



CITY OF JOHN DAY

mayor
Ron Lundbom

city manager
Nicholas Green

office manager
Chantal DesJardin

council
Shannon Adair
Gregg Haberly
Dave Holland
Heather Rookstool
Elliot Sky
Paul Smith

January 24, 2022

Re: John Day Wastewater Treatment Plant System Improvements - National Marine Fisheries Service (NMFS) Inquiry

Ms. Gonzales,

Per your request, I am writing in response to an NMFS inquiry about the John Day Wastewater Treatment Plant System Improvements Project, which is a City of John Day project that received CDBG funding under Agreement No. P18011.

Please note, the City has not been provided a copy of the NMFS inquiry. It is my understanding that your office has also not been provided with a copy of the inquiry. As a result, I cannot directly address their specific questions or concerns.

I am providing a copy of the project area maps showing the area of potential effect (enclosure 1). The only portion of this project that is within the Special Flood Hazard Area (SFHA) is the underground gravity sewer main line that will connect the City's existing wastewater treatment plant to the new plant. Otherwise, the new plant will be built entirely outside of the 100-year SFHA (enclosure 2) with no impacts to wetland or riparian areas (enclosure 3). As the floodplain administrator for John Day and program manager for this project, I will personally be responsible for verifying compliance with FEMA's floodplain requirements and the City's adopted floodplain regulations.

The new facility will be erected on an undeveloped site that currently has no impervious surfaces. Our engineers and city staff have verified that the project will meet all of the following requirements of the HUD-NOAA Programmatic Agreement (NMFS Stormwater Design Criteria for HUD Projects in Oregon, September 7, 2016) for NMFS:

- All post-construction runoff will be completed infiltrated or used on-site;
- Project will not impact an area of natural habitat, wetland, or riparian area;
- Facility will comply with all state and local building codes and stormwater regulations.

The City has cleared this project through the State Historic Preservation Office (SHPO [Case No. 19-1577](#)) and Department of State Lands ([WD#2020-0186](#)). The project's Environmental Assessment has been submitted to USDA Rural Development as the lead federal agency on this Wastewater System Improvements Project. A complete copy of the EA submitted to USDA is available at this link:



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<https://www.dropbox.com/s/ukzoid33kens0q2/John%20Day%20WWSI%20USDA%20Environmental%20Report%2012.7.2021.pdf?dl=0>.

We anticipate USDA Rural Development will make a determination of **No effect** regarding Endangered and Threatened Species as the project, by design, will not have any direct or indirect effect on listed species or designated critical habitat. We also expect a Finding of No Significant Impact on the project as a whole.

Prior to applying for USDA funding, the City of John Day was the designated the Responsible Entity (RE) for HUD-CDBG and we completed the appropriate notification process with all relevant state and federal agencies.

A few important things to note from these public notifications:

- We contacted NOAA-NMFS in La Grande about this project in 2019 and they told us NOAA consultation was unnecessary if the City determined "No Effect" because of the Programmatic Agreement between NOAA and HUD. Rebecca Viray with NMFS went into extensive detail here and educated us clearly on why consultation was not necessary. However, we still did consult initially. This NOAA-NMFS consultation is detailed and included in Section 6 (floodplain) and 7 (ESA) of the Environmental Assessment copy that you have. To excerpt some quotes from NOAA-NMFS correspondence:
 - August 12, 2019: *If the City of John Day is the approved acting entity for the federal nexus, (HUD) they would be the authority to provide a "No Effect" Determination. NMFS does not provide or concur with "No Effect" determinations as part of the Section 7 Interagency Endangered Species Act Consultation process.*
 - August 15, 2019: *If the City of John Day had made a No Effects Determinations there should be No potential effects to ESA-Species and there should not be any potential mechanisms for effects to listed species.*
 - August 15, 2019: *For entities responsible for making No Effect calls, it is solely their determination and responsibilities if a project has no effects to listed species. NOAA can provide recommendations to assist. However, as the last line in the attaching document you sent states there is no ESA consultation required with NOAA for No-Effects determinations. Basically, it is outside the authority of the ESA law for NOAA to agree or provide consultation on No Effects Determinations. NOAA needs no documentation sent to us*



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regarding No Effects Determinations since the Responsible Entity is solely responsible for the No-Effects determination. I hope that further clarifies your questions.

- NOAA-NMFS was noticed (twice) again as a part of the City's 8-Step floodplain process that the City undertook per HUD-CDBG standards. NOAA reached out to the City about the larger riparian/Innovation Gateway plans, which conceptually describe changes to the John Day River, but these plans are unrelated to this project. The City's EA Preparer reached out to NOAA-NMFS to directly clarify the 8-step comment and its relevance to this. This was the NOAA reply:
 - March 2020 (after receiving the 8-step Notice): *I am following up on your email back in February concerning the John Day Wastewater System Improvements. NMFS recently received the hard copy notification as well. As mentioned in previous email correspondence, **NMFS does not provide concurrences or need notification for No Effect determinations by action agencies.***

I notified Ms. Viray today that we are not requesting additional consultation from NMFS at this time on this project or for any other city project (enclosure 4).

Sincerely,

Nicholas Green,
City Manager

Enclosure(s)