



## Settlement reached in two spotted frog lawsuits

**Tumalo Irrigation Dist. upset by 'draconian' deal**

By: Barney Lerten  
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MADRAS, Ore. - Five Central Oregon irrigation districts, the U.S. Bureau of Reclamation and two environmental groups submitted to U.S. District Court Judge Ann Aiken on Friday a settlement agreement intended to resolve two lawsuits related to the Oregon spotted frog, the parties announced. But one of the irrigation district calls the deal a “draconian” lesser of two evils that will set back its water conservation efforts by 20 years.

Here's the rest of the full text of a statement issued by the Deschutes Basin Board of Control on the proposed settlement:  
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The settlement represents a science-based effort to improve Oregon spotted frog habitat in the Deschutes Basin, avoid adverse impacts to other species, and protect the rights and livelihoods of central Oregon communities, family farmers, and ranchers.



Oregon spotted frog. - Teal Waterstrat/USFWS

The settlement agreement will not go into effect unless it is approved by Judge Aiken.

WaterWatch of Oregon and the Center for Biological Diversity filed the lawsuits in late 2015 and early 2016, claiming that the operation of three reservoirs — Crane Prairie, Crescent, and Wickiup — harms the Oregon spotted frog, a species listed as “threatened” under the Endangered Species Act.

The lawsuits created significant uncertainty for farm and ranch families, and those who rely on the irrigation districts for water supplies stored in these three reservoirs.

Earlier this year, Judge Aiken denied a request by the environmental groups to order immediate changes to reservoir operations. Those changes would have resulted in abrupt and severe restrictions on reservoir operations and disrupted water supplies to thousands of families throughout the Deschutes Basin.

Judge Aiken also ordered the parties to participate in settlement discussions. Those discussions, which began on June 1, ultimately resulted in the settlement agreement submitted to the court Friday.

Under the settlement agreement, the irrigation districts would modify the operations of the reservoirs, with the goal of improving habitat for Oregon spotted frogs in and downstream from the reservoirs.

The irrigation districts said they voluntarily implemented many of these changes over the past year, and would formally commit to them under the settlement.

In addition to the already-implemented changes, the irrigation districts would ensure a minimum instream flow in the Upper Deschutes River of 100 cubic feet per second (cfs) between mid-September and the end of March—an increase compared to some years in which minimum instream flows during certain periods were closer to 20 cfs.

The Bureau of Reclamation would commit to using its best efforts to fulfill its obligations under the ESA related to the Oregon spotted frog by July 2017, including completing its consultation with the U.S. Fish and Wildlife Service regarding the potential effects of federal actions related to reservoir operations on the Oregon spotted frog.

The Bureau of Reclamation initiated the consultation process in September 2015.

Under the settlement, in exchange for the commitments by the irrigation districts and the Bureau of Reclamation, the environmental groups' lawsuits would be dismissed. And so long as the settlement is in effect, the groups would agree not to pursue the ESA claims raised in their complaints against the Bureau of Reclamation or the irrigation districts.

"The settlement agreement demonstrates that collaborative, science-based solutions can be achieved when all parties work together," said Mike Britton, president of the Deschutes Basin Board of Control, which is made up of eight central Oregon irrigation districts, including those involved in the lawsuits.

"This collaborative approach has proven successful in our region, and results in better outcomes than confrontation. The Deschutes Basin Board of Control would like to thank its local partners for their continued support and insights while the lawsuits were pending and as implementation of the settlement agreement moves forward."

Although the settlement agreement is a step in the right direction, the irrigation districts recognize that it does not permanently resolve potential concerns related to the reservoirs' impacts on the Oregon spotted frog or provide long-term liability protection to the districts.

The irrigation districts and their partners remain committed to completing a multi-species habitat conservation plan (HCP), which represents a proactive, collaborative approach to balance fish and wildlife conservation with water use in the Deschutes Basin through innovative, science-based solutions.

The HCP, once approved, will result in long-term benefits to the Oregon spotted frog, bull trout, steelhead, and other fish and wildlife species, the region's water resources, and the social and economic health of communities. The HCP will also provide ESA-related liability protection to the districts.

### About the DBBC

The Deschutes Basin Board of Control is made up of eight irrigation districts in Oregon's Deschutes Basin. The districts supply water throughout the Deschutes Basin to 8,700 patrons across 155,662 acres. The districts work in partnership with conservation groups and local, state and federal agencies to increase instream flows in rivers and creeks, while improving fisheries passage and ecologically important habitat. Since 2000, the districts have increased instream flows by nearly 80,000 acre-feet in the Deschutes River, Little Deschutes River, Ocho-co Creek, Whychus Creek, Tumalo Creek and Crescent Creek, benefitting salmon, steelhead, bull trout, Oregon spotted frog and other species.

For more information on the irrigation districts and their conservation efforts, visit [dbbcirrigation.com](http://dbbcirrigation.com).

Here's the statement released Friday by environmental groups involved in the case:

PORTLAND - The Center for Biological Diversity, WaterWatch of Oregon, the U.S. Bureau of Reclamation and several irrigation districts today reached an interim agreement to temporarily boost flows in the Upper Deschutes River to reduce harm to the Oregon spotted frog, a threatened species protected by the federal Endangered Species Act.

The deal also requires the Bureau of Reclamation and the water districts to consult with the U.S. Fish and Wildlife Service to create a long-term plan on a set timeline that will further reduce harm to the frogs.

The agreement stems from lawsuits brought by the two conservation groups arguing that management of Crane Prairie and Wickiup dams on the Upper Deschutes River is driving the struggling frogs toward extinction. The groups also argued that the Bureau of Reclamation had failed to follow the law and consult with the Fish and Wildlife Service in a timely manner to reduce the harm from its river management operations.

"This agreement is an important first step to ensuring that the Deschutes River dams don't drive the Oregon spotted frog to extinction," said Noah Greenwald, endangered species director at the Center. "This is the first of many steps to restore a natural flow regime in the Deschutes, which will benefit not only the Oregon spotted frog but the fish and people dependent on the health of the river."

The 2-inch- to 4-inch-long, black-spotted frog, now known to inhabit fewer than 100 sites, lives on the margins of both reservoirs and along the river below the dams. Large fluctuations in both the size of the reservoirs and the river's flows alternately flood and dry out the frog's habitat, in violation of the Endangered Species Act. The flow regime also damages water quality while harming fish and wildlife. One of the most visible recent examples of this harm occurred in October 2013, when a rapid flow reduction due to irrigation management killed nearly 3,000 fish and sparked outrage throughout the state.



“Our goal has always been a science-based water management plan that benefits frogs as well as fish, other wildlife and the people of Central Oregon who cherish and rely on the Upper Deschutes,” said John DeVoe, Executive Director of WaterWatch of Oregon. “The interim flow measures are a step in the right direction while parties work toward the main objective: establishing substantive flow improvements in the river. We will be holding parties to achievement of this goal under the timeline defined by the settlement.”

The frog, which was protected last year under the Endangered Species Act, was once common from British Columbia to Northern California along numerous rivers and lakes, including the Deschutes and Willamette rivers. But the frog, known for the unique clicking sound it makes, has suffered massive declines because of loss of its wetland habitats, largely caused by dam building, urban and agricultural development and livestock grazing.

“This agreement will result in timely completion of consultation with U.S. Fish and Wildlife Service and other spotted-frog experts to provide long-term protections for the frog, as well as interim changes to river flows that benefit frogs immediately, without having to resort to further litigation,” said Laurie Rule, an attorney from Advocates for the West representing the Center.

“The bottom line of this settlement is moving off of the status quo that has been harming frogs and fish,” said Janette Brimmer, the Earthjustice attorney representing WaterWatch. “This deal mandates consultation to improve Upper Deschutes River flow management by a certain date, and we fully intend to keep the parties on schedule and to monitor

future developments very closely in order to ensure that adequate protections are put in place quickly.”

The Center is represented in litigation by Laurie Rule and Elizabeth Zultoski of Advocates for the West. WaterWatch of Oregon is represented by Janette Brimmer and Anna Sewell of Earthjustice.

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.1 million members and online activists dedicated to the protection of endangered species and wild places.

For 30 years, WaterWatch of Oregon has protected and restored water to Oregon’s rivers, streams and lakes for fish, wildlife and people.

But not all involved are pleased with the resulting settlement. Here’s a full statement from the Tumalo Irrigation District:

**Tumalo Irrigation District Reluctantly Accepts Spotted Frog Settlement**

**Projected That Settlement Sets TID Water Conservation Efforts Back 20 Years**

October 28th, 2016: As far as Tumalo Irrigation District and its patrons go, recent events give new meaning to “between a rock and a hard place”. The pressure on TID and other districts to comply with environmental regulations as relate to the endangered threatened Oregon Spotted Frog has resulted in all five frog- effected Central Oregon districts reluctantly agreeing to a settlement in a suit brought against TID and the other districts by Portland-based Water Watch of Oregon (WW)

and the Center for Biological Diversity(CBD)  
a national environmental group based in Tuc-  
son, Arizona.

The settlement, draconian at best, was deemed by the Tumalo Irrigation District Board as the lesser of two evils as it avoids prolonged and cost-prohibitive legal and environmental battles. If the District fought the Federal Government and private lawsuits on the Endangered Species Act the odds are TID would lose.

TID Manager Ken Rieck speculates the settlement sets TID conservation efforts back 20 years relative to firming-up water rights, TID's ability to add instream water to Tumalo Creek, and other water resource development projects TID has become celebrated for. With the settlement requiring the release of 42% of TID's yearly usage of stored water (on average), TID will be forced to limit stored water use by a corresponding amount to its members. As Field Supervisor Robert Varco states: "Imagine being asked to live with 42% less electricity or heat in your house or gas for your car."

To meet the settlement requirements, TID, on behalf of its farmers, must turn to other resources and maximize the value of Tumalo and Crater creeks live flow to make up some of the loss. "Across the board, TID's water conservation projects placing water in-stream on Tumalo Creek will be seriously compromised," states TID Manager Ken Rieck. "Resources TID had earmarked for ongoing and planned water resource development projects which placed water instream Tumalo Creek will now need to be redirected to backfilling agricultural water within the District lost to the spotted frog."

Despite the potential effect of this decision on Tumalo's farmers, Martin Vaughn, the irrigation district's biologist, urged calm and explained that once the settlement is in effect all will have time to assess what the options are and get to work. He encouraged TID to continue to make certain the water "budget" in Crescent Creek is biologically defensible during all seasons and to work with other districts so no water is wasted.

The formation of new alliances is already emerging because of the suit with organizations such as with the Farmers Conservation Alliance and Deschutes Basin Board of Control to fund studies and help explain to the public, not just to farmers, the impact of lawsuits that take a mono-specie approach at the expense of other species, not to mention the impact on the livability and economic vitality of the region.