

Oregon State Legislature 2023 Regular Session HB 2930  
**Issue Summary**

“It is the policy of the State of Oregon to provide for upstream and downstream passage for native migratory fish [...] and to achieve the enhancement and restoration of Oregon’s native salmonid populations [...] (ORS 509.585.1)”

To accomplish this objective, ORS 509.585.4 specifies that a person owning or operating an existing artificial obstruction must seek a determination from the Oregon Department of Fish and Wildlife (ODFW) concerning the presence of native migratory fish “prior to construction, fundamental change in permit status or abandonment.” If ODFW determines that native migratory fish are or were historically present, owners/operators must submit a proposal to ODFW for fish passage, or apply for a Fish Passage Waiver (“Waiver”) before modifications can be made to the artificial obstruction. Waivers are often necessary for small-scale hydropower retrofit projects if constructing fish passage facilities at the current artificial obstruction is economically infeasible. When seeking a Waiver, the owner/operator must propose alternatives to fish passage that “result in a benefit to fish greater than that provided by the artificial obstruction with fish passage (ORS 509.585.7b).” A Waiver can be granted if the Oregon Fish and Wildlife Commission (“Commission”) determines that the proposed alternatives to fish passage provide a “net benefit” to native migratory fish (ORS 509.585.7a).

While the statutes provide general guidance about requirements for issuance of a Waiver, applicants have encountered difficulty with the process. The most notable concern has to do with the way in which “net benefit” is determined. Oregon statute is clear that the Commission is responsible for determining whether the proposed alternatives meet the net benefits standard, but valuation of passage and the proposed alternatives is carried out by ODFW. Department staff with knowledge of the applicant’s proposal are tasked with developing the net benefits analysis document, which later becomes the basis for the Commission’s determination. This has led to a variety of approaches, including both descriptive and quantitative analyses. The lack of consistency in analysis methods propagates inconsistent outcomes, with some projects receiving waivers while other similar projects do not. A recent example of a failed Waiver application occurred at Bowman Dam on the Crooked River. This small-scale (3MW) hydropower retrofit project would have generated 15,750 megawatt hours per year and powered approximately 1,400 homes in central Oregon. However, the project was only expected to generate an average of \$300,000 in net profit annually and could not support the cost of fish passage (\$138-\$250 million). Bowman Hydropower was similar to hydropower retrofit proposals at Mason Dam and Warm Springs Dam, with the exception that both of these projects received a Waiver from the Commission in 2013. Comparison of the Bowman Dam Hydropower net benefits analysis with the analyses written for Mason and Warm Springs Dams reveals significant differences in analytical approach and conclusions.

Bowman Dam Hydropower’s recent application for a Waiver revealed another important shortcoming of Oregon’s fish passage laws. The statute is written principally to address large projects where the applicant’s proposed modification is directly related to the primary purpose of the obstruction. However, Bowman Hydropower is unique in that the project seeks to enhance the economic value of a dam that was originally constructed for irrigation storage and flood control purposes without altering its impacts on fish. In fact, installation of turbines and associated modification of the dam’s outlet is expected to provide numerous fisheries and water quality benefits as related to a critical total dissolved gas issue that currently leads to fish mortality during high flow events. Nevertheless, the current rules require that these types of projects meet the net benefits standard, regardless of whether they harm fish. In summary, we believe strict adherence to Oregon’s fish passage laws without considering legislative intent, as well as a subjective process for evaluating passage waiver applications, has led to lost opportunity to enhance Oregon’s fisheries while accommodating renewable energy development.

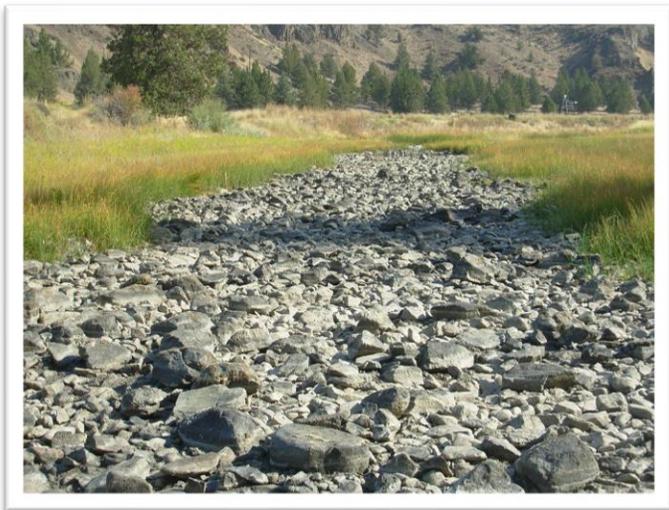


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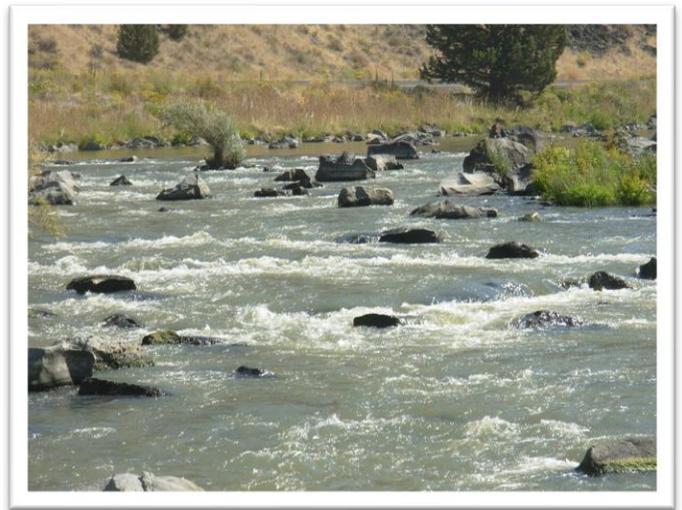
**Fish Passage at Bowman Dam Fast Facts**

- Volitional passage is extremely difficult due to high variation in Prineville Reservoir surface water elevation
- Volitional passage would cost \$138 to \$250 million
  - Total cost is \$16 million for the Bowman Dam Hydropower project
- Only two steelhead and two Chinook salmon reach Bowman Dam in an average year
- The upper Crooked River basin is characterized by low summer flows, high water temperatures, and generally poor water quality
- Fish passage at Bowman Dam is not regarded as a priority for fish restoration in the basin due to poor upstream habitat conditions for migratory fish
- Bowman Hydro will not adversely affect fish, but restoration measures were proposed to satisfy Oregon’s fish passage laws
- Proposed measures:
  - Ochoco Preserve Habitat Restoration (\$200,000)
  - Ochoco Creek Fish Passage (\$90,500)
  - Crooked River Gravel Augmentation (\$265,000-471,000)
  - Total Dissolved Gas Reduction (\$4 million)
- Project is supported by federal fish agencies
- “The Service believes that the proposed Bowman Dam hydro project will provide significant and needed measures to protect native fish species, including redband trout, steelhead, spring chinook, and bull trout.” - U.S. Fish & Wildlife Service
- “We believe that the proposed Bowman Dam Hydroelectric Project does provide needed measures to support the ongoing reintroduction of steelhead and spring-run Chinook salmon.” -National Marine Fisheries Service
- Waiver denied by Fish and Wildlife Commission on October 9<sup>th</sup>, 2020
- Bowman Hydro would have:
  - Generated > 15,000 megawatt hours/year
  - Powered 1,400 homes with clean energy
  - Funded \$5-6 million in fish habitat restoration and water quality improvements
  - No adverse effects on the environment



9/14/2007

Crooked River above Prineville Reservoir



9/14/2007

Crooked River below Prineville Reservoir



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