

177 FERC ¶ 62,020
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1 of Douglas County

Project No. 2149-152

ORDER GRANTING VARIANCE FROM RADIO TELEMTRY STUDY
PURSUANT TO BULL TROUT STRANDING, ENTRAPMENT, AND TAKE STUDY
PLAN AND ARTICLE 402

(Issued October 12, 2021)

1. On June 22, 2021, Public Utility District No. 1 of Douglas County, Washington, licensee for the Wells Hydroelectric Project No. 2149, filed a request for a variance of the Bull Trout Stranding, Entrapment, and Take Study Plan (Plan)¹ for Federal Energy Regulatory Commission (Commission) approval, pursuant to Article 402 of the project license.² The project is located on the Columbia River in Chelan, Douglas, and Okanogan 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

2. Article 402 of the project license requires the licensee to implement the Plan, which includes stranding evaluations and incidental 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.³ The Plan was developed in 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, and U.S. Bureau of Land Management (BLM).

¹ Order Approving Bull Trout Stranding, Entrapment, and Take Study Plan Pursuant to License Article 402 (145 FERC ¶ 62,070), issued October 29, 2013.

² Order Issuing New License (141 FERC ¶ 62,104), issued November 9, 2012.

³ See Attachment C of the May 27, 2010 filing with the Commission.

3. Pursuant to the Plan, the Aquatic Settlement Agreement's Bull Trout Management Plan, the Section 18 Fishway Prescriptions, the terms and conditions of the FWS' 2012 Biological Opinion (BO),⁴ and the project Water Quality Certification,⁵ the licensee is required to conduct various bull trout passage and survival studies over the life of the license. The numerous studies and monitoring requirements address survivorship of the federally-threatened bull trout throughout the project area and at various life stages. In relevant part to this request, the Plan requires the licensee to conduct a Bull Trout Passage and Survival Radio Telemetry Study (Study) to assess bull trout passage and survival at the Wells Dam and Twisp River Wier in years 5, 10, and every 10 years thereafter. The year 10 implementation would occur during fall 2021.

License's Request

4. On June 22, 2021, the licensee requested that the Commission suspend the Study during fall 2021. The filing indicates that the parties of the Aquatic Settlement Agreement⁶ requested the suspension and includes a formal Statement of Agreement attesting to all parties' concurrence. The licensee states that prior years of implementing the Study as well as its other bull trout monitoring requirements have demonstrated that the project does not have a significant effect on bull trout populations.⁷

5. The Study would require surgical implantation of radio tags in bull trout, which involves significant handling of the fish and may result in incidental take. Initially, the justification for the Study was that the knowledge gained would improve bull trout management activities in the future. It was therefore reasoned that some take would ultimately benefit the species as a whole. During consultation associated with the fall 2021 Study, the FWS determined that the instances of bull trout interaction with Wells Dam and Twisp River Weir were too low to risk potential mortalities associated with the radio telemetry surgeries. Accordingly, the licensee requests a variance from the requirement for fall 2021. The licensee would continue to monitor bull trout populations via a passive integrated transponder (PIT) tag study⁸ and through other requirements of

⁴ See March 16, 2021 filing with the Commission.

⁵ See Appendix A of the project license.

⁶ Parties to the Settlement Agreement include: the licensee; FWS; Washington Department of Ecology; Washington Department of Fish and Wildlife; Colville; Yakama Nation; and BLM.

⁷ See Bull Trout Monitoring and Management Plans filed with the Commission December 24, 2008 and November 13, 2017.

⁸ PIT tags are implanted via a small needle injection. They do not require

the Plan, Aquatic Settlement Agreement, Section 18 Fishway Prescriptions, FWS' Biological Opinion, and Water Quality Certification.

Consultation

6. As stated above, the FWS requested the proposed variance during consultation regarding the fall 2021 Study. The licensee subsequently developed a Statement of Agreement in which the parties of the Aquatic Settlement Agreement approved the request on May 12, 2021. The request was also addressed at a May 12, 2021 meeting, where all agencies and tribes present reaffirmed their concurrence with the request.

7. The FWS filed additional comments with the Commission on September 17, 2021. In its filing, the FWS confirms that bull trout survival and passage efficiency has been adequate in all prior studies, and that the performance studies at the project have met the minimum requirements for all criteria related for bull trout survival and passage. The FWS states that the proposed variance would not change its effects analysis as identified in its 2012 BO, wherein the FWS concluded that the operation of the project is not likely to jeopardize the continued existence of the bull trout and will not destroy or adversely modified its designated critical habitat. The FWS indicates that it does not require any additional consultation pursuant to section 7 of the Endangered Species Act.

Discussion and Conclusion

8. The licensee's request for a variance from its Study requirements to conduct a radio telemetry study during fall 2021 would decrease the potential for take of a threatened species. The requirement was intended to increase knowledge about bull trout survival and passage; however, it appears that other related requirements and past implementation of the Study adequately supplement the knowledge, and that further knowledge would not be gained in fall 2021. The FWS requested the variance and has verified that it would have no effect to its analysis and that it would not require consultation pursuant to section 7 of the Endangered Species Act. While the FWS previously permitted the take of bull trout for Study purposes, the licensee's request would further reduce the potential for bull trout mortalities. Moreover, the NMFS' March 7, 2012 BO states that bull trout studies could result in incidental take of co-mingled, federally-endangered Chinook salmon.

9. The potential effects of the Study have already been examined and approved, and there would be no impacts to bull trout or loss of knowledge from not conducting the Study for one iteration while allowing the licensee and parties to the Settlement Agreement to determine the need to implement the Study in 10 years, based on future

anesthesia and involve significantly less handling than radio tags, subsequently resulting in less risk to the fish.

data collection. Therefore, the proposed variance would have no effect on federally listed species.

10. The variance was initially requested by the FWS, and the licensee obtained formal approval from all parties to the Aquatic Settlement Agreement prior to requesting Commission approval. The variance takes into consideration the best available science and adaptive management measures to update its Study implementation. The licensee would continue to monitor bull trout populations under numerous other project requirements. For these reasons, the variance should be approved.

The Director orders:

(A) Public Utility District No. 1 of Douglas County, Washington's request for a variance from the 10-year Bull Trout Passage and Survival Radio Telemetry Study pursuant to the Bull Trout Stranding, Entrapment, and Take Study Plan, filed on June 22, 2021, with the Federal Energy Regulatory Commission (Commission) for the Wells Hydroelectric Project No. 2149, is approved.

(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 (2018), and the Commission's regulations at 18 CFR § 385.713 (2020). 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.

Andrea Claros
Chief, Aquatic Resources Branch
Division of Hydropower Administration
and Compliance