

More spill over dams may increase OTEC rates

Court ruling requires more water for fish

By Jayson Jacoby
Baker City Herald

A court ruling requiring officials to pass more water through the spillways of eight federal dams to aid migrating salmon and steelhead, rather than using the water to produce electricity, could increase monthly bills for Oregon Trail Electric Cooperative customers for part of the year.

The decision April 2 by a three-judge panel of the Ninth U.S. Circuit Court of Appeals affects four dams on the lower Snake River in Washington and four on the Columbia River.

The release of water started April 3 at the Snake River dams, and started April 10 at the Columbia River dams.

The Army Corps of Engineers, which operates all the dams, already boosts water flows through the impoundments during the spring and summer to aid fish, some of which are threatened or endangered, as they migrate to the Pacific Ocean.

Conservation groups have advocated for the tactic of diverting more water over the dams because they say that's less likely to kill young salmon and steelhead than directing the water, and some of the fish, through the dams' power-producing turbines.

Last spring U.S. District Court Judge Michael Simon ruled that the Corps of Engineers must spill more water between April and mid-June.

The Corps of Engineers appealed Simon's ruling, but on April 2 the Appeals Court panel upheld the judge's decision.

The Appeals Court judges cited studies showing that more fish survive when more water is spilled over dams.

The potential effect for OTEC customers has to do

with the Bonneville Power Administration (BPA), the federal agency that sells power produced at the dams.

OTEC buys about 99.5 percent of its electricity from BPA, said Anthony Bailey, the cooperative's chief financial officer (OTEC buys a negligible amount of power from a hydroelectric plant near Cove).

In a press release April 2, BPA said the Appeals Court decision "creates a new multimillion dollar obligation for the region's ratepayers."

Agency officials have previously estimated that the increased spring water spills could cost \$40 million per year.

"And that's not just a one-time shot," Bailey said. "It could continue for several years."

Bailey said BPA likely will recoup its costs by adding a surcharge to the bills for its wholesale customers, including OTEC.

BPA has estimated that OTEC's surcharge would be about \$450,000 per year, and that the amount would be collected from May through September annually.

Bailey said BPA could start assessing the surcharge as soon as this May.

Although OTEC's board of directors will make the final decision, Bailey said it's "more than likely" that the cooperative would have to pass on the BPA surcharge to its approximately 23,000 members in Baker, Union, Grant and Harney counties.

If so, OTEC likely would follow BPA's system and add a seasonal surcharge to customers' bills from May through September, Bailey said. He estimated the surcharge at about \$2 per month for residential customers.

"BPA could handle this differently, but right now that's how we see this happening," Bailey said.

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Environmentalists push grazing lawsuit

By Mateusz Perkowski
EO Media Group

Environmentalists are urging a federal judge not to throw out a lawsuit they filed 15 years ago alleging that grazing harms the threatened bull trout in Oregon's Malheur National Forest.

Last year, a federal magistrate judge found the Oregon Natural Desert Association and Center for Biological Diversity had failed to prove that livestock grazing along two rivers in the forest is to blame for the protected species' decline.

The plaintiffs have objected to his recommended dismissal of their complaint, which was originally filed more than 15 years ago.

During oral arguments held April 5 in Portland, the environmental groups asked U.S. District Judge Michael Mosman to instead rule that grazing authorizations along the Malheur and North Fork Malheur rivers violated federal laws.

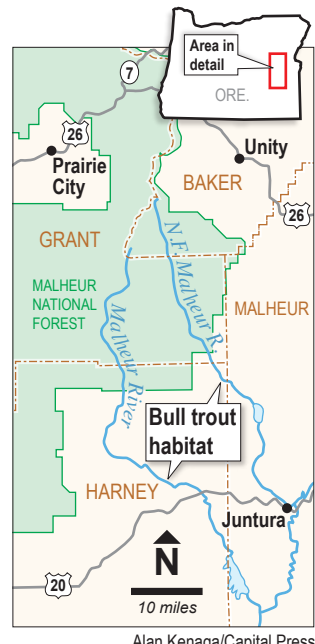
Fewer than 50 bull trout now inhabit each of the waterways, which together should support about 2,000 of the fish, said Mac Lacy, attorney for the plaintiffs.

The U.S. Forest Service has authorized livestock grazing on seven allotments covering tens of thousands of acres without analyzing the site-specific effects as required by law, Lacy said.

In recommending the lawsuit's dismissal, the magistrate



The bull trout is at the center of a 15-year-old lawsuit over grazing in Eastern Oregon.



Alan Kenaga/Capital Press

judge incorrectly found that attainment of "riparian management objectives" for the fish can be measured at the "watershed or landscape scale," the plaintiffs claimed.

The agency cannot decide

it has met these objectives based on "habitat indicators" that don't mirror reality while ignoring actual measurements that show stream conditions are worsening, Lacy said.

Grazing must be suspended if it prevents a "near natural rate of recovery" under the National Forest Management Act, while the Forest Service faces a similar obligation under the Wild and Scenic Rivers Act, according to the plaintiffs.

"It's not just a non-degradation requirement," Lacy said. "It's an enhancement requirement."

Stephen Odell, attorney for the government, argued that it's up to the Forest Service to decide how best to measure compliance with recovery strategies for the fish.

The agency has relied on the most relevant data collected over thousands of hours, he said. "It's extremely rigorous."

Riparian management objectives are "dream stream"

benchmarks that would exist under ideal conditions and are meant to measure progress, Odell said.

However, the Forest Service doesn't have to attain these standards to comply with its recovery strategies for the bull trout, he said.

Odell also revived an argument against the environmentalist lawsuit that was rejected by the magistrate judge.

The plaintiffs have challenged more than 100 agency decisions regarding grazing, which amounts to an improper attempt to change the Forest Service's entire grazing program, he said.

Such "programmatic" revisions are meant to occur during rule-making or in Congress, not in federal court.

Instead of finding faults specific to each of the actions, the plaintiffs make the same "blanket assertion" to challenge all of them, Odell said.

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yelling advice at him not to talk to police unless he got a lawyer, affirmatively indicated his willingness to re-engage with the officers and enter into a generalized discussion of the substance of the charges."

For that reason, the defendant's motion should be denied, Benson said.

Citing case law, Benson noted that Elliott had re-initiated the conversation after saying at the hospital, "OK, I'm not talking no more," and that the officers did nothing to prompt Elliott to respond against his rights.

"An important consideration is not simply what

was said when the defendant invoked, but how the defendant and the officers behaved," Benson said, adding, "Rarely during the interview did the defendant appear to be worried about any legal jeopardy he might be in, but he was instead preoccupied with his having been assaulted and his sadness over his friend having died."

In court, Baughman said the officers provoked responses from Elliott after he told them, "OK, I'm not talking no more." According to the recording, Durr responded, "OK, that's fine," and Elliott immediately continued by saying, "You're trying to hang me here." Durr then responded, "No, I'm not. I'm just trying to figure out why."

Baughman noted in court that Timko then provoked a response from Elliott by noting the extent of Elliott's facial injuries as a possible reason for the shooting. Baughman said any statements made by Elliott after he said, "OK, I'm not talking no more," should be inadmissible.

Baughman also filed a March 5 motion asking the court to admit evidence about "the alleged victim's character trait for violence and threatening behavior," and that the evidence "be admitted in the form of reputation or opinion."

Baughman said he had identified and interviewed individuals and law enforcement officials or official reports that would support this motion.

In his March 21 response, Benson argued that Baughman "failed to state with particularity the specific evidence he intends to offer" as required by law. Benson also argued that Baughman's evidence "will unfairly malign the victim and confuse the jury" and will "unnecessarily prolong the trial" by requiring "several 'trials within trials'" to prove the victim's alleged character traits.

Cramer said he had received three discs from the state with the body camera recordings but had not yet reviewed them. Attorneys from both sides agreed to meet with Deschutes County Judge Pro Tem Alta Berry in a settlement conference at 9 a.m. May 25.

Project celebrates Wild and Scenic Rivers anniversary

Blue Mountain Eagle

In 2018, America celebrates the 50th anniversary of the Wild and Scenic River System and National Trails System. Rivers and trails are the arteries that connect people and communities to public lands and waters.

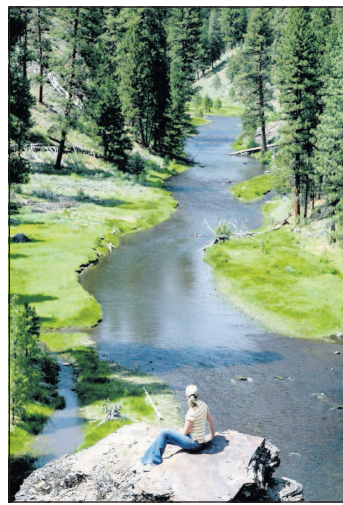
The Malheur National Forest is home to two designated wild and scenic rivers for floating, fishing or hiking activities: the Malheur and North Fork Malheur rivers. The forest

plans to honor its scenic rivers through a Wild and Scenic Malheur River Stewardship Project set to take place on July 14.

Agency personnel, local clubs and community members will be installing a new trailhead kiosk, interpretive panel, signage and a trail sign at the Malheur Ford trailhead. The celebration will also include river cleanup, some minor repairs of existing facilities and educational pieces about Wild and Scenic Rivers.

To search for other anniversary events, visit the 50th Anniversary Rivers Events Story Map online at <http://bit.ly/2sp3kMr>.

Coinciding with the anniversary, a Wild and Scenic film festival begins at 7 p.m. Saturday, April 21, at the Madden Brothers Performing Arts Center. Tickets cost \$15, and children 17 and younger are free. The festival features a collection of films about environmental concerns and celebrations of the planet.



Contributed photo

A hiker sits on a boulder overlooking the Malheur River in the Malheur National Forest.

OLD WEST
FEDERAL CREDIT UNION

ANNUAL MEETING NOTICE
This is our 60th Anniversary 1957-2017
Sunday, April 15th at 1pm
Grant County Senior Center
142 NE Dayton St. • John Day, OR 97845

This is an opportunity for you as a member and owner of Old West Federal Credit Union to review this past year's performance and learn about goals for the upcoming year.

THANK YOU!
The junior and senior classes from Spray High School, along with the Spray School District staff, would like to express our appreciation to the community of John Day and surrounding areas.
We thank the following businesses for hosting our annual job shadow week.
We couldn't do it without your willingness to help!

- John Day Fossil Beds
- John Day River Vet Center
- Chester's Thriftway
- Les Schwab Tire Center
- Blue Mountain Hospital
- Len's Drug
- Boyd Britton Welding
- Pioneer Feed & Farm Supplies
- Asher Dental Services (Fossil)

Again, thank you!
Sincerely, Spray High School Students & Staff

Pioneer Feed & Farm Supply
60561 Highway 26 | John Day
541-575-0023

- Irish Eyes garden seeds
- Foxfarm soil & fertilizer products
- Poultry supplies & supplements
- Live chicks