



# 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      |
|                                     | Casey Thomas, Captain Oregon State Police         |

## 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.

## 11 **DIRECTOR'S REPORT**

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)

### 17 Expenditure Report

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

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.

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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.

45  
46 **10.635-023-0095**

47 **2020 Recreational Sturgeon Fisheries Allowed**

1 Adopted September 24, 2020: effective September 26, 2020 through October 3, 2020  
2 This amended rule allows recreational retention of white sturgeon on the mainstem lower  
3 Columbia River for 3-days from the Wauna power lines upstream to Bonneville Dam.  
4 Revisions are consistent with action taken September 23, 2020 by the Departments of  
5 Fish and Wildlife for the States of Oregon and Washington.

6  
7 **11. 635-041-0075**

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

9 Adopted September 25, 2020: effective September 28, 2020 through December 31, 2020  
10 These amended rules extend fall Treaty commercial gillnet fishing periods in the Columbia  
11 River mainstem. Modifications are consistent with action taken September 24, 2020 by the  
12 Departments of Fish & Wildlife for the States of Oregon and Washington in cooperation  
13 with the Columbia River Treaty Tribes at a meeting of the Columbia River Compact.

14  
15 **12. 635-019-0090**

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

17 Adopted September 28, 2020: effective October 1, 2020 through December 31, 2020  
18 These amended rules open a coho salmon fishery on a portion of the Grande Ronde River  
19 from October 1 to November 30, 2020.

20  
21 **13. 635-023-0130**

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

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

33  
34 **14. 635-018-0090**

35 **Angling regulation modifications in the Deschutes and John Day rivers, and Eagle  
36 Creek.**

37 Adopted October 1, 2020: effective October 1, 2020 through December 31, 2020  
38 The modified rules 1) close steelhead retention in the lower John Day River from  
39 September 1 through December 31 consistent with regulations for the adjacent section of  
40 the mainstem Columbia River, and 2) reduces the daily bag limit for hatchery steelhead to  
41 one fish when retention is allowed in the summer and fall for Eagle Creek, and the  
42 Deschutes and John Day Rivers.

43  
44 **15. 635-008-0080**

45 **Close Denman Wildlife Area to hunting except for Youth Upland Bird Hunt  
46 Scheduled by  
47 Department**

1 Adopted: September 30, 2020 – Effective Dates: October 1, 2020 through October 15,  
2 2020  
3 The September 19-20, 2020 scheduled Youth Upland Bird Hunt was postponed due to  
4 predicted air quality issues resulting from numerous severe wildfires in western Oregon.  
5 This amendment will close hunting on the Denman Wildlife Area to the general public in  
6 order to allow for youth participation in a re-scheduled Youth Upland Bird Hunt at the  
7 wildlife area on October 10-11, 2020. A standard component of these events for safety of  
8 the participants is to not allow concurrent hunting activities to overlap the youth hunt.  
9

10 **16.635-041-0075**

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

12 Adopted October 2, 2020: effective October 5, 2020 through December 31, 2020<sup>1</sup>  
13 These amended rules extend fall Treaty commercial gillnet fishing periods in the Columbia  
14 River mainstem. Modifications are consistent with action taken October 1, 2020 by the  
15 Departments of Fish & Wildlife for the States of Oregon and Washington in cooperation  
16 with the Columbia River Treaty Tribes at a meeting of the Columbia River Compact.  
17

18 **17.635-042-0060**

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

20 Adopted October 7, 2020: effective October 7, 2020 through December 31, 2020<sup>1</sup>  
21 This rule authorizes five late fall non-Treaty commercial gillnet periods in the lower  
22 Columbia River in Zones 4-5. Sturgeon may not be retained. Modifications are consistent  
23 with action taken October 6, 2020 by the Departments of Fish and Wildlife for the States of  
24 Oregon and Washington at a meeting of the Columbia River Compact.  
25

26 <sup>1</sup> A current temporary rule for this section expired, so this rule was refiled for the  
27 remainder of the period.  
28

29 Action:

30 Commissioner Zarnowitz moved to ratify the 17 temporary rules set forth in the today's  
31 agenda. Commissioner Wolley seconded the motion, and the motion carried unanimously,  
32 six (6) in favor.  
33

34 Monitoring and Management of Wild Steelhead on the Oregon Coast: Status  
35 Update

36 Jamie Anthony, Monitoring Coordinator

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

38 [https://www.dfw.state.or.us/agency/commission/minutes/20/10\\_Oct/Coastal%20Steelhead  
39 %20Update-Oct%209%202020.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Coastal%20Steelhead%20Update-Oct%209%202020.pdf)  
40

41 The Willamette Wildlife Mitigation Program overview

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

43 Dorie Welch, BPA

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

45 [https://www.dfw.state.or.us/agency/commission/minutes/20/10\\_Oct/Presentation\\_WWMP  
46 %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

1 [https://www.dfw.state.or.us/agency/commission/minutes/20/10\\_Oct/Presentation\\_BPA%20WWMP%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)

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3  
4 **OTHER BUSINESS**

5  
6 **COMMISSION ITEMS**

7  
8 **Exhibit A: COMMISSION MINUTES**

9 Action:

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

13  
14 **Exhibit B: AMENDMENTS TO WILDLIFE CONTROL OPERATOR RULES**

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

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

19 *Presentation:* Rick and Mikal provided the Commission with a presentation on  
20 Wildlife Control Operator background and on the proposed amendments.

21  
22 *This presentation is located in the commission material and can be viewed at*  
23 [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)  
24 [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)

25  
26 No Public Testimony  
27 Rulemaking

28  
29 Action:

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

34  
35 Wildlife Connectivity, Existing Corridors in OR and Federal Engagement  
36 Dr. Rachel Wheat, Wildlife Connectivity Coordinator  
37 Michael O'Casey Theodore Roosevelt Conservation Partnership  
38 Laurel Williams, the Pew Charitable Trusts

39 *This presentation is available in the meeting materials and at*  
40 [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)  
41 [%2010-9-20.pdf](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/Presentation_OCAMP%2010-9-20.pdf) ; and  
42 [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)  
43 [ODFW%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](https://www.dfw.state.or.us/agency/commission/minutes/20/10_Oct/C/Exhibit%20C_Presentation.pdf)  
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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	

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Commissioner Labhart read the following statement into the record.  
 “First let me say thanks to the 279 of you who took the time to send us an email, individual letter and the form letters that we received in our Commission packets and those who have testified today. Most appreciated.

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

Licensing by FERC and issuance of a hydroelectric water right by the Oregon Water Resources Department are “triggers” for required fish passage under state law (ORS 509.585(4)). As the license applicant and operator of the dam, OID has chosen to apply for a fish passage waiver rather than providing fish passage at the dam. The Oregon Fish and Wildlife 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 hearing from the June 2020 Fish Passage Task Force, public review and comment, that the 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).

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

1 As stated in the staff report OID is proposing to provide three in-proximity mitigation  
2 measures:

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

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

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

11  
12 The waiver application also includes a proposal to install two Howell Bunger valves for  
13 passing water releases that could reduce total dissolved gas (TDG) in the Crooked River  
14 downstream of Bowman Dam. So, let me first clarify this requirement and our role in it.  
15 The Department is not able to include this measure in its benefit analysis because the  
16 Oregon Department of Environmental Quality (ODEQ) has stated that the Project must  
17 reduce TDG levels in waters below Bowman Dam in order to meet the water quality  
18 standard (110% TDG) for ODEQ 401 Water Quality Certification for the Project. OAR 635-  
19 412-0040(3) provides that “Mitigation shall not include any activity that is a requirement or  
20 condition of any other agreement, law, permit, or authorization except if it is also for fish  
21 passage mitigation of the same action at the artificial obstruction for a different level of  
22 government.”

23  
24 The Department’s analysis suggests that OID’s proposed mitigation would provide a  
25 benefit to approximately 3.95 miles of stream habitat below Bowman dam for redband  
26 trout, steelhead, and spring Chinook salmon. If fish passage was able to be placed above  
27 Bowman dam it would provide fish passage to approximately 464 miles of accessible  
28 habitat (some excellent, some good and some poor) for redband trout, 63 miles of  
29 accessible habitat for steelhead (some excellent, some good and some poor), and 57 of  
30 accessible habitat miles for spring-run Chinook salmon (some excellent, some good and  
31 some poor). Again, OID proposes to mitigate 3.95 miles of habitat below the dam.

32  
33 What bothers me the most with OID’s in-proximity mitigation proposal is that it doesn’t  
34 even come close to passing the red face test for Net Benefit mitigation measures. The  
35 Fish Passage Task Force also said OID did not satisfy even reasonable mitigation  
36 measures as a “Net Benefit” as required in Statute.

37  
38 One person who testified this afternoon stated in his testimony: Why is ODF&W making it  
39 so hard to find a solution to this good project? Another said communications with OID  
40 could be severely improved. In my opinion the Department and the Fish Passage Task  
41 Force went out of its way to work with OID to find a reasonable compromise that both  
42 parties could live with. Let me elaborate on this statement. I’m not going to list all the  
43 meetings (I asked staff to provide me a list) where a compromise could have been  
44 negotiated but suffice to say between the March 14, 2017 kick off meeting with OID and  
45 today there were 43 meetings, follow-ups, conference calls, letters and other forms of  
46 communication between OID and/or their contractor and ODF&W to try and find an  
47 acceptable net benefit solution that both parties could live with. Even the Director of

1 ODF&W met with OID on Dec. 23, 2019 to try and find a compromise that was satisfactory  
2 to both parties. That failed. After the FPT denied OID's proposed fish passage waiver  
3 options, one of the FPT members reached out to OID and proposed some other options  
4 for possible discussion. OID did not accept this offer to meet to discuss other possible  
5 options. I even asked staff to reach out to OID on July 12, 2020 following the June 26<sup>th</sup>  
6 Fish Passage Task Force meeting (which I listened into virtually) where the FPT denied  
7 the request to see if OID would be willing to meet with me and ODF&W staff to see if we  
8 could find a compromise that both sides could live with. Staff informed me that this offer  
9 was also declined by OID. Crook County Commissioner Barney said in his testimony today  
10 that we stand ready to find a solution to move forward. Based upon what was tried to date  
11 to find an acceptable solution up to this point I find that hard to accept. NOAA's Columbia  
12 River Branch Chief Dale Bambrick in his June 22, 2020 letter said "We do support further  
13 discussion between OID and ODFW to reach an agreement on conservation measures."  
14 This offer was not taken by OID. A similar letter was sent by Bridget Moran, Field  
15 Supervisor of the UF&W Service in June of 2020. Ms. Moran states "We strongly support  
16 the ODFW and OID's continued efforts to reach an agreement which both parties find  
17 acceptable." Again, no acceptance to try and work things out.

18  
19 So, the only conclusion I can draw from all these attempts to reach a satisfactory  
20 compromise is that maybe OID has another agenda. I believe OID believes that the  
21 Commission would likely turn them down as the recommendation from the FPT was 7 to 2  
22 to deny their waiver request, the staff recommendation is to deny and the Statute we must  
23 follow is quite clear that this request will not pass muster even in the most generous terms.  
24 I hope I'm wrong but I'm speculating OID's plan is to check the box that the Commission  
25 turned them down and maybe go to the Legislature in the 21-23 session as Chris Gannon  
26 alluded to in his testimony to secure a specific waiver for their request which in my opinion  
27 could set a dangerous precedent for other future mitigation proposals or they may try and  
28 get the fish passage waiver statute itself changed which in my opinion is very detrimental  
29 to the fish we are statutorily charged to protect, conserve, restore and provide a resource  
30 for fishers for current and future generations. They also might have another motive that I'm  
31 not aware of too. I wish I knew what they are ultimately hoping to achieve but my request  
32 to meet with them and have an opportunity for discussion of a compromise after three  
33 years of work was not accepted by OID.

34  
35 Yes, the hydro power facility is something we all should be proud to support and I  
36 compliment them, the County and the Crook County Citizens for this effort but at what  
37 expense? It just frustrates me to no end that with numerous attempts to find additional  
38 creative solutions such as in-stream flow restoration and fish passage restoration options  
39 as well as a possible long-term conservation/passagage fund as Mr. Barney recommended  
40 in his testimony today, we could not reach an agreement and we are at this point today.  
41 It's a win lose as far as I'm concerned and not the Oregon Way as some say.

42  
43 So, in summary despite some positive benefits realized downstream of Bowman Dam that  
44 would result from the Applicant's proposed mitigation package, when compared to the net  
45 benefits of providing upstream and/or downstream passage for Native Migratory Fish, I  
46 find that the proposed mitigation is deficient. Pursuant to the fish passage statutes (ORS  
47 509.580 through 509.585) and Department administrative rules (OAR 635-412-0005

1 through 0040), I conclude and agree with the Fish Passage Task Force recommendation,  
2 the staff analysis and the public input that recommended denial that the measures  
3 proposed by Applicant will not provide a satisfactory net benefit to native migratory fish  
4 populations and my reading of the Statute that we must follow. I recommend that the fish  
5 passage waiver be denied.”

6  
7 Approval

8 Action:

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

14  
15 Chair Wahl adjourned the meeting at 4:37 p.m.  
16

DRAFT