

7 September 2009

Commissioners Dwyer, Fleenor, Handy, Sorenson, and Stewart  
Lane County Commissioners  
Lane County Public Service Building  
125 East 8th Avenue  
Eugene, OR 97401

Commissioners,

I sent a letter to Senator Wyden and Representative Defazio on July 17, 2009 expressing my concerns regarding a proposed hydroelectric project on Dorena Dam in Cottage Grove. The concerns I have now are the same: the lack of fish passage and the project's inability to meet water quality standards.

This project fails to recognize the legal procedure regarding the issue of fish passage that is 'triggered' by, any new or modification of, a hydroelectric license. Let's consider the ODFW's Fish Passage program, (enacted by the Oregon legislature and found at ORS 509.580 to 509.590, and expanded on by an ODFW Rule found in OAR Chapter 635, Division 412.)

This program requires that: "a person owning or operating an artificial obstruction may not construct or maintain any artificial obstruction across any waters of this state that are inhabited, or historically inhabited, by native migratory fish without providing passage for native migratory fish." This program further clarifies: "A person owning or operating an artificial obstruction shall, prior to construction, fundamental change in permit status ... either submit a proposal for fish passage to the department or apply for a waiver ..." A fundamental change in permit status is known as a trigger for the requirement of fish passage and includes, according to the Fish Passage program: "a change in regulatory approval for the operation of an artificial obstruction ... including but not limited to licensing, relicensing, reauthorization or the granting of new water rights ..." ODFW has stated numerous times on the record that the proposed construction of a hydroelectric facility at Dorena Dam is a trigger for the requirement of fish passage at the dam. (Please look at pages 8 through 10 in the attachment labeled as "Reasons to support a fish ladder")

At present, the U.S. Corps of Engineers has not submitted a fish passage plan or filed a fish passage waiver with an alternative mitigation to the ODFW. Consequently, I have sent a letter to the Corps suggesting that if they choose not to follow the ORS regarding fish passage, I will file a Writ of Mandamus for their lack of compliance, (see attached letter). I have not received any response from the Corps regarding this letter.

Meanwhile, my water samples show that the amount of mercury the ODEQ estimates coming through Dorena Dam in one year actually occurs in 3.5 days during typical high flows rates. (see attachment: Mercury Data Table) This implies the ODEQ's

(303) TMDL report for mercury for the entire Willamette Basin is incorrect especially if you consider the same error was made for Cottage Grove Lake where the mercury concentration is at least 4 or 5 times greater.

An additional problem with the error in determining the amount of mercury coming from Dorena Dam is the City of Cottage Grove's drinking water. The water treatment plant is 5 miles downstream of Dorena Dam. And the Row River, which flows from Dorena Dam, is the sole source of water for the city of Cottage Grove. They do not test for mercury at the treatment plant and are not required by DHS to test for mercury. My estimations show the mercury levels are PROBABLY with the federal guidelines of safe drinking regulations for mercury and yet no one has measured for mercury during extreme high flow rates from Dorena Dam in the sixty years of its existence. The mercury issue will be a focus point when the project moves into the upcoming ODEQ permit process for the 401 Certification for Construction. At which point I may call on your assistance at that time.

At this time, I would like to request your assistance in obtaining a reply from the Army Corps of Engineers as to the status of this 'fish passage' issue. Do you have any suggestions how I might obtain a positive reply from the Army Corps of Engineers regarding this issue? I think it would be prudent to enhance the communication regarding this topic since there are several citizens of Cottage Grove who are interested in this fish passage issue.

Meanwhile, my efforts are focusing on establishing a website with information regarding this project and all my correspondence with state and federal agencies. The projected launch of the website is within the next two weeks.

Thanks for your time,

Sincerely,

John Steele  
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Cottage Grove, Or. 97424

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541-942-3415 home  
541-463-5399 work, starting Sept. 29.