

1 **UNITED STATES OF AMERICA**
2 **FEDERAL ENERGY REGULATORY COMMISSION**

3
4 Public Utility District No. 1 of Douglas County,)
5 Washington) Project No. 2149-152
6)
7 Final License Application) Wells Hydroelectric Project
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10 **U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT**
11 **MOTION TO INTERVENE**
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14 COMES NOW the United States Army, Corps of Engineers, Seattle District, Seattle,
15 Washington (Corps), herein represented by the undersigned attorney, who respectfully submits
16 this Motion to Intervene in the above captioned project. Pursuant to 18 C.F.R. § 385.214, this
17 motion to intervene is supported by the information set forth below.

18 **I. STATEMENT OF INTEREST**

19 The Corps has interests in the Wells Project relicensing arising from statutory
20 enforcement responsibilities, hydroelectric generation, flood control, treaty and trust obligations,
21 and real estate ownership.

22 With regard to the Corps' statutory responsibilities concerning hydropower projects, the
23 Corps protects the nation's interest in navigation through recommendations to FERC instead of a
24 separate Section 10 permit (33 C.F.R. § 320.3(f)). The Federal Power Act of 1920 (16 U.S.C. §
25 791(a) et seq.), as amended, authorizes the Federal Energy Regulatory Agency (FERC) to issue
26 licenses for the construction and the operation and maintenance of dams, water conduits,
27 reservoirs, power houses, transmission lines, and other physical structures of a hydro-power
28 project. However, where such structures will affect the navigable capacity of any navigable
29 water of the United States (as defined in 16 U.S.C. § 796), the plans for the dam or other
30 physical structures affecting navigation must be approved by the Chief of Engineers and the

1 Secretary of the Army. In such cases, the interests of navigation should normally be protected by
2 a Department of Army recommendation to FERC for the inclusion of appropriate provisions in
3 the FERC license rather than the issuance of a separate DA permit under 33 U.S.C. § 401 et seq.

4 As to any other activities in navigable waters not constituting construction and the
5 operation and maintenance of physical structures licensed by FERC under the Federal Power Act
6 of 1920, as amended, the provisions of 33 U.S.C. § 401 et seq. remain fully applicable. In cases
7 involving the discharge of dredged or fill material into waters of the United States, Section 404
8 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (“Clean Water Act”) will be
9 applicable.

10 The Corps’ hydroelectric power generation is affected by the Wells Project as its
11 operation causes a higher tailwater level at Chief Joseph Dam and a corresponding reduction in
12 generation from Chief Joseph power facilities. The Chief Joseph Dam was constructed and is
13 operated and maintained by the Secretary of the Army under the authority of the Rivers and
14 Harbors Act of July 24, 1946, P.L. 79-525. The Chief Joseph Dam acts as a reregulating
15 reservoir for outflows from Grand Coulee Dam and largely controls the tailwater level at Grand
16 Coulee dam. Since the river system is interrelated, alteration of the Chief Joseph Dam tailwater
17 level could also have effects upstream from Chief Joseph Dam.

18 The Corps operates its dams on the Columbia River system to provide flood damage
19 reduction as authorized by the Rivers and Harbors Act of 1936 (P.L. 74-738). Operation of the
20 Wells Project causes a loss of floodwater storage space in the valley now occupied by the Wells
21 reservoir. By operating in coordination with the Corps, the Wells Project has the ability to
22 mitigate for this lost storage space and prevent exacerbation of floods downstream from the
23 project.

1 The Confederated Tribes of the Colville Reservation, with whom the Corps has Treaty
2 and trust responsibilities, have plans to construct a fish hatchery, fish ladder and associated
3 facilities at the base of Chief Joseph Dam near the Corps Visitor Orientation Area. These
4 facilities, as well as the behavior of migrating salmon associated with the hatchery, could be
5 affected by the operation of the Wells Project.

6 As a real estate owner, the Corps' lands extend on either side of the Columbia River
7 upstream of the Wells Project. Any possible impact to Corps property is of utmost concern to
8 the Corps, the Army and the United States of America.

9 **II. STATEMENT OF POSITION**

10 The outcome of this relicensing proceeding may affect the Corps' responsibilities as a
11 regulatory agency under the Clean Water Act and the Rivers and Harbors Act. It may also affect
12 the operations of Chief Joseph Dam, both for hydropower generation and flood control, the
13 Corps' treaty and trust responsibilities to the Confederated Tribes of the Colville Reservation,
14 and the Corps' real estate interests on the banks of the Columbia River. These interests are
15 unique and cannot be adequately represented by any other party. The Corps believes its
16 participation in this proceeding is in the public interest.

17 **III. COMMUNICATIONS**

18 The Corps submits the following Corps staff to be listed as recipients for copies of all
19 filings associated with this process:

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1 **IV. CONCLUSION**

2 In order that this proceeding may be fully developed in accordance with the applicable
3 law, and that the Commission has before it all the material facts relating to the proposed project,
4 the Commission should grant the Corps intervener status.

5 As a party in this proceeding, the Corps requests the right to have notice and appear at
6 any and all hearings or proceedings, to produce evidence and cross-examine witnesses, to be
7 heard through counsel in written and oral argument, to be served with copies of all pleadings,
8 applications and notices, and for any other participation and relief as may be appropriate.

 Dated this 18th day of August, 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon each person designated on the official service list compiled by the Commission in the above captioned proceeding.

Dated this 18th day of August, 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "V. K. Ryan", written over a horizontal line.

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