



United States Department of the Interior



FISH AND WILDLIFE SERVICE

La Grande Field Office

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File Number: 2023-F-0005
File Name: John Day Wastewater Treatment Plant
Ecosphere: 2023-0056391

Brian Daily
U.S. Department of Agriculture, Rural Development
1220 SW 3rd Avenue
Suite 1801
Portland, OR 97204

Re: Insufficient information to initiate formal consultation under 7(a)(2) of the Endangered Species Act for the City of John Day Wastewater System Improvements Project

Dear Mr. Daily,

Thank you for your letter requesting initiation of formal consultation (Request Letter) with the U.S. Fish and Wildlife Service (Service) on the proposed John Day Wastewater System Improvement Project. This Request Letter was received by the Service via email February 16, 2023, and included a biological assessment (BA), and Letter of Insufficient Information from the National Marine Fisheries Service (NMFS) which had been initially sent on October 13, 2022.

Upon review of the information provided in the Request Letter and attached BA, we determined the need for additional information or clarification of the provided information before the Service can proceed with the formal consultation. At issue are the effects on the federally-listed bull trout (*Salvelinus confluentus*) and bull trout critical habitat.

Page 26 of the BA states "The Oregon Pine lumber mill and associated facilities were constructed in the early 1930s and were in operation for the following 60 years until the main timber production facilities were closed in the early 1990s...The mill used the proposed waste water treatment facility site within the Action Area for log storage".

Information found within an associated hydrogeology report transmitted to the Service from NMFS on October 12th, 2022, states "Most of the environmental concerns of the old mill were located south of the John Day River. However, debris piles were identified in the log yard area, including within a few hundred feet of the proposed infiltration trench, and it is possible that

PACIFIC REGION 1

IDAHO, OREGON*, WASHINGTON,
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*PARTIAL

buried wood materials may be found in the dredge tailings. This wood debris is a potential source of nutrients or wood processing chemicals in the groundwater surrounding the planned SIG (Subsurface Infiltration Galleries)." (Page 6, City of John Day: Phase 1- Preliminary Alluvial Aquifer Hydrogeology Report, 2021). The BA describes multiple remediation efforts accomplished at the site of the old mill (outside the action area) but does not address potential contaminants within the soil of the log yard (within the action area).

A Phase II field investigation memorandum transmitted to the Service from NMFS on October 12th, 2022, reports installing three shallow wells (CwM-1, CwM-2, and CwM-3) around the proposed subsurface infiltration gallery location where water quality samples were collected and shipped to separate labs for nitrogen source-analysis and general water quality testing. The results of those tests were described as "forthcoming" in the memorandum (Phase II field investigations: Sampling and Aquifer Pump Test, 2021).

The BA and associated reports have highlighted the potential for subsurface infiltration galleries to mobilize contaminants contained within the soils which will eventually reach the John Day River through the groundwater. To do a full analysis of effects we request the following information about conditions within the action area:

- The forthcoming report referenced within the CwM-H20 Technical Memorandum: City of John Day- Site Visit Field Memo: Sampling and Aquifer Pump Test (CwM-H20, 2021. City of John Day-Water Quality and Nitrogen-Isotope Analysis)
- Any past site/soil contamination reports pertinent to the action area

Pursuant to 50 CFR 402.14(c), the formal consultation process for this project will not begin until we receive all the information requested, or a statement explaining why that information cannot be made available.

If you have any questions regarding this information request, please contact Laura Navarrete, Fish and Wildlife Biologist (laura_navarrete@fws.gov) or Marisa Meyer, Field Supervisor (marisa_meyer@fws.gov) or 541-962-8584.

Sincerely,
MARISA
MEYER

Digitally signed
by MARISA MEYER
Date: 2023.03.16
16:32:52 -07'00'

Marisa Meyer
Field Supervisor

cc: Stuart Myers- Mason, Bruce and Girard, Inc. smyers@masonbrice.com
Rebecca Viray, NMFS, Rebecca.viray@noaa.gov
Nick Green, City of John Day, green@grantcounty-or.gov



March 20, 2023

Rebecca Viray, *Fish Biologist*
Interior Columbia Basin Office - West Coast Region
NOAA Fisheries, U.S. Department of Commerce
1201 Northeast Lloyd Boulevard, Suite 1100
Portland, OR 97232

RE: RESPONSE TO NMFS QUESTIONS FOR THE CITY OF JOHN DAY BIOLOGICAL ASSESSMENT

Dear NOAA staff,

On March 9, 2023, the City of John Day was included in electronic correspondence between the National Marine Fisheries Service (NMFS), the USDA Rural Utilities Service (RUS), and several other entities regarding the Biological Assessment (BA) submitted for the City's wastewater project, a new wastewater treatment plant and groundwater infiltration gallery.

In the March 9th communication, Rebecca Viray of NMFS presented two questions for the City related to 1) the status of instream water right transfers required by the *Grant Agreement WPG-0034-21 John Day Innovation Gateway Adaptive Water Reuse-Condition 17*, which are not reliant on the wastewater project and 2) NMFS desire to review and comment of surface and groundwater quality monitoring plans required by the City's new Oregon Department of Environmental Quality (ODEQ) issued Water Pollution Control Facility (WPCF) Permit identified by File: 43569 and Permit 102481 for the wastewater project. Drafts of the required monitoring plans are due to ODEQ by May 1, 2023. It is the City's understanding that NMFS will have an opportunity to review and comment on the draft monitoring plans once submitted to ODEQ.

This letter is intended to address NMFS's questions and provide clarification. The following response was prepared by the City in coordination with CwM-H2O (CwM) and Mason, Bruce, and Girard (MBG) based on their expertise and familiarity with the City's projects.

Question 1 -NMFS asked for an update on the status of the City's proposed instream transfers of water rights on City property for streamflow conservation, which is referenced on page 15 of the BA. Firstly, the City would like to clarify that the proposed instream transfers have no connection to and are not reliant on the Wastewater Treatment Facility project in any way. The required instream transfers are related solely to the John Day Gateway Adaptive Water Reuse Grant. As part of this grant, the City is required to evaluate a set of water rights and attempt instream transfer applications with OWRD for eligible rights under Condition #17 condition of the agreement:

#17. Transfer of Certificated Water Rights Instream. Water Right Certificates C-48135, C-87480, C-36368, C-36367, C-85675, C-48000, C-25786, C-82663, and C-11725 identified in the application



are proposed for transfer instream. Water rights that are eligible for instream transfers shall be transferred instream. The Final Report shall include a copy of the final order approving the transfer and the instream certificates confirming the instream use for all water rights determined eligible and practicable by the Department. Within the Grant Budget where funds are allocated to facilitate the transfer of water right(s) instream, no funds shall be released for that Project Task until after the petition/reconsideration period following Final Order issuance has elapsed.

This instream transfer process is not associated with the Wastewater Treatment Facility, or the new Water Pollution Control Facility (WPCF) permit issued to the City by ODEQ (#103281). The City and CwM have evaluated the nine water rights listed in the grant condition above and has determined that many are not eligible for instream transfer, either due to water right type or history of use. The City intends to submit instream transfer applications for several of the water rights which may be eligible through rebuttal of the presumption of cancellation.

Question 2 - NMFS inquired about the status of water quality monitoring plans required by DEQ in relation to the City's WPCF permit. Indeed, WPCF Permit #103281 includes requirements for both a quarterly Groundwater Monitoring Plan and Surface Water Monitoring Plan and the permit defines the list of parameters that must be monitored in each case. However, the discharge under this permit will be to a subsurface infiltration gallery. There is no direct outfall of treated effluent to surface water. All treated wastewaters will be infiltrated or beneficially reused.

The surface water monitoring requirements include flow rate (measured at the USGS gage upstream of the City), dissolved oxygen, pH, temperature, *E. coli*, total nitrogen, and BOD₅ measured upstream and downstream of the infiltration site proposed. The measurements are to be collected quarterly and reported annually. Currently there are no requirements for analysis and reporting of metals. The new plant and infiltration site is located on City property above the 100-year flood plain.

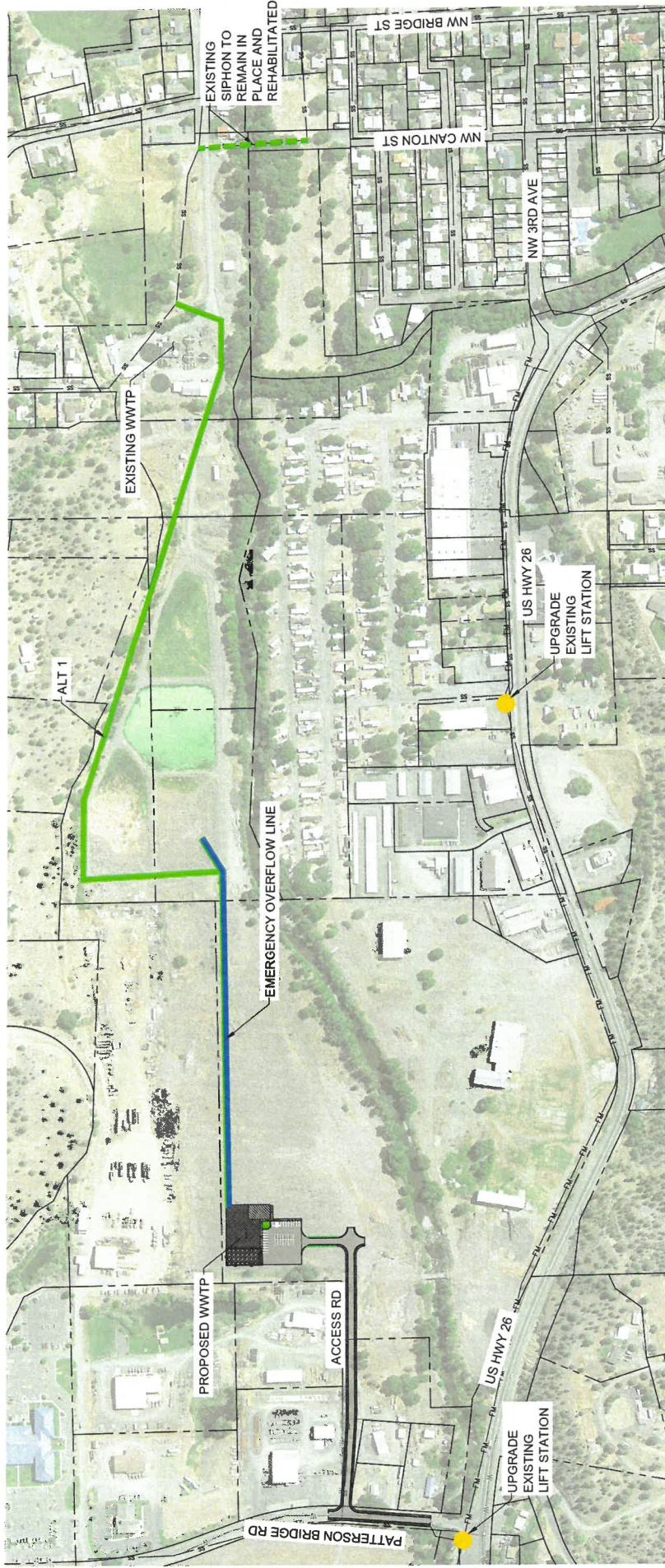
The WPCF permit includes the opportunity for surface water monitoring to be reduced or terminated after three years if data demonstrates that there are no impacts to surface water in the John Day River. The monitoring plans must be submitted to DEQ by May 1, 2023. CwM has prepared drafts of the monitoring plans for submittal to the City and review by the Council.

The City hopes that this letter provides the necessary clarification for NMFS to continue their review of the City's BA. The City and its consultants are available to schedule a discussion of these items if further clarification is required. Please let us know if there are any additional questions. Thank you for your assistance.

Sincerely,
DocuSigned by:


Richard Allen

Rick Allen, Interim City Manager



OVERVIEW
SCALE: 1"=175'

- LEGEND:
- PROPOSED GRAVITY SEWER LINE
 - PROPOSED EMERGENCY OVERFLOW LINE
 - EXISTING SIPHON TO REMAIN IN PLACE AND REHABILITATED

 FLAGLINE ENGINEERING	DESIGNED BY: VRO DRAWN BY: KJB CHECKED BY: JOP SCALE: AS NOTED	DRAWING NO. 1	
	REVISED BY: [] DATE: []	PROJECT NO. TBD DATE: FEBRUARY 2021	
WASTEWATER TREATMENT PLANT JOHN DAY ALTERNATIVE 1			
PRELIMINARY			



DISCLAIMER:
 THIS DRAWING IS INTENDED TO BE PLOTTED IN COLOR ON A 24" X 36" SHEET. ADJUST SCALES ACCORDINGLY AND VERIFY COLORS BELOW TO CORRECT.

NO.	DATE	BY	APPR.	REVISIONS

