

1983 DEC 21 AM 10:12

AGREEMENT

FEDERAL ENERGY
REGULATORY COMMISSION

Owyhee Dam Hydroelectric Project
Federal Energy Regulatory Commission Project No. 4354

This agreement is entered into this 24 day of October, 1983 between the State of Oregon, by and through its DEPARTMENT OF FISH AND WILDLIFE, hereinafter called the "Department", and The Gem, Ridgeview, Owyhee, Ontario-Nyssa, Advancement, Payette-Oregon Slope, Crystal, Bench and Slide Irrigation Districts of Box 1565, Nyssa, Oregon 97913, hereinafter all called the "Districts".

RECITALS

WHEREAS the Department has the statutory responsibility and authority to protect and enhance anadromous and game fish in the waters of the State of Oregon; and

WHEREAS the Districts have proposed to divert the waters of the Owyhee River, Malheur County, Oregon, for purposes of hydroelectric generation, said project more particularly described in the Districts' Application to the Federal Energy Regulatory Commission for a Hydroelectric License which is by this reference incorporated herein; and

WHEREAS the Department and Districts recognize the need to protect the fish life of the Owyhee River against possible adverse effects of the project; and

WHEREAS the parties agree that it is in their mutual best interest to informally dispose of the issues which are the subject of this agreement rather than to suffer the time and expense involved in contesting the matter in an administrative proceeding;

NOW, THEREFORE, in light of the above the parties hereto mutually agree as follows:

8312220089


It is the intention of the Districts to take all steps necessary to assure the maintenance of the cold water fishery of the Owyhee River as it now exists during operation of the proposed Owyhee Dam power plant. This trout fishery, as documented by ODFW (Exhibit E-29), extends from Owyhee Dam at RM 28.5 to approximately RM 23.0 and is present as a direct result of existing reservoir regulation, controlled by needle valves set at elevation 2,470. The Districts, at the request of ODFW, performed a preliminary analysis of the effects of the proposed Project on the existing stream temperature regime. The results of this study are presented as Appendix 3 of the Application for License. ODFW accepts these results conditioned on performance of the following plan of study:

1. State of the art temperature monitoring facilities will be Procured and installed as necessary at the Districts' expense. Two stations will be established in the reservoir at the dam, to be located near the penstock inlet and the needle valve inlet at elevation 2,570 and 2,470 respectively. Four monitoring stations will be placed in the Owyhee River at approximately RM 28.3 (Government Camp), RM 25.8 (above Coal Mine Canyon), RM 23.1 (old railroad tunnel), and at RM 20.5 (Tunnel Canyon Creek). Air temperature also will be recorded at the RM 20.5 location. Ryan "Model J" thermographs will be placed in locations inspected by and agreed upon by an ODFW representative. During the irrigation season, reservoir temperature profiles will be measured monthly except during August and September when two profiles will be measured.
2. Temperature monitoring will begin during the 1983 irrigation season. Monitoring will occur year round in the reservoir and at the power plant during projected periods of operation. Prior to Project construction and throughout the first two years of operation, monitoring in the Owyhee River will take place from March 15 through November 1. After the first two years of plant operation, river monitoring will be initiated when the reservoir level is drawn below 2,640 feet MSL. Water temperature monitoring will continue, as scheduled above, each year until such a time as:

- a. analysis of data (see item 4. below) indicates that the temperature of water withdrawn from elevation 2,570 of the reservoir during plant operation is such that the cold water fishery, as defined by ODFW to occur between the dam and RM 23.0, is essentially unchanged, and that ODFW concurs in writing with the Districts that the temperature monitoring devices may be removed. Such concurrence shall not be unreasonably withheld; or
 - b. the Districts elect to retrofit the penstock inlet to withdraw power flows at elevation 2,470, or with the written concurrence from ODFW, at some other elevation.
3. Temperature recording devices will be operated in accordance with the schedule delineated under item 2. above. Data will be collected weekly and submitted by the Districts to ODFW. Record reduction and data compilation will be performed by competent District personnel.
4. During the first three years of power plant operation, the Districts will prepare an annual report, to be submitted promptly to ODFW, presenting the accumulated temperature data and power plant operational data. Thereafter, such a report will be made every three years. This report will include a data analysis specifically addressing the effects of power plant operation on the river temperature regime which would have existed had releases been made through the needle valves. It will also address the proposed water temperature control criteria for continued plant operation. Concurrently, ODFW agrees to submit to the Districts a brief report discussing the biological effects of plant operation on the fishery habitat between the dam and RM 23.0. If study results should demonstrate there is a change in the temperature of the river water as a result of withdrawal from the reservoir at elevation 2,570 rather than elevation 2,470 which would affect the fishery's temperature environment detrimentally, then operation of the power plant will be adjusted to maintain the existing fishery.

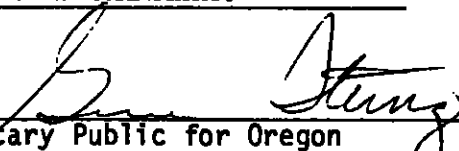
IN WITNESS WHEREOF, the parties hereto have executed this instrument in duplicate through their duly authorized officials as of the first date written above.

DISTRICTS



STATE OF OREGON
County of Malheur

The foregoing instrument was acknowledged before me this 5th day of December, 1983 by Robert Cruickshank.



Notary Public for Oregon

My Commission Expires: 2/23/84


STATE OF OREGON
DEPARTMENT OF FISH AND WILDLIFE



John R. Donaldson, PhD
Director

STATE OF OREGON
County of Multnomah

The foregoing instrument was acknowledged before me this 27th day of October, 1983 by John R. Donaldson, the Director of the Oregon Department of Fish and Wildlife.



Notary Public for Oregon

My Commission Expires: 3-14-87