Bend	
18.	Yancy Lind, Bend	
19.	Frank Porfily, Prineville	
20.	Seth Isenberg, Bend	
21.	Michael Messina, Seattle, WA	Whooshh Innovations; Provided written testimony

22.	Ben Kirsch, Portland	Deschutes River Alliance
23.	Shaun Pigott, Bend	
24.	Tim DeBoodt, Prineville	
25.	Craig Horrell, Prineville	
26.	Mark Thalacker, Prineville	
27.	Phil Fine	
28.	April Snell, Salem	
29.	Mike Britton, Prineville	
30.	David Moskowitz, Portland	The Conservation Angler
31.	Caylin Barter	
32.	Jefferson Jacobs, Bend	

1
2 Commissioner Labhart read the following statement into the record.

3 “First let me say thanks to the 279 of you who took the time to send us an email,
4 individual letter and the form letters that we received in our Commission packets and
5 those who have testified today. Most appreciated.
6

7 As we have heard Bowman Dam was not built for and is not equipped with upstream
8 or downstream fish passage facilities. The Ochoco Irrigation District (OID) hydro
9 project proposes a new facility on Bowman with a hydraulic capacity of 80 to 400
10 cfs, 1 MW turbine and a 2 MW turbine, with an estimated annual power output of
11 15,000 MWH. The Project will operate on a “run of release” strategy using water that
12 is released for irrigation, flood control, and fish and wildlife purposes. These 3
13 turbines would provide green energy to approximately 1,400 homes in the Prineville
14 area. As state Representative Vicki Breese-Iverson says in her letter to us: “This is
15 great news for renewable energy and proponents deserve a big pat on the back for
16 proposing this project.” I agree whole heartedly. I hope Prineville City Manager
17 Steve Forester is correct that they can find large load industries to pay an increased
18 green energy rate to demonstrate their commitment to clean and renewable energy.
19

20 Licensing by FERC and issuance of a hydroelectric water right by the Oregon Water
21 Resources Department are “triggers” for required fish passage under state law (ORS
22 509.585(4). As the license applicant and operator of the dam, OID has chosen to
23 apply for a fish passage waiver rather than providing fish passage at the dam. The
24 Oregon Fish and Wildlife Commission is authorized by ORS 509.585 to enter into an
25 agreement with the owner or operator of an artificial obstruction that waives the
26 statutory requirements for fish passage in specified circumstances. To enter into such
27 an agreement, the Commission must determine, after hearing from the June 2020 Fish
28 Passage Task Force, public review and comment, that the mitigation proposed by the
29 owner or operator will provide a net benefit to native migratory fish (ORS
30 509.585(7)(a), (7)(b) and OAR 635-412-0025(1), (2)). Net benefit is defined in

1 statute and rule as “an increase in the overall, in-proximity habitat quality or quantity
2 that is biologically likely to lead to an increased number of native migratory fish after
3 a development action and any subsequent mitigation measures have been completed.”
4 ORS 509.580(7); OAR 635-412-0005(33).

5 OID submitted its final fish passage waiver application to the Department on May 7,
6 2020.

7
8 As stated in the staff report OID is proposing to provide three in-proximity mitigation
9 measures:

10 1) Add approximately 500 cubic yards of gravel downstream of the dam every 3
11 years, or as needed to replenish the gravel recruitment pile;

12 2) Contribute funding to assist in implementation of an offsite fish passage project on
13 Ochoco Creek that currently does not provide fish passage. OID will provide \$90,500
14 to the project, which will cover the cost of implementation and provide additional
15 funding for passage design and project management;

16 3) Contribute funding of \$200,000 in habitat restoration at Ochoco Preserve, a 185-
17 acre property on the Crooked River near the confluences with Ochoco and McKay
18 creeks.

19
20 The waiver application also includes a proposal to install two Howell Bunger valves
21 for passing water releases that could reduce total dissolved gas (TDG) in the Crooked
22 River downstream of Bowman Dam. So, let me first clarify this requirement and our
23 role in it. The Department is not able to include this measure in its benefit analysis
24 because the Oregon Department of Environmental Quality (ODEQ) has stated that
25 the Project must reduce TDG levels in waters below Bowman Dam in order to meet
26 the water quality standard (110% TDG) for ODEQ 401 Water Quality Certification
27 for the Project. OAR 635-412-0040(3) provides that “Mitigation shall not include any
28 activity that is a requirement or condition of any other agreement, law, permit, or
29 authorization except if it is also for fish passage mitigation of the same action at the
30 artificial obstruction for a different level of government.”

31
32 The Department’s analysis suggests that OID’s proposed mitigation would provide a
33 benefit to approximately 3.95 miles of stream habitat below Bowman dam for
34 redband trout, steelhead, and spring Chinook salmon. If fish passage was able to be
35 placed above Bowman dam it would provide fish passage to approximately 464 miles
36 of accessible habitat (some excellent, some good and some poor) for redband trout,
37 63 miles of accessible habitat for steelhead (some excellent, some good and some
38 poor), and 57 of accessible habitat miles for spring-run Chinook salmon (some
39 excellent, some good and some poor). Again, OID proposes to mitigate 3.95 miles of
40 habitat below the dam.

1
2 What bothers me the most with OID's in-proximity mitigation proposal is that it
3 doesn't even come close to passing the red face test for Net Benefit mitigation
4 measures. The Fish Passage Task Force also said OID did not satisfy even reasonable
5 mitigation measures as a "Net Benefit" as required in Statute.

6
7 One person who testified this afternoon stated in his testimony: Why is ODF&W
8 making it so hard to find a solution to this good project? Another said
9 communications with OID could be severely improved. In my opinion the
10 Department and the Fish Passage Task Force went out of its way to work with OID to
11 find a reasonable compromise that both parties could live with. Let me elaborate on
12 this statement. I'm not going to list all the meetings (I asked staff to provide me a list)
13 where a compromise could have been negotiated but suffice to say between the
14 March 14, 2017 kick off meeting with OID and today there were 43 meetings,
15 follow-ups, conference calls, letters and other forms of communication between OID
16 and/or their contractor and ODF&W to try and find an acceptable net benefit solution
17 that both parties could live with. Even the Director of ODF&W met with OID on
18 Dec. 23, 2019 to try and find a compromise that was satisfactory to both parties. That
19 failed. After the FPT denied OID's proposed fish passage waiver options, one of the
20 FPT members reached out to OID and proposed some other options for possible
21 discussion. OID did not accept this offer to meet to discuss other possible options. I
22 even asked staff to reach out to OID on July 12, 2020 following the June 26th Fish
23 Passage Task Force meeting (which I listened into virtually) where the FPT denied
24 the request to see if OID would be willing to meet with me and ODF&W staff to see
25 if we could find a compromise that both sides could live with. Staff informed me that
26 this offer was also declined by OID. Crook County Commissioner Barney said in his
27 testimony today that we stand ready to find a solution to move forward. Based upon
28 what was tried to date to find an acceptable solution up to this point I find that hard to
29 accept. NOAA's Columbia River Branch Chief Dale Bambrick in his June 22, 2020
30 letter said "We do support further discussion between OID and ODFW to reach an
31 agreement on conservation measures." This offer was not taken by OID. A similar
32 letter was sent by Bridget Moran, Field Supervisor of the UF&W Service in June of
33 2020. Ms. Moran states "We strongly support the ODFW and OID's continued
34 efforts to reach an agreement which both parties find acceptable." Again, no
35 acceptance to try and work things out.

36
37 So, the only conclusion I can draw from all these attempts to reach a satisfactory
38 compromise is that maybe OID has another agenda. I believe OID believes that the
39 Commission would likely turn them down as the recommendation from the FPT was
40 7 to 2 to deny their waiver request, the staff recommendation is to deny and the

1 Statute we must follow is quite clear that this request will not pass muster even in the
2 most generous terms. I hope I'm wrong but I'm speculating OID's plan is to check
3 the box that the Commission turned them down and maybe go to the Legislature in
4 the 21-23 session as Chris Gannon alluded to in his testimony to secure a specific
5 waiver for their request which in my opinion could set a dangerous precedent for
6 other future mitigation proposals or they may try and get the fish passage waiver
7 statute itself changed which in my opinion is very detrimental to the fish we are
8 statutorily charged to protect, conserve, restore and provide a resource for fishers for
9 current and future generations. They also might have another motive that I'm not
10 aware of too. I wish I knew what they are ultimately hoping to achieve but my
11 request to meet with them and have an opportunity for discussion of a compromise
12 after three years of work was not accepted by OID.

13
14 Yes, the hydro power facility is something we all should be proud to support and I
15 compliment them, the County and the Crook County Citizens for this effort but at
16 what expense? It just frustrates me to no end that with numerous attempts to find
17 additional creative solutions such as in-stream flow restoration and fish passage
18 restoration options as well as a possible long-term conservation/passagage fund as Mr.
19 Barney recommended in his testimony today, we could not reach an agreement and
20 we are at this point today. It's a win lose as far as I'm concerned and not the Oregon
21 Way as some say.

22
23 So, in summary despite some positive benefits realized downstream of Bowman Dam
24 that would result from the Applicant's proposed mitigation package, when compared
25 to the net benefits of providing upstream and/or downstream passage for Native
26 Migratory Fish, I find that the proposed mitigation is deficient. Pursuant to the fish
27 passage statutes (ORS 509.580 through 509.585) and Department administrative
28 rules (OAR 635-412-0005 through 0040), I conclude and agree with the Fish Passage
29 Task Force recommendation, the staff analysis and the public input that
30 recommended denial that the measures proposed by Applicant will not provide a
31 satisfactory net benefit to native migratory fish populations and my reading of the
32 Statute that we must follow. I recommend that the fish passage waiver be denied.
33 Mark Labhart, Commissioner

34
35 Approval

36 Action:

37 Commissioner Spelbrink moved to deny OID's fish passage waiver request, finding
38 proposed mitigation does not provide a net benefit to native migratory fish species as
39 specifically described in the Department's benefit analysis. Chair Wahl seconded the
40 motion and the motion was carried five (5) in favor – Wahl, Wolley, Labhart, Spelbrink,
41 Zarnowitz; one (1) opposed – Hatfield-Hyde.
42

1 Chair Wahl adjourned the meeting at 4:37 p.m.
2

DRAFT