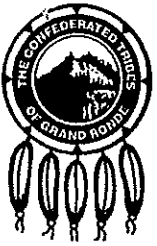


Exhibit G
GRTC - Kennedy



The Confederated Tribes of the Grand Ronde Community of Oregon

Natural Resources
Phone (503) 879-2424
1-800 422-0232
Fax (503) 879-5622

47010 SW Hebo Road
Grand Ronde, OR 97347

December 14, 2022

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

Chair Wahl and Members of the Commission,

The Confederated Tribes of Grand Ronde (CTGR) submits this letter in support of the new rules to benefit fish passage. We appreciate the effort by the Commission and the Oregon Department of Fish and Wildlife (Department) to improve habitat for multiple species, including lamprey.

CTGR is a federally recognized Tribe that includes over 30 Tribes and bands from western Oregon, northern California, and southwest Washington. Grand Ronde's tribal homelands, sometimes called ceded lands, extends from the Columbia River south to incorporate the Willamette Valley and all the way to the California border.

Fish and wildlife are a critical part of our culture. CTGR is dedicated to protecting and restoring habitat throughout our homelands. This includes restoration projects owned or managed by Grand Ronde and advocating to state and federal agencies for better policies.

There are thousands of impediments to fish passage—big and small—in the Willamette Valley. We encourage the Department to take all possible actions to improve fish passage and habitat for native fish, including salmon, steelhead, and lamprey.

We provide the following comments on the proposed rules:

Fish passage triggers

CTGR supports the Department's changes to definitions to clarify activities that trigger the requirement to address fish passage. In particular, we support the Department's inclusion of cumulative repairs or upgrades over the course of multiple years. In addition, we support the 30% thresholds to trigger fish passage review. Barrier owners should not be able to avoid rule compliance by making changes over time.

Road crossings

CTGR also supports the Department's proposal to increase design standards for road crossings to require spanning the active channel width times 1.2 plus 2 feet. The current standard of only the stream's active channel width is not satisfactory for storm events and flooding.

Lamprey

Pacific lamprey have always been an important subsistence resource for the Tribe. Pre-reservation, many tribes would travel to different streams and waterfalls to harvest lamprey for both food and medicinal purposes. Today, harvesting lamprey is still practiced by the Grand Ronde. Willamette Falls was, and still is, a significant place for tribal people to harvest lamprey. Lamprey are anadromous and depend on fish passage to migrate

Umpqua • Molalla • Rogue River • Kalapuya • Chasta

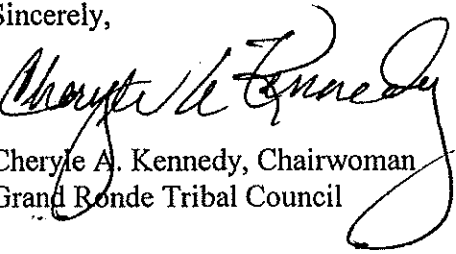
through obstructions, such as roads and dams. Lamprey, however, require different passage design than salmon. CTGR supports the Department's proposal of lamprey-specific design criteria to ensure that surfaces and corners are constructed to allow safe lamprey passage.

Protests

CTGR supports previous draft language, which has been removed, to allow "any person or tribal representative" to protest a passage determination. The Department has deleted this change so the current proposal only allows an owner or operator to protest. We believe that our Tribe, as well as the public, should have the right to protest passage determinations. We request that you reinstate the deleted protest language.

We appreciate the opportunity to comment on the Department's rule changes. Please reach out to Kelly Dirksen, Fish and Wildlife Program Manager, at Kelly.Dirksen@grandronde.org if you have any questions.

Sincerely,



Cheryl A. Kennedy, Chairwoman
Grand Ronde Tribal Council

Exhibit 5
Dominic Carollo

From: COMMISSION ODFW * ODFW
To: WRIGHT Amanda L * ODFW
Subject: Fwd: Fish Passage rulemaking
Date: Friday, December 16, 2022 9:55:29 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Please print.

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Dominic Carollo <dcarollo@carollolegal.com>
Sent: Friday, December 16, 2022 8:40:59 AM
To: Ryan Beckley <RBeckley@terrafirmafs.com>; CLEMENTS Shaun * ODFW <Shaun.CLEMENTS@odfw.oregon.gov>
Cc: rspelbrink@yahoo.com <rspelbrink@yahoo.com>; Kevin Davis <kqjd1@gmail.com>; SMead Consulting <smeadconsulting@aol.com>; Mick Baranko <srbaranko@gmail.com>; Brian Meunier <bmeunier@dowl.com>; Marriott Anika E <anika.e.marriott@doj.state.or.us>; COMMISSION ODFW * ODFW <ODFW.COMMISSION@odfw.oregon.gov>
Subject: RE: Fish Passage rulemaking

Mr. Clements:

As the District's attorney, I request that Mr. Beckley's email be added to the rulemaking record, as well as the following additional comments. When I spoke to Mr. Beckley prior to submitting the comments, he was very sure about what you had told him about the application of the proposed rules to the District's project and this was an issue that was of utmost significance to the District prior to Mr. Beckley's meeting with you. It also informed the measured approach the District took in their comments on the proposed rules.

It is important that the Department and Commission be aware that the District's current repair plan project has been financed and planned and pursued in heavy reliance on the existing fish passage rules. The financing for the District's project included a \$3 million dollar bond that was passed by district members. In reliance on the existing rules, making significant changes to, or replacement of, the fish ladder, was not part of the planning and budgeting for proposing the bond measure. Under these circumstances, and those explained by Mr. Beckley, seeking to make these rules apply retroactively to the District's project, submitted well ahead of the potential passage of these

rules, would be patently unreasonable and otherwise contrary to law. *See, e.g., Gooderham v. Adult & Fam. Servs. Div. of State of Or.*, 64 Or. App. 104, 108, 667 P.2d 551, 554 (1983). All of the factors recognized in *Gooderham* weigh heavily against retroactive application.

The Department and Commission should pull these proposed rules from today's agenda so that the Department can add revisions that clarify that the proposed rules will not apply to projects submitted to ODFW prior to the rule's effective date.

Sincerely,

DOMINIC M. CAROLLO

CAROLLO LAW GROUP LLC

PO Box 2456

Roseburg, OR 97470

PH: 541-957-5900

FAX: 541-957-5923

dcarollo@carollolegal.com

From: Ryan Beckley <RBeckley@terrafirmafs.com>

Sent: Friday, December 16, 2022 8:26 AM

To: CLEMENTS Shaun * ODFW <Shaun.CLEMENTS@odfw.oregon.gov>

Cc: rspelbrink@yahoo.com; Kevin Davis <kqjd1@gmail.com>; SMead Consulting <smeadconsulting@aol.com>; Mick Baranko <srbaranko@gmail.com>; Brian Meunier <bmeunier@dowl.com>; Dominic Carollo <dcarollo@carollolegal.com>

Subject: RE: Fish Passage rulemaking

Good morning,

I appreciate the clarification, although I will admit your response to my very direct question on the phone seemed unambiguous. You stated that the proposed rules were in no way directed at the Winchester Dam project and that you did not feel there would be any issue with delay or impacts to the project.

With 8-10 working days before 1/1/23 the District finds ourselves entirely at the mercy of a government agency's staff to execute their duties expeditiously..... After our meeting Wednesday it was clear that ODFW staff intend to be abundantly thorough, providing more pages of notes than we had pages of submissions. Some of those notes and inquiries seemed somewhat absurd, such as

requesting a design for a temporary fish ladder to be installed during construction to accommodate fish migration that 60+ years of your own records clearly indicate DO NOT EXIST during the timeline that ODFW has directed the repairs take place.


On a related topic, during a conversation this morning with Bob Spelbrink, he relayed that you had commented about "issues" with the fish ladder, specifically exposed rebar and the false attractant flow. If you are under the impression that there is ANY exposed rebar in, near or even in the vicinity of the fish ladder, then your staff is blatantly misleading you and I find their behavior criminally negligent considering the factors the District is currently facing. I have email, text and photographic records that clearly show that any identified metal/rebar or utility anchors that your staff has ever identified to me was removed within days of notification, and that was over THREE YEARS AGO..... Fabian Carr, Tim Walters, Greg Hutchko, Alan Ritchey and others are absolutely aware of this.


As for the false attractant flow, I would assume that you are aware of the incredibly effective mitigation measures that were also installed three years ago, within weeks of Tim Walters meeting me on site and identifying the issue. I would also assume that you are aware that one of the main reasons for the planned repair project is to permanently address the design flaw that has led to the false attractant flow. But if not, you now are informed.


If your staff is misleading you, then you need new staff. If you are misleading commissioners to manipulate an outcome, then you are committing a criminal act. I would be happy to provide you with the records if you would like, as I will certainly be getting them in order after hearing that.

I take my role as WWCD Board President incredibly seriously. The homes and life savings of 156 of my neighbors are at stake, and I don't hesitate to defend that vigorously.

Ryan Beckley - Owner/President
TERRAFIRMA Foundation Systems

 13110 SW Wall St | Tigard, OR | 97223

 (541) 492-2404 (d) | (866) 486-7196

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 [Online Payment](#)



From: CLEMENTS Shaun * ODFW <Shaun.CLEMENTS@odfw.oregon.gov>

Sent: Thursday, December 15, 2022 8:09 PM

To: Ryan Beckley <RBeckley@terrafirmafs.com>

Subject: Fish Passage rulemaking

This message originated from outside of TerraFirma. Please exercise caution.

Ryan, I just wanted to followup with you. In my review of the public comments for tomorrows fish passage rule making, the following footnote was included in correspondence from Dominic Carrollo, relating to Winchester Dam

4 Although the District understands from ODFW staff that, if adopted, these proposed rules would not apply to the District's current repair project, because the project has already been submitted to ODFW for consultation prior to the proposed rules taking effect, the District is concerned that future routine maintenance or repair projects could be improperly construed as "construction" and "trigger" fish passage review by ODFW.

As I noted on our call earlier this week, the proposed rules will not apply to the Districts current repair project if it is approved before the effective date of the rules (should the Commission adopt them tomorrow). The effective date is Jan 1, 2023. Feel free to call me if you want to discuss further

Cheers, Shaun

Shaun Clements
Deputy Administrator Fish Division
Oregon Department of Fish and Wildlife
Ph 503 947-6212



United States Department of the Interior

Exhibit G
Craig Rowland



FISH AND WILDLIFE SERVICE
Oregon Fish and Wildlife Office
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
Phone: (503) 231-6179 FAX: (503) 231-6195

File Name: Letter of Support – ODFW Revised Fish Passage Rules 2022
TS Number: 23-85

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

Subject: Revised Fish Passage Rules Initiative

Dec. 16, 2022

Dear Chair Wahl and fellow Commissioners,

We are writing this letter to express our support for the Oregon Department of Fish and Wildlife's (ODFW or Department) revised fish passage rules, up for consideration at the December 16, 2022, Commission meeting in Portland. We recognize the importance of these updates given it has been over 15 years since the last revision and policies have been enacted by the Department in the interim such as the Climate and Ocean Change Policy, which further support and warrant the proposed rule revisions. Revised fish passage rules are also timely given the unprecedented Federal funding available now and in coming years to implement fish passage.

We have appreciated the opportunity to provide input and comment during the public process and we acknowledge the extensive time and resources staff and the Fish Passage Task Force dedicated to these important and timely revisions. We provided comments on various aspects of the rule revisions, the majority of which were incorporated into the final document. For comments and suggestions not fully incorporated, we appreciated the follow-up and coordination with staff to better understand the Department's rationale and perspectives. We look forward to further coordination and collaboration with the Department as guidelines are developed to assist in implementing new fish passage rules.

PACIFIC REGION 1

IDAHO, OREGON*, WASHINGTON,
AMERICAN SAMOA, GUAM, HAWAII, NORTHERN MARIANA ISLANDS

*PARTIAL

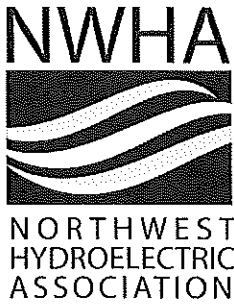
Thank you again and please let us know if you have questions regarding our support for the Department's proposed rule revisions.

Sincerely,

CHRISTOPHER
ALLEN

Digitally signed by CHRISTOPHER ALLEN
Date: 2022.12.16 08:40:34 -0800

Christopher Allen for,
Craig Rowland,
Acting State Supervisor



December 16, 2022

FILED ELECTRONICALLY

Oregon Fish and Wildlife Commissioners
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302

By E-mail: ODFW.Commission@state.or.us

RE: Oregon Fish Passage Rules Revisions Comments

Dear Commissioners,

The Northwest Hydroelectric Association (NWAHA) appreciates the opportunity to provide comments to the Oregon Fish and Wildlife Commission (Commission) on the Oregon Department of Fish and Wildlife's (Department or ODFW) proposed revisions to the Oregon Administrative Rules (OARs) governing Fish Passage.

The Northwest Hydroelectric Association (NWAHA) is a non-profit trade association that represents and advocates on behalf of the Northwest hydropower industry. NWAHA has over 130 member companies from all segments of the industry. NWAHA is dedicated to the promotion of the Northwest region's hydropower resources as a clean, efficient and cost-effective source of energy while maintaining fundamental environmental protections.

NWAHA is supportive of ways to clarify the administrative rules implementing Oregon's fish passage statutes to ensure that the rules promote clean energy without impeding fish passage or by enhancing passage, where feasible. We worked with our member companies to review the Oregon Administrative Rules (OARs) to identify revisions to rules, including definitions, to provide clarity for the regulated community and improve our ability to find opportunities for addressing changing climate conditions while simultaneously providing fish passage and clean energy solutions. NWAHA as well as individual members have provided comments to ODFW's Rules Advisory Committee (RAC) at several junctures throughout the process. While our members were not enthusiastic about the final version proposed in ODFW's August 31, 2022 final draft, most of the rule revisions were at least comprehensible and made appropriate allowances for dam safety considerations.

BRENNA VAUGHN
Executive Director

PO Box 441

Lake Oswego, OR 97034

(503) 502-7262

(866) 329-6525 Fax

www.nwhydro.org

brenna@nwhydro.org

*For a list of Directors,
please visit our website.*

than ten days before this Commission meeting, we were made aware of several last-minute changes that were inserted into the version before you. These changes were made as a result of Department of Justice (DOJ) review of the final draft. As a general comment on the process, we do not understand why DOJ was not brought into the process until after the RAC and Task Force votes on Department drafts for

advancement to the Commission. Former Task Force members within our membership have noted that DOJ representatives were involved and/or present in all Task Force meetings during this members tenure. We believe these last-minute changes do a disservice to the many volunteers and public that invested considerable effort in working with the Department on the rules changes.

Further, NWHHA feels that it is our responsibility to our members and to the public to highlight the ramifications of some these changes.

1. **Problematic definitions:** The RAC and the Department had several long conversations about how to delineate activities that--in the course of operating and maintaining a dam--would trigger fish passage requirements. We did not agree with the outcome of this discussion, but at least the draft rule revisions before the RAC and Task Force were comprehensible. The proposed final version of the draft before the Commission today defines "major construction" (635-412-0005(10)(b)(ii) to include "repairs, patches, or modifications to over 30 percent of the area of the upstream, downstream, or top face of the dam (measured above the natural ground gradeline that is used to impound water)."

Our members are subject matter experts on dams, and we are unable to interpret the components of this rule as written. Dams exist in many configurations specific to their purpose, site conditions, and landscape position, and this rule does not appear to address these differences. It is unclear what is meant by the "top face of the dam" or "the natural ground gradeline that is used to impound water." The rule as written could be interpreted to mean that repairing spalling concrete on 30% of the deck above a spillway and dam face could trigger fish passage. The repairs in this example are clearly not commensurate with requiring fish passage. In addition to the lack of clarity in the sub-paragraph, the definitions co-mingle "area" and "volume" within the same section. The more strenuous yet unclear area triggers would clearly preclude the pre-existing volumetric triggers. The Task Force and the Department developed this wording ad hoc and without proper consideration in service to the deadline of a vote at the Task Force meeting to vote on the Department's draft revision. Timeliness was achieved at the expense of clarity. This rule as written is an invitation for confusion and is a potential source of legal ambiguity that should be addressed. If the intent of the rule change is to reduce ambiguity in the existing rules, this definition should be rewritten. We understand one of our members, who is also a member of the Task Force, has provided Deputy Administrator Clements and Commissioner Labhart with proposed rule revisions that would address some of these concerns; we hope the Commission will consider and adopt those revisions today.

2. **Dam Safety Related Work:** Final versions of the proposed rules removed exemptions for work at existing dams to address dam safety concerns at existing projects. In the distributed Agenda Item Summary, the Department explained that these provisions were removed after review by Department of Justice as they were deemed incompatible with the Oregon Revised Statutes. However, no further elaboration or clarification was provided, and our members are unable to follow the logic. Our concern is that removing

these measures will limit the ability and incentive for members to address pressing dam safety concerns.

Dam safety directives from the Federal Energy Regulatory Commission or Oregon Water Resources Department are frequent, address changing conditions, and incorporate new information such as changing hydrographs and updated seismic risk assessments. Examples of dam safety actions might include a requirement to expand spillway capacity to prevent overtopping and abutment erosion, similar to events at the Oroville Dam in 2017. Removing flexibility to address these concerns without the added burden of fish passage could create additional risk to public health and safety and/or increased costs to Oregon's electrical service customers.

NWHA members continue to be confused why triggers for fish passage at dams have different thresholds than other Artificial Obstructions (AOs). Throughout the proposed rules, actions are required when 30% of a dam is improved, repaired, or modified. For all other AOs, this threshold is 50%. No rationale has been provided despite numerous requests throughout the process for such a rationale. Furthermore, at some point in the process, this trigger became cumulative, rather than per incident. This raises additional questions about how cumulative changes are measured and tracked. Are changes cumulative from the time the dam was built or since the date of the rules changes? Who is measuring cumulative changes and keeping track of changes at each dam: the Department, the owner/operator, or some other entity?

NWHA continues to support rules changes that provide clarity and a decision-framework that will help members understand their role in supporting the department's fish passage statutes *and* the state's Ocean and Climate Change Policy. Hydropower provides renewable sources of clean energy and can be compatible with fish passage requirements. We urge the Commission to address the issues identified here and look forward to working with the Department in developing an understanding of how to implement any revised rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenna Vaughn". The signature is fluid and cursive, with the first name being more prominent.

Brenna Vaughn, Executive Director

Cc: NWHA Legislative and Regulatory Affairs Committee