

145 FERC ¶ 62,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1 of Douglas County,
Washington

Project No. 2149-163

ORDER APPROVING BULL TROUT STRANDING, ENTRAPMENT, AND TAKE
STUDY PLAN PURSUANT TO LICENSE ARTICLE 402

(Issued October 29, 2013)

1. On September 23, 2013, Public Utility District No. 1 of Douglas County, Washington (licensee) filed, for Federal Energy Regulatory Commission (Commission) approval, a bull trout (*Salvelinus confluentus*) stranding, entrapment, and take study plan (plan) for the Wells Hydroelectric Project. The plan is required by Article 402 of the Commission's November 9, 2012 Order Issuing New License.¹ The Wells Hydroelectric Project is located on the Columbia River in Douglas, Okanogan, and Chelan Counties, Washington, and partially occupies federal lands administered by the U.S. Department of the Interior and U.S. Army Corps of Engineers.

LICENSE REQUIREMENTS AND BACKGROUND

2. Article 402 requires the licensee to file a bull trout monitoring plan for Commission approval that includes stranding evaluations and incident take studies as described in sections 4.4, 4.5.1, and 4.6.1 of the Aquatic Settlement Agreement's Bull Trout Management Plan.² The plan must include a record of consultation with the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), Confederated Tribes of the Colville Reservation (Colville), Confederated Tribes and Bands of the Yakama Nation (Yakama Nation), U.S. Bureau of Indian Affairs (BIA), and U.S. Bureau of Land Management (BLM). The plan is due to the Commission within one year of issuance of the project license, or November 9, 2013.

3. Section 4.4 of the Bull Trout Management Plan mandates that the licensee must identify potential entrapment or stranding areas for bull trout. In 2004 through 2008, the

¹ 141 FERC ¶ 62,104.

² See Attachment C of the May 27, 2010 filing with the Commission.

licensee employed high resolution bathymetric information, hydraulic and elevation data, and backwater curves to identify the areas of highest risk for entrapment or stranding. The licensee is required to monitor those potential entrapment or stranding areas when low reservoir levels expose the identified sites in as many as five entrapment/stranding assessments over the first five years of the November 9, 2012 license term. If no incidences of entrapment or stranding are observed during the initial five years, the licensee must continue the assessments once every five years. If bull trout entrapments and strandings exceed the authorized incidental take level, the licensee must consult with the Aquatic Settlement Working Group (ASWG)³ to address the impact. The ASWG consists of representatives from consulting agencies and tribes and assists in the implementation of the Aquatic Settlement Agreement.

4. Similarly, section 4.5.1 of the Bull Trout Management Plan mandates that, if the licensee exceeds the authorized incidental take of bull trout during implementation of other resource management plans, the licensee must consult with the ASWG to identify factors contributing to the exceedance. If the exceedance is a result of implementing the Predator Control Program, the licensee must develop a plan, in consultation with the Habitat Conservation Plan Coordinating Committee⁴ and the ASWG, to address the impact.

5. Section 4.6.1 of the Bull Trout Management Plan also addresses incidental take of bull trout. Under this requirement, the licensee must consult with the ASWG to address any observed impacts from the operations of the Wells Hatchery that cause an exceedance of the authorized incidental take of bull trout.

LICENSEE'S PROPOSED PLAN

6. The licensee's plan describes monitoring protocols aimed at detecting incidental take of bull trout as a result of other management activities. Because the project is operated in run-of-river mode, the licensee does not anticipate frequent reservoir level fluctuations that exceed one to two feet. As a result, potential entrapment/stranding areas may not be exposed for assessment annually. The licensee proposes conducting their

³ The Aquatic Settlement Working Group consists of at least one representative from each of the following agencies and organizations: FWS, Washington State Department of Ecology, WDFW, Colville Tribes, Yakama Nation, and the licensee. The BLM has elected to waive regular participation, but it receives all documents and reserves the right to participate as desired. The BIA participates intermittently as an observer, but it receives all documents and reserves the right to participated as desired.

⁴ The Habitat Conservation Plan Coordinating Committee consists of representatives from FWS, NMFS, WDFW, Colville, Yakama nation, and the licensee.

annual entrapment and stranding assessments opportunistically, rather than deliberately lowering the water levels for the purpose of conducting their assessments, for the first five years of operation under the new license.

7. The licensee, through its pre-license surveys, identified six potential entrapment or stranding areas. Under its plan, the licensee would conduct assessments of the previously-determined areas of concern annually, if possible, for five years. If there are no instances of bull trout entrapment or stranding, the assessments would be transitioned to a once every five years schedule.

8. The licensee would notify the FWS of its intention to conduct an entrapment and stranding survey within 24 hours of reservoir elevations dropping to 773 feet mean sea level or below. Each of the six areas of concern would be visually inspected or, if too deep for visual inspection, sampled using a soft nylon seine. The licensee would remove bull trout from the entrapment or stranding location, count and estimate the size and condition of each individual, and release any living bull trout. Any other entrapped or stranded fish would be recorded. The licensee would record the temperature of any pool containing fish, regardless of species.

9. During aquatic resources sampling activities required by the license, the licensee would continue to monitor for the incidental take of bull trout. If the activities contribute to exceeding the allowable level of incidental take, the licensee proposes working with the ASWG to identify the contributing factors and develop a plan to address them. The size and condition of any incidentally captured bull trout would be recorded, and the licensee would release living bull trout as quickly as possible.

10. The licensee would screen for bull trout during hatchery activities at the Wells and Methow Hatcheries, as well as at any additional facilities it may use in the future. During broodstock collection and stock assessment of Chinook salmon and steelhead trout, the licensee proposes anesthetizing, measuring, and collecting tissue samples from any live bull trout unintentionally captured. The licensee would also scan for and record any passive integrated transponder (PIT) tags. Any bull trout not containing a PIT tag would be injected with one. Bull trout would be handled and released in accords with protocols established by the FWS to minimize take.⁵

11. For all bull trout mortalities resulting from the licensee's aforementioned management activities, the licensee proposes taking tissue samples for genetic analysis. The licensee would then refrigerate and store the mortalities until it would be able to provide the fish to the FWS. If levels of incidental take are acceptable after three years of

⁵ See the FWS's June 19, 2012 Recommended Fish Exclusion, Capture, Handling, and Electroshocking Protocols and Standards.

implementation, the licensee, after consultation with the ASWG, would request that the Commission amend the plan to decrease or discontinue monitoring.

12. After each entrapment and stranding survey, the licensee proposes summarizing its findings to the ASWG and Commission via electronic communication before developing a more detailed report to be included in the licensee's incidental take report, due to the FWS by April 15 annually.⁶ The licensee also proposes including its incidental take data in its annual bull trout monitoring report, as required by the approved Bull Trout Management Plan⁷ which is filed with to the Commission by May 31 annually.

CONSULTATION

13. On July 29, 2013, the licensee provided its draft plan to the NMFS and ASWG, which includes representatives from the FWS, Colville, Yakama Nation, BIA, and BLM, for review and comment. The FWS, via electronic communication on August 28, 2013, requested clarification in multiple sections of the plan, which the licensee revised. No other comments were provided. The licensee additionally confirmed ASWG approval of the plan during a September 16, 2013 conference call.

DISCUSSIONS AND CONCLUSION

14. The plan fulfills the requirements of Article 402 to monitor and report on strandings and incidental take of bull trout during various project management activities. The licensee's plan includes a summary of potentially impactful activities and provisions for adjusting contributing factors if unacceptable levels of take are observed. The plan incorporates ongoing dialog with the ASWG and allows for adaptive management at the ASWG's request. The bull trout study would be ongoing until members of the ASWG agree that monitoring should be decreased or discontinued, and the licensee files an amendment request with the Commission.

15. The licensee's proposed bull trout stranding, entrapment, and take study plan for the Wells Hydroelectric Project should be approved.

The Director orders:

(A) Public Utility District No. 1 of Douglas County, Washington's (licensee) bull trout stranding, entrapment and take study plan, filed October 4, 2013 pursuant to Article 402 of the Wells Hydroelectric Project No. 2149, is approved.

⁶ See Appendix E of the project license.

⁷ See Order Modifying and Approving Bull Trout Management Plan Under Article 61. 111 FERC ¶ 62,069 (issued April 19, 2005).

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and the Federal Energy Regulatory Commission's regulations at 18 CFR § 385.713 (2013). The filing of a request for hearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

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and Compliance