Joint Review of the Fish Passage Restoration Subaccount

Report to the Oregon Legislature as required by Section 3, Chapter 674, Oregon Laws 2013

September 26, 2018

A joint report of the
Oregon Water Resources Department and Oregon Department of Fish and Wildlife

OREGON
WATER RESOURCES DEPARTMENT

OREGON
Fish & Wildlife

THIS PAGE INTENTIONALLY BLANK

Contents

I. Executive Summary

Background: ORS 543.760 and 543.765 provide for an expedited licensing process for new hydroelectric projects constructed on existing municipal, irrigation or other water delivery systems that already have certificated water rights. Certain requirements must be met in order to use Oregon's expedited water right application process to add new hydroelectric projects to existing infrastructure. Prior to 2013, in order to obtain approval under the expedited process, the holder had to construct, operate and maintain all fish screens, by-pass devices and fish passages as required by the Oregon Department of Fish and Wildlife (ODFW).

In 2013, the Oregon Legislature passed Senate Bill 837 (Chapter 674, Oregon Laws 2013), providing additional flexibility in addressing the fish passage requirements by establishing new provisions for in-conduit hydroelectric projects generating less than 15 megawatts. Under the new law, persons wishing to install in-conduit hydroelectric power using an existing water right could meet fish passage requirements by: (1) providing fish passage in accordance with an agreement with ODFW; (2) obtaining a waiver or exemption under ORS 509.585; or (3) paying annual fees into the Fish Passage Restoration Subaccount (restoration subaccount).

In regards to option 3, the Legislation also required the Oregon Water Resources Department and ODFW to commence a joint review in late July of 2018 and submit a report on the structure of the annual fees and the function of the Subaccount to a legislative committee on natural resources by October 1, 2018. The review and report requirements are outlined in Section 3, Chapter 674, Oregon Laws 2013.

During the past five years, one project has elected to pay the fee instead of providing fish passage. The project has paid an annual fee of $100, resulting in approximately $600 in the restoration subaccount today. No monies have been expended from the restoration subaccount.

Development of Report and Public Comments: Pursuant to the law, the Departments began their review of the program in late July 2018 and created a draft report to share with interested parties. The Department received three comments on the report and the program, which are included in the full report. In brief, one comment suggested repeal of the program, another comment suggested evaluation of the continued necessity of the program, and the final comment supported the program but stated that it should be expanded to include payment of fees in lieu of new fish screens.

Findings: As a result of only one project participating, the Departments are unable to make extensive findings or recommendations. Generally, small projects, such as the current project opting to pay the fee, are unlikely to result in significant revenues for the restoration subaccount; however, this appears to be consistent with the intent and structure of the legislation. Significant revenues were anticipated to be generated by major projects, not small projects. No major projects have opted to pay the fee for the restoration subaccount to date. Current market prices for electricity and the costs of construction appear to be the primary challenges to hydropower development at this time. As a result, until major projects are constructed and opt into the annual fee, the amount in the restoration subaccount is likely to remain small. Given the costs associated with addressing fish passage are often hundreds of thousands to millions of dollars, ODFW may choose to expend the existing funds on projects that receive funding from other sources.

Conclusion: In conclusion, the Departments have not received any information that suggests that the funding structure is discouraging conduit operators from installing these types of hydro-projects. Based on the limited information, it appears that minor (small) projects will not generate funds necessary to implement a meaningful fish passage restoration project. Increasing the fee on small projects is not recommended; however, as it would likely discourage development of those projects. Based on the estimates of what would be obtained if major projects are developed in the future and opt to pay the fee, a more meaningful level of funding may be achieved. No recommendations for changes are proposed at this time.

A copy of the full report is available online at:

- http://www.oregon.gov/owrd/wrdreports/JointReportToLeg.pdf
- https://dfw.state.or.us/fish/water/report

II. Introduction

Background

In 2007, ORS 543.760 and 543.765 were added to the hydroelectric statutes to expedite the licensing process for new hydroelectric projects constructed on existing municipal, irrigation or other water delivery systems that already have certificated water rights. Adding hydropower to this type of infrastructure inside or at the end of existing transmission conduits, such as an open canal or pipeline, is often referred to as "in-conduit hydropower." Prior to 2007, in-conduit hydroelectric projects were licensed through the regular hydropower process for new projects under ORS Chapter 543.[1]

Certain requirements must be met in order to use Oregon's expedited water right application process (ORS 543.765) to add new hydroelectric projects to existing infrastructure. In addition, the amount, timing and primary use of water diverted for the original purpose must remain unchanged, meaning that the goal is to allow water that is already being used for another purpose to generate hydropower before it goes to that end purpose – not to increase the amount of water used under an existing water right.

The Federal Energy Regulatory Commission has also adopted expedited provisions for in-conduit hydropower.

Senate Bill 837

Prior to 2013, in order to obtain approval under the expedited process, the holder had to construct, operate and maintain all fish screens, by-pass devices and fish passages as required by the Oregon Department of Fish and Wildlife (ODFW). In 2013, the Oregon Legislature passed Senate Bill 837 (Chapter 674, Oregon Laws 2013), providing additional flexibility in addressing the fish passage requirements by establishing new provisions for in-conduit hydroelectric projects generating less than 15 megawatts.

Under the new law, persons wishing to install in-conduit hydroelectric power using an existing water right could meet fish passage requirements by: (1) providing fish passage in accordance with an agreement with ODFW; (2) obtaining a waiver or exemption under ORS 509.585; or (3) paying annual fees into the Fish Passage Restoration Subaccount (Subaccount) as described below and specified in ORS 543.765(14).

Essentially, the law allows some projects that are unable to pay the upfront costs for fish passage facilities to contribute funds that could be used for fish passage restoration at other sites. It was anticipated that as more projects paid into the restoration subaccount, and as fees for projects participating in the program increased over time, that the revenues could help ODFW fund priority fish passage projects around the state.

Purpose of Report to the Legislature

Senate Bill 837 required the Oregon Water Resources Department and ODFW to conduct a joint review and report on the structure of the annual fees and the function of the Subaccount. The requirements of the review and report are outlined in Section 3, chapter 674, Oregon Laws 2013.

[1] See public comments at the end of this report related to the history of the expedited process in HB 2785 (2007) and efforts that eventually resulted in development of SB 837 (2013).

Specifically, the law requires OWRD and ODFW to begin a review after July 25, 2018 to evaluate: (1) the adequacy of the amount and structure of the annual fee in ORS 543.765(14) in achieving the dual in-conduit energy development and fish passage restoration objectives of ORS 543.765, and (2) the functionality of the restoration subaccount and expenditures made from the restoration subaccount. The departments are required to consult relevant interested parties. Any findings and recommendations are to be reported to an interim legislative committee on natural resources by October 1, 2018. This report is in fulfillment of that requirement.

Consultation with Interested Parties

On August 20, 2018, a copy of the draft Joint Report was sent to the below persons by email with a notice of the opportunity to provide comments by September 14, 2018. This list of interested persons was developed based on individuals that participated in the workgroup that preceded SB 837, persons who testified on the bill, and others that have an interest in in-conduit hydropower and fish passage.

Mary Anne Cooper	Oregon Farm Bureau
Kevin Crew	Consultant
Brett Estes	City of Astoria, City Manager
Chandra Ferrari	Trout Unlimited
Mark Landauer	Special Districts Association of Oregon
Tracy Rutten	League of Oregon Cities
April Snell	Oregon Water Resources Congress
Kimberley Priestley	WaterWatch of Oregon
Jan Lee	Northwest Hydro Association
Jed Jorgensen	Energy Trust of Oregon
Rob Kirschner	The Freshwater Trust
Jeff Stone	Oregon Association of Nurseries
Lori Grant	Oregon Environmental Council
Cathy MacDonald	The Nature Conservancy
Craig Horrell	Central Oregon Irrigation District
Mike Britton	North Unit Irrigation District
Marc Thalacker	Three Sisters Irrigation District
Kyle Petrocine	Wallowa Resources
Jim Myron	Native Fish Society
Bob Oleson	Association of Northwest Steelheaders
Margi Hoffmann and Preston Brown	Farmer's Conservation Alliance

Trout Unlimited, WaterWatch of Oregon, and Wallowa Resources Community Solutions commented on the report. Those comments are provided in full in Appendix 1 of this final report.

III. Adequacy of the Annual Fee in Achieving Dual Objectives

The Departments are required to evaluate the adequacy of the amount and structure of the annual fee established pursuant to ORS 543.765(14) in achieving the dual in-conduit energy development and fish passage restoration objectives of ORS 543.765. This section of the report first provides a summary of the structure of the fee, a review of the projects to date opting to pay the fee, and finally, a summary of the Departments' observations.

Overview of the Structure of the Annual Fee and Fish Passage Restoration Subaccount

The amendments to ORS 543.765 by Senate Bill 837 allow some in-conduit hydroelectric projects to pay fees in lieu of providing fish passage at their own diversion points. The fees are collected by the Oregon Water Resources Department (OWRD) and forwarded to ODFW for crediting to the restoration subaccount created under ORS 497.141.

Eligibility to Pay Annual Fees Instead of Providing Fish Passage

In order to be eligible to pay an annual fee instead of providing fish passage, the law provides that the following criteria must be met: (1) the hydroelectric generating equipment must be installed within or at the end of a conduit delivery system and not located in a dam; (2) the delivery system distributes water for agricultural, municipal, or industrial consumption; and (3) the water right certificate includes a requirement that annual payments are made to the restoration subaccount.

Calculation of the Fish Passage Fee

All hydroelectric projects pay an annual base hydropower fee that funds hydroelectric program staff at ODFW, Oregon Department of Environmental Quality, and OWRD. The annual base hydropower fees are based on the calculated theoretical horsepower (THP) of the project. The restoration subaccount fee is in addition to the annual base hydropower fee.

According to ORS 543.765(14), the restoration subaccount fee is calculated using the base hydropower fee. Specifically, for projects that have a base minimum fee of $100 or less, the fish passage fee is $100 per year. For projects with a base hydropower fee of more than $100, the restoration subaccount fee is calculated as follows: years 1-5 will be assessed at four times the base hydropower fee; years 6-10, eight times the base hydropower fee; and, thereafter, 15 times the base hydropower fee. If a project initially chooses the fee option, but later provides fish passage or is granted a waiver or exemption, payment of the fish passage fee will no longer be required.

Example of Fee Calculation for Small Project

For a minor hydroelectric project, producing less than 100 THP in capacity (about 75 kilowatts), the annual hydropower base fees are $50 per year. The restoration subaccount fee under ORS 543.765(14)(a)(D) would be an additional $100 per year for a project of this size. For a minor project less than 100 THP, the electricity produced would likely offset a reasonable portion of the municipal, district or water user's power needs, but not likely provide a significant monthly income to afford a major fish passage project.

Example of Fee Calculation for Larger Project

In the future, if larger in-conduit projects become economically feasible and they choose to pay the fee, the restoration subaccount would accrue at a much faster rate and could potentially provide meaningful funding for fish passage projects. For example, if one or more new projects were approved totaling 3.3 megawatts (4400 THP) and paid into the restoration subaccount, the fees would be as shown in Table 1 below. The initial annual base fee would inflate at 3 percent per year. For years one through five, the restoration subaccount fee would be four times the annual base fee. For years six through 10, the restoration subaccount fee would be eight times the annual base fee. Finally, for years 11 through 15, the restoration subaccount fee would be 15 times the annual base fee. By the 15th year, approximately $468,510 would have been paid into the restoration subaccount. The restoration subaccount fee would continue to apply for the life of the project at a rate of 15 times the annual base fee, or until the certificate holder addresses fish passage.

Table 1. Example Fee Calculation for a Major Hydroelectric Project of 4,400 Theoretical Horsepower

Year	Base hydropower fee with 3% annual increase	Restoration Subaccount Multiplier	Restoration Subaccount Fee
1	$2,640	4	$10,560
2	$2,719	4	$10,876
3	$2,800	4	$11,200
4	$2,885	4	$11,540
5	$2,971	4	$11,884
6	$3,060	8	$24,480
7	$3,152	8	$25,216
8	$3,247	8	$25,976
9	$3,344	8	$26,752
10	$3,444	8	$27,552
11	$3,548	15	$53,220
12	$3,654	15	$54,810
13	$3,763	15	$56,445
14	$3,876	15	$58,140
15	$3,993	15	$59,895
Cumulative fish passage fee paid into subaccount as of year 15 = $468,546			
Annual fee is paid for life of project or until fish passage is addressed.			

Attainment of Dual Objectives: Fish Passage and Hydropower

Economics of Project Operation and the Cost of Fish Passage

Fish passage facilities can cost as little as a few thousand dollars to millions of dollars depending on the project.

When the legislation passed in 2013, power contracts were relatively favorable for incentivizing further hydropower development. Since then, significant wind and solar power projects have been installed and have helped to create times of surplus electricity production. Therefore, current power sales agreements have shown a substantial decline in pricing, which has reduced interest in hydropower development.

The cost of fish passage and the cost of developing and then operating a hydropower project is fact specific to the project and cannot be easily generalized. Similarly, the revenues generated by the project will also differ based on the power sale agreement. These factors all affect whether a project will be developed.

As an example, the Departments are aware of a 4.3 megawatt project hydroelectric project that has historically provided annual revenues between $3 and $4.2 million. Current power sales agreements are being offered at much lower pricing, so it is unclear to the Departments what future revenues will be. The annual costs of operating the project are estimated at $1.25 million per year. A 31.2 feet tall fish ladder is currently being constructed for the project to provide fish passage, with estimated design and construction costs of $14 million.

In-conduit Projects Approved Since 2013

In 2013, the fiscal impact statement for Senate Bill 837B, projected 30 projects would be paying into the restoration subaccount within three years. It was expected that up to $75,000 would be available in the restoration subaccount by the end of 2017. These projects have not come forward and due to the current low electricity prices, more projects are not expected to come forward in the next 5 to 10 years.

Since passage of Senate Bill 837 in 2013, OWRD has received eight applications for in-conduit hydroelectric projects. Four projects were minor projects of less than 100 THP each. The largest project was about 3.3 megawatts in capacity (about $2500/yr. base fee). All of the major in-conduit projects were on irrigation district canals or municipal pipelines that already had fish passage or recent agreements to install fish passage. One minor project was on a non-fish bearing spring. One minor project was approved, but later a decision was made to not build based on the economics of the project. One project is still in the review process. One minor project was installed and pays $100/year into the restoration subaccount. With the fees paid by the one project, the current balance of the Subaccount is $600.

Observations Regarding the Dual Objectives

As discussed above, small projects are unlikely to result in significant revenues for the restoration subaccount, or implementation of fish passage projects. In contrast, based on the estimates of revenues that would be provided by a major project, the fee has the potential to provide funding to assist with fish passage restoration. As a result, until major projects are constructed that opt into paying into the restoration subaccount, the amount in the account is likely to remain small. The Departments have not received any information that suggests that the funding structure is discouraging installation of in-conduit projects.

IV. Functionality of the Fish Passage Restoration Subaccount and Expenditures Made

Structure of Fund

Moneys in the restoration subaccount are administered by ODFW and are to be used to fund fish passage restoration projects. Priority for funding is to be given to projects on the statewide inventory of artificial obstructions priority list, with an emphasis on projects that pay fees into the restoration subaccount, and projects that leverage matching dollars. The fund may not be used for culverts or state-owned structures.

Use of the Fund

During the past five years, one minor project has elected to pay into the fund instead of providing fish passage or obtaining a waiver, resulting in approximately $600 in the restoration subaccount today. No monies have been expended from the restoration subaccount to date. Given that the current balance is insufficient to pay for one fish passage project, ODFW may consider expending the existing funds in conjunction with funding from other sources.

V. Additional Topics Identified in Comments from Interested Parties

Comments from interested parties identified additional issues that the Departments believe would require much broader conversations. As a result, these topics are outlined here without recommendation by the Departments.

One commenter requested that the report make recommendations on matters that were discussed in a workgroup that was conducted prior to the passage of SB 837. The comment specifically suggests that the legislature mandate certain water efficiency standards in order for a project to utilize the expedited in-conduit hydro process. The Departments believe this suggestion goes beyond the scope of the report's focus on fish passage, but note it here for the record.

One commenter suggests that the 2013 law be repealed, and that the requirements of the 2007 law be reinstated. The comment states that the intended purpose of the law has not been realized because only one project has paid into the account, and fewer in-conduit projects have been developed. Similarly, another commenter suggests that fish passage requirements do not appear to be a major obstacle to the initiation of in-conduit projects, so it may be appropriate to evaluate the continued necessity of the (subaccount) program. The Departments note that other sections of this report do not state that the cost of fish passage is not a factor in whether an in-conduit hydropower project is developed; rather, the report states that it is one factor that may be considered in whether a project will be financially feasible. Whether fish passage costs are a significant factor in consideration of a project's development will be specific to that project. That said, interest in development of hydropower projects has declined due to low power prices, and this currently appears to be the major driver in project development. The Departments decline to make broader policy statements than what is contained in this report.

One commenter noted that the cost of downstream passage and screening requirements may also preclude potential hydroelectric projects from moving forward, and that this could be one reason why participation in the subaccount program is low. The commenter suggests that the program be modified to include downstream fish passage, such as screening. Given that only one project has paid into the subaccount under the current implementation of the program, it is unclear to the Departments to what extent broadening the program would result in projects using it for downstream passage.

VI. Conclusion

The Departments are unable to make extensive findings based on only one small project paying into the restoration subaccount to date. Approximately $600 has accumulated, and no funds have been expended. Small projects are unlikely to result in significant revenues for the restoration subaccount, or implementation of passage projects. Until major projects are constructed that opt into paying into the restoration subaccount, the amount is likely to remain small. Based on the estimates of what would be obtained if a major project is developed that opts to provide funding to the restoration subaccount, the fee has the potential to provide funding to assist with fish passage restoration. The Departments have not received any information that suggests that the funding structure of the subaccount is discouraging conduit operators from installing these types of hydro-projects. Given the limited data available to the Departments, no modifications are being recommended at this time.

Appendix 1 – Comments from Interested Parties

WATERWATCH

PROTECTING NATURAL FLOWS IN OREGON RIVERS

September 14, 2018

Mary Grainey
Water Resources Department
725 Summer St N.E., Suite "A"
Salem, OR 97301-1271

Re: Comments, Draft Review of the Fish Passage Restoration Subaccount

Dear Mary,

WaterWatch is river conservation group dedicated to promoting water policies for Oregon that provide the quality and quantity of water necessary to support fish, wildlife, recreation and other instream values. WaterWatch served on the original HB 2785 work group, as well as the SB 837 work group.

Our primary concern with the draft report is that the reporting as to the legislative background is missing key components and/or is misleading in places. Concerns include, but are not limited to:

Pg. 4: Senate Bill 837 background: The narrative in this section could erroneously lead readers to believe that SB 837 was in response to directives in the 2012 Oregon Integrated Water Resources Strategy. This is not accurate. Specifically, the Draft Report states that "[i]n 2012, Oregon's Integrated Water Resources Strategy recommended taking advantage of existing infrastructure to develop hydroelectric power (Recommended Action #4b). Read with the rest of the paragraph, the implication is that that the changes to SB 837 were somehow driven and/or responsive to the 2012 IWRS directive. This is not an accurate representation of either the history and/or the 2012 IWRS directive.

What the ISWR Action #4B actually says is "Utilize the state's expedited application process to develop hydroelectric projects at existing infrastructure." In other words, the directives of the IWRS were to use the existing process, the process which included a requirement for fish passage as required by ODFW. The 2012 IWRS should not be tied to the development of the 2013 bill in any form. If anything, the 2013 bill was in direct conflict with Recommended Action #4B, and also other IWRS directives encouraging increased fish passage (see e.g. Recommended Action 11.D).

As the WRD is aware, the genesis for SB 837 came from unsubstantiated claims that the fish passage requirements were somehow blocking countless of in-conduit hydro power projects from moving forward. It had nothing to do with the directives of the 2012 IWRS. Again, any reference/tie to the 2012 IWRS should be removed.

Along the same line, the draft report fails to set forth the legislative history of the law as it exists. Before 2007 any interest who wanted to install in-conduit hydro had to go through the state's ORS 543 process; while rigorous, it did provide an avenue for in-conduit hydro development. This should be noted in the report. In 2007, HB 2785 proposed an "expedited" path for in-conduit hydro development that allowed the water right holder to skirt the state's more stringent environmental reviews, however, in its final form the bill ensured that basic standards, such as fish passage, would adhere. To better reflect the history, the report should be clarified to note that the original bill (HB 2785, 2007) was opposed by a

number of interests. As a result a work group was convened. A compromise was eventually reached that allowed the expedited in-conduit process to move forward, but only if a number of standards/conditions were met, including, importantly, that the certificate holder was subject to fish passage requirements as required by ODFW. Then, in direct conflict with agreements made in 2007, user groups returned in 2010 to try to gut the fish passage provisions from the law (HB 2873, see Attached WW testimony). This bill was defeated. Then, in 2012 the issue again popped up (in advance of the 2013 sessoin). A workgroup was convened by the Governor's office. After many meetings, a compromise was reached. Again, the background should be made clearer as to the pre-2007 law, the 2007 deal, the 2011 attempt to undermine the deal, and the 2013 compromise.

It would also be helpful to outline some of the outstanding issues that were raised by the group, but were not addressed given timing. For instance, numerous workgroup members supported mandating efficient use of water in order to use the expedited in-conduit hydro statutes. In other words, to help ensure that in-conduit hydro projects did not end up having the unintended consequence of perpetuating inefficient uses, the suggestion was made to institute standards into the in-conduit hydro statute that would require that an applicant prove that it is meeting set efficiency standards, or through the building of the project, would meet set efficiency standards. For instance, municipalities that have, say, 10% or less leakage rate could utilize the statute. Those who did not meet this standard could not and would have to go through the regular hydro statutes. For irrigation districts, standards would also apply. This is an issue that should be noted in the report as something the legislature might consider in relation to in-conduit hydro.

Recommendations for changes: The WRD does not recommend any changes at this time. We disagree. As noted, the geneses of this bill were unsubstantiated claims that countless in-conduit hydro projects were being stymied because of the fish passage requirements of the 2007 law. This report makes clear that this simply was not the case. Under this new law that was supposed to open the door to a plethora of in-conduit hydro projects, including 30 projects within three years, and bring in substantial dollars to the fish passage restoration fund, only 8 in-conduit projects have moved forward, with all but one providing fish passage instead of offering funds. The one that opted for funds has deposited $600 into the fish passage account to date. Given the intended purpose and result of this law has not come to fruition, we suggest that the report suggest to the legislature the repeal of the 2013 law and reinstatement of the 2007 law (the original deal struck by users, conservation interests and state agencies).

Thank you for the opportunity to comment.

Sincerely,

Kimberley Priestley
Sr. Policy Analyst

WATERWATCH

PROTECTING NATURAL FLOWS IN OREGON RIVERS

HB 2873
Testimony of Kimberley Priestley
WaterWatch of Oregon
Submitted to the House Committee on Energy, Environment and Water
February 15, 2010

Co-Chair Cannon, Co-Chair Gilliam, members of the Committee, I am testifying on behalf of WaterWatch of Oregon. Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch opposes HB 2873—a bill that would gut existing fish protection measures that currently apply to in-conduit hydro projects

Oregon has understood the importance of fish passage since before statehood, and set laws and policies accordingly. Oregon law requires fish passage on all artificial obstructions in streams that are home to native migratory fish. ORS 509.585 (2). The existing statutes do allow alternatives to fish passage, but only if they provide a net benefit to fish. ORS 509.585(7)(a). Oregon law also sets legal requirements and policy objectives for fish screening. ORS 498.306. The Oregon Plan, additionally, includes a path forward for fish screening and passage.

Consistent with existing law and policy, the in-conduit hydro statutes that were adopted in 2007 (HB 2785) require fish passage, screening and bypass conditions as required by the Oregon Department of Fish and Wildlife (ODFW). ORS 543.765(5)(a).

What HB 2873 does: HB 2873 seeks to prohibit ODFW from requiring fish passage, screening or bypass devices when an in-conduit hydro project is developed on an existing structure.

HB 2873 is inconsistent with Oregon's long-standing commitment to achieving fish passage and screening across the state. HB 2873 undermines existing laws and policies. HB 2873 sets state efforts to restore fish habitat backwards, and sends the wrong message about energy development. Energy development is neither "green" nor "renewable" if it involves shortcuts that compromise existing protections for imperiled fish across the state.

The in-conduit hydro statute (HB 2785, 2007) was adopted to allow an expedited process for the development of in-conduit hydro. In conduit hydro development was already allowed under existing law (ORS Chapter 543). HB 2785 allowed for a quicker approval process---an incentive to develop this type of power---but only if key resource protections were in place. Fish passage and screening were contemplated from the outset as a minimum condition.

The changes proposed by HB 2873 are in direct conflict with agreements made in 2007 that allowed the in-conduit hydro statute (HB 2785) to move forward. WaterWatch, the Hydropower Reform Coalition and others initially opposed the bill because, among other things, there was concern that the "expedited" process would result in an end run of the existing environmental protections of ORS 543. A legislative workgroup was convened to try to come up with an agreeable path forward. Agreement was ultimately reached. Importantly, to ensure that that bill did not run afoul of existing protections, a number of sideboards were included in the bill. These sideboards were agreed upon by all members of the workgroup---including the Oregon Farm Bureau and the Oregon Water Resources Congress. The provision allowing the state to require fish passage, screening and bypass requirements was key to the bill's passage. HB 2873 undermines agreements made in good faith in 2007.

WaterWatch urges the Committee to reject HB 2873. HB 2873 undermines Oregon's laws and policies directing fish passage and screening. HB 2873 undermines key tenets of the Oregon Plan. HB 2873 undermines Oregon's resource protective laws governing hydropower development. In a nutshell, HB 2873 should be rejected as inconsistent with numerous Oregon laws and policies aimed at protecting Oregon's natural resources.

Rejection of HB 2873 will not halt in-conduit hydro development; it will simply ensure that Oregonians develop power in a manner consistent with state priorities regarding its economically important fish resources.

Contacts:

Jim Myron	Myrons@canby.com	503-819-5589
Kimberley Priestley	kjp@waterwatch.org	503-295-4039, x 3

From:	Chandra Ferrari
To:	GRAINEY Mary S * WRD
Subject:	RE: Comments Due Sept 14: Opportunity to Provide Input on Fish Passage Restoration Subaccount
Date:	Friday, September 14, 2018 3:42:08 PM
Attachments:	image004.jpg image002.jpg

Hi Mary,

Thanks for including Trout Unlimited (TU) in this comment opportunity. As you know, TU was involved in the HB 2785 workgroup efforts that produced the expedited in-conduit process and then later in the SB 837 workgroup that modified the requirements of that process. I was not personally involved in those efforts, however, so lack a little bit of context around what transpired in those discussions. Accordingly, I do not have lengthy comments on the report. The one observation/request I wanted to share was that it may be appropriate to evaluate the continued necessity of this program given that some of the key assumptions that appear to have driven the SB 837 legislation are not playing out. For instance, fish passage requirements do not appear to be a major obstacle to the initiation of in-conduit hydro projects.

Thanks again for allowing us the opportunity to review the report. Have a nice weekend!

Chandra Ferrari/ Senior Policy Advisor and Staff Attorney

cferrari@tu.org/916-214-9731

Trout Unlimited
http://www.tu.org

From: GRAINEY Mary S * WRD <Mary.S.Grainey@oregon.gov>
Sent: Monday, August 20, 2018 2:53 PM
To: HOMOLKA Ken <Ken.Homolka@state.or.us>; aprils@owrc.org; bestes@astoria.or.us; trutten@orcities.org; LANDAUER Mark <mlandauer@sdao.com>; Chandra Ferrari <Chandra.Ferrari@tu.org>; Kimberley Priestley <kjp@waterwatch.org>; 'NWHA' <jan@nwhydro.org>; Jed Jorgensen <jed.jorgensen@energytrust.org>; rob@thefreshwatertrust.org; STONE Jeff <jstone@oan.org>; lorig@oeconline.org; cmacdonald@tnc.org; chorrell@coid.org; Mike Britton <mbritton@northunitid.com>; Marc Thalacker <manager@tsidweb.org>; Maryannecooper@oregonfb.org; blackrockci@gmail.com; Kyle Petrocine <kyle@wallowaresources.org>; myrons@canby.com; Bob Oleson <boboleson@hotmail.com>; margi.hoffmann@fcasolutions.org
Cc: RANCIER Racquel R * WRD <Racquel.R.Rancier@oregon.gov>

Subject: Comments Due Sept 14: Opportunity to Provide Input on Fish Passage Restoration Subaccount

Greetings:

The Oregon Water Resources Department and Oregon Department of Fish and Wildlife are required to submit a report to the legislature by October 1, 2018 evaluating the fish passage restoration fee collected from in-conduit hydroelectric projects that do not already have fish passage installed. The fee and Fish Passage Restoration Subaccount were created in 2013 by Senate Bill 837. We are contacting you because the agencies are required to consult with interested parties before submitting the report and we believe that you may be an interested party.

The report is specifically required to evaluate: (1) the adequacy of the amount and structure of the annual fee in achieving the dual in-conduit energy development and fish passage restoration objectives of ORS 543.765, and (2) the functionality of the restoration subaccount and expenditures made from the restoration subaccount. OWRD and ODFW would appreciate any comments or insights that you can offer related to these two topics. We have attached a rough draft of the report, which may assist you in providing feedback.

Comments must be received by Friday, September 14, 2018, in order to be considered for the final report. Please send comments to Mary Grainey at Mary.s.grainey@oregon.gov.

Thank you for your time and assistance.

Sincerely,

Mary S. Grainey P.E., C.W.R.E.
Hydroelectric Program Coordinator
Oregon Water Resources Department
725 Summer St. NE Suite A
Salem, OR 97301
503-986-0833
Mary.s.grainey@oregon.gov

6025_OWRD_OREGON Logo_2017-COLOR

Memo

To: Oregon Water Resources Department
From: WRCSI
Date: September 14, 2018
RE: Fish Passage Restoration Subaccount

Dear Oregon Water Resources Department,

In 2013, the Oregon Legislature passed Senate Bill 837, which created a Fish Passage Restoration Fund for small, conduit hydropower projects to pay into when developing projects within existing municipal or irrigation infrastructure. Paying into this fund was intended to allow projects to move forward within systems where there was inadequate or antiquated fish passage structures that would require significant capital costs to rebuild and/or replace. In many cases, due to the low cost of electricity in the region and limited incentives for renewable energy, the cost of installing new fish passage structures is prohibitively expensive for many potential projects. Additionally, improving existing diversions to current fish passage criteria may have a limited benefit in some cases due to the location, stream conditions, and fish species present. The Fish Passage Restoration Fund was meant to allow projects to pay into a statewide fund that could both limit the capital costs for hydro projects to be commensurate with the value of the project and simultaneously allow wildlife managers to pool funds and prioritize the most beneficial projects across the state, expanding the scope and impact of those funds.

Wallowa Resources Community Solutions Inc (CSI) has been developing small hydro projects in Oregon for nearly 10 years, and provided commentary on both OR-837 as well as the conduit hydro legislation at the federal level. In our experience, these two pieces of legislation have been instrumental in developing opportunities for micro-hydro, benefiting farmers, municipalities, and Oregonians as a whole. In some ways however, it seems that the spirit of the Fish Passage Restoration Fund is not being realized. In particular, our recent experience in permitting a hydropower project on an existing irrigation conduit where a diversion screen, designed and installed in 2012 to serve a number of center pivots that use less water by irrigating more efficiently, is not up to fish passage criteria. In this case, the Fish Passage Fund should be applicable and the project should pay into the Fund netting significant financial contributions over the life of the project. As written, the law does not clearly differentiate between upstream and downstream passage, only fish passage as a whole, which would seem to include all components of diversion infrastructure, including fish screens, by-pass structures, and diversion structures. Unfortunately, as interpreted in the case of the project and likely others in the future, fish passage excludes fish screening, meaning that any fish screens associated with a diversion that impact downstream fish passage are required to be brought up to criteria through replacement or repair, the cost of which would preclude the project from moving forward. By eliminating the potential for a project to actually get built, benefits of the project cannot be realized, including improved fish passage statewide through fees paid into the Fish Passage Fund.

It is our understanding at CSI that this sort of impasse was exactly what the fund was meant to address. A clarification of the law to include both upstream and downstream passage would be extremely helpful in providing opportunities for projects to move forward and begin paying into the fish passage fund.

Sincerely,

Matt King, Renewable Energy Program Advisor, Wallowa Resources Community Solutions INC