United States Department of the Interior

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9043.1
IN REPLY REFER TO:
ER10/686

Electronically Filed November 19, 2010

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Subject: **AMENDED COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, AND PRESCRIPTIONS -** Review of Notice of Application Ready for Environmental Analysis, Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions for the Wells Hydroelectric Project, Project No. 2149-152, Chelan and Douglas Counties, Washington (ER 10/686)

Dear Ms. Bose:

On October 6, 2010, the Department of the Interior (Department) filed its comments and preliminary recommendations, terms and conditions, and prescriptions for the subject project pursuant to sections 10(a), 10(j), and 18 of the Federal Power Act (FPA). Those comments were intended to be materially consistent with the provisions of the *Wells Aquatic Settlement Agreement* (Settlement Agreement) filed with the Commission on May 27, 2010.

On October 8, 2010, the Public Utility District No. 1 of Douglas County (Douglas PUD) notified the Department that 10(j) Recommendation No. 1 was inconsistent with the Settlement Agreement because it recommended a license term of 42 years or less. Subsequently, the Department, through the U.S. Fish and Wildlife Service (Service), met with Douglas PUD on October 15, 2010, where additional concerns regarding the Department's filing were raised, and, in particular, material conflicts between the terms of the Settlement Agreement and 10(j) Recommendations Nos. 4, 5, 6, 7, 8, 9, and 10 were identified.

With this letter, we are amending 10(j) Recommendations Nos. 1, 4, 5, 6, 7, 8, 9, and 10. The Department recognizes that Douglas PUD has additional concerns and we will continue to work with them directly, as well as through the ongoing licensing process, i.e., Douglas PUD's filing of reply comments, to resolve those concerns.

AMENDED 10(j) RECOMMENDATION NO. 1

The Service agrees that the disputed language is inconsistent with the Settlement Agreement. Section 5 of the Settlement Agreement requires the settlement parties to support a 50-year term for the new operating license. Therefore, the Service wishes to submit a correction to the wording of 10(j) recommendation No. 1 to better conform to the wording in the proposed license articles contained in the Settlement Agreement. Accordingly, 10(j) Recommendation No. 1 is hereby corrected to read as follows:

> 10(j) Recommendation No. 1: Duration of the New License:
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> For the conservation, development, and mitigation of damages to fish and wildlife resources, the term of the new license should be 50 years in accordance with the Wells Aquatic Settlement Agreement.
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> **Justification**
> The Wells AFA/HCP is intended to constitute a comprehensive and long term adaptive management plan for spring and summer/fall Chinook salmon, sockeye salmon, coho salmon and steelhead (Plan Species) and their habitat as affected by the Wells Hydroelectric Project. Included in this goal was the need to establish appropriate protections for salmon and steelhead listed as endangered or threatened under the ESA. The Wells AFA/HCP is a comprehensive plan for fish passage, hatchery compensation and tributary conservation, and endangered species issues for Plan Species at the Project. No Net Impact (NNI) has been attained for all Plan Species identified in the Wells AFA/HCP, and attainment can reasonably be expected to continue for the duration of the new license term, given the applicant's proposal to continue implementation of the AFA/HCP measures as part of the new license.
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> Prior to issuance, the Wells AFA/HCP was reviewed under section 7 of the ESA and NOAA Fisheries issued a biological opinion to cover the incidental take of listed fish for the implementation of the Wells AFA/HCP at the Wells Project. Likewise, the Service issued a biological opinion to cover incidental take of bull trout for implementation of the Wells AFA/HCP. The Service will also complete a biological opinion for the relicensing of the Project which is anticipated to permit incidental take of bull trout for 50 years.
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> The Wells ASA includes six management plans for water quality, bull trout, Pacific lamprey, white sturgeon, resident fish and aquatic nuisance species (Aquatic Resources), and is intended to establish the applicant's obligations for the protection, mitigation and enhancement of Aquatic Resources affected by Project operations for a period of 50 years under the new license.
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> The Wells ASA, together with the Wells AFA/HCP, address the project related impacts for spring and summer/fall Chinook salmon, sockeye salmon, coho salmon, and steelhead, in addition to bull trout, Pacific lamprey, resident fish, white sturgeon, water quality and aquatic nuisance species for 50 years. The

Service anticipates participating in the adaptive management of listed species throughout the license period, as agreed to in the settlement agreements. Therefore, the Service supports a 50-year license term for the Project.

AMENDED 10(j) RECOMMENDATION NO. 4

Douglas PUD believes 10(j) Recommendation No. 4 inaccurately describes the proposed measures contained within the Bull Trout Management Plan (BTMP) and that the deletion of incidental take and the insertion of injury/mortality in sections a), b), c), e) and f) of the recommendation is a material alteration of their obligations under the Settlement Agreement. The Service did not intend the wording of this recommendation to be materially inconsistent with the Settlement Agreement. The Service altered the language contained in the BTMP to better align the recommendation with the purpose and intent of section 10(j) of the FPA. That alteration did not nor was it intended to change the obligations and measures that Douglas PUD agreed to implement under the BTMP. The implementation of the BTMP is intended to provide protection to bull trout during the subsequent license term regardless of the listing status of this fish species. Nevertheless, the Service has agreed to amend 10(j) Recommendation No. 4 to avoid any future misunderstandings regarding bull trout management at the Project. Accordingly, 10(j) Recommendation No. 4 is hereby amended to read as follows:

10(j) Recommendation No. 4: Bull Trout Management Plan

For the conservation, development, and mitigation of damages to fish and wildlife resources, the Licensee shall, in consultation with the Wells Aquatic SWG, implement the Bull Trout Management Plan (BTMP) according to the requirements of the Wells Aquatic Settlement Agreement. Where implementation of the BTMP might affect salmon and steelhead, the Licensee shall be responsible for coordinating these actions with NOAA Fisheries and the Wells HCP Coordinating Committee. The BTMP shall be implemented to direct the improvement, if needed, of adult upstream passage and juvenile downstream passage through the Project. The BTMP shall include the development of telemetry studies to monitor the movement, behavior, and passage of adults through the Project's existing fishways and reservoir. The BTMP shall also include an assessment of fishway modifications should fishway modifications be made to improve the passage of bull trout and monitor incidental take of bull trout under the ESA at the Project. The BTMP includes the following measures to be implemented by the Licensee for the conservation and development of bull trout:

a. Investigate Entrapment or Stranding of Bull Trout During Periods of Low Reservoir Elevation (BTMP Section 4.4): The Licensee shall continue to investigate potential entrapment or stranding areas for bull trout through periodic monitoring when periods of low reservoir elevation expose identified sites. During the first five years of the new license, the Licensee will implement up to five bull trout entrapment/stranding assessments during periods of low reservoir elevation (below 773 ft. MSL). If no incidences of bull trout stranding are observed during the first five years of study, additional assessment will take place every fifth

year during the remainder of the license term, unless waived by the Aquatic SWG. If bull trout entrapment and stranding result in take in exceedance of the authorized incidental take level, then reasonable and appropriate measures will be implemented by the Licensee, in consultation with the Aquatic SWG, to address the impact.

b. Monitoring Other Aquatic Resource Management Plan Activities and Predator Control Program for Incidental Capture and Take of Bull Trout (BTMP Section 4.5.1): The Licensee will monitor activities associated with the implementation of other Aquatic Resource Management Plans (white sturgeon, Pacific lamprey, resident fish, aquatic nuisance species, and water quality) and Predator Control Program that may result in the incidental capture and take of bull trout. If the incidental take of bull trout is exceeded due to the implementation of other Aquatic Resource Management Plan activities, then the Licensee will develop a plan, in consultation with the Aquatic SWG, to address the identified factors contributing to the exceedance of the allowable level of incidental take. If the incidental take of bull trout is exceeded due to the implementation of the Predator Control Program, then the Licensee will develop a plan, in consultation with the HCP Coordinating Committee and the Aquatic SWG, to address the identified factors contributing to the exceedance of the allowable level of incidental take.

c. Funding Collection of Tissues Samples and Genetic Analysis (BTMP Section 4.5.2): Beginning in year 10 of the new license, and continuing every 10 years thereafter for the term of the new license, the Licensee will, if recommended by the Aquatic SWG, collect up to 10 adult bull trout tissue samples in the Wells Dam fishway facilities over a period of one year and fund their genetic analysis. Genetic tissue collection will take place concurrent with the implementation of the bull trout radio-telemetry monitoring study. Samples will be submitted to the Service's Central Washington Field Office in Wenatchee, Washington. Any sub-adult bull trout collected during these activities will also be incorporated into the bull trout genetic analysis.

Beginning in year one of the new license, the Licensee shall collect up to 10 adult bull trout tissue samples from the Twisp River brood stock collection facility over a period of one year and will fund their genetic analysis. Genetic tissue collection shall take place concurrent with the implementation of the Off-Project bull trout radio-telemetry monitoring study.

d. Information Exchange and Regional Monitoring Efforts (BTMP Section 4.5.3): The Licensee will continue to participate in information exchanges with other entities conducting bull trout research and regional efforts to explore availability of new monitoring methods and coordination of radio-tag frequencies for bull trout monitoring studies in the Project.

The Licensee will make available an informational and educational display at the Wells Dam Visitor Center to promote the conservation and recovery of bull trout in the Upper Columbia River and associated tributary streams.

e. Bull Trout Monitoring During Hatchery Activities (BTMP Section 4.6.1): During the term of the new license, the Licensee shall monitor hatchery actions (e.g., salmon trapping, sturgeon brood stocking and capture activities) that may encounter adult and sub-adult bull trout for incidental capture and take. Actions to be monitored shall be associated with the Wells Hatchery, the Methow Hatchery, and any future facilities directly funded by the Licensee.

If the incidental take of bull trout is exceeded due to the Licensee's hatchery actions then the Licensee shall develop a plan, in consultation with the Aquatic SWG, to address the identified factors contributing to the exceedance of the allowable level of incidental take.

f. USFWS Section 7 Consultation (BTMP Section 4.7): The PMEs contained within the BTMP were specifically developed, in consultation with the Service, to address potential Reasonable and Prudent Measures (RPMs) for the Project relicensing and associated section 7 consultation. All the FWS's potential RPMs for the Wells Project can be found in Appendix A of the BTMP. Each of these RPMs has been cross referenced with the specific supporting objective and PME (Sections 4.1-4.6) found within the BTMP. The purpose of Appendix A is to provide consistency with Licensee's Aquatic Settlement Agreement and the Service's subsequent section 7 consultation on the relicensing of the Wells Project.

g. Reporting (BTMP Section 4.8): The Licensee shall provide a draft annual report to the Aquatic SWG summarizing the previous year's activities undertaken in accordance with the BTMP. The report will document all bull trout activities conducted within the Project and describe activities and changes proposed for the following year. Furthermore, any decisions, statements of agreement, evaluations, or changes made pursuant to this BTMP shall be included in the annual report. If significant activity was not conducted in a given year, the Licensee shall prepare a memorandum providing an explanation of the circumstances in lieu of the annual report.

Justification

The Service concurs with the applicant's proposed comprehensive BTMP (Douglas PUD 2010). The BTMP is intended to be an adaptive management plan, where strategies for meeting the goals and objectives shall be revised collaboratively with relicensing stakeholders. New bull trout information, input from regional scientific experts, the best techniques, and the evaluation/monitoring results will be used to achieve identified BTMP goals. The

protection, mitigation, and enhancement measures described in the BTMP will be used to achieve consistency with the Service's Bull Trout Recovery Plan and establish the measures necessary to minimize the effect of any incidental take of bull trout during the term of the new license.

Bull trout in the mid-Columbia River Basin have more specific habitat requirements than most other salmonids. Habitat components that influence bull trout distribution and abundance include water temperature, cover, and channel stability; substrate for spawning and rearing; and migratory corridors. Bull trout are found in colder streams and require colder water than most other salmonids for incubation, juvenile rearing, and spawning. Spawning and rearing areas are often associated with cold-water springs, groundwater infiltration, and/or the coldest streams in a watershed. Throughout their lives, bull trout require complex forms of cover, including large woody debris, undercut banks, boulders, and pools. Alterations in channel form and reductions in channel stability result in habitat degradation and reduced survival of bull trout eggs and juveniles. Channel alterations may reduce the abundance and quality of side channels, stream margins, and pools, which are areas bull trout frequently inhabit. For spawning and early rearing bull trout require loose, clean gravel relatively free of fine sediments. Because bull trout have a relatively long incubation and development period within spawning gravel (greater than 200 days), the transport of bedload in unstable channels may kill young bull trout.

Bull trout use migratory corridors such as the mid-Columbia River to move back and forth from spawning and rearing habitats to foraging and overwintering habitats. Different habitats provide bull trout the opportunity to exploit diverse resources, and migratory corridors allow local populations to connect, which increases the potential for gene flow and rebuilding of local populations (USFWS 2002b).

Declines in bull trout distribution and abundance are the result of the combined effects of habitat degradation and fragmentation; the blockage of migratory corridors; poor water quality; angler harvest and poaching; entrainment into diversion channels and dams; and the introduction of non-native species. Specific land and water management activities that continue to depress bull trout populations and degrade habitat include hydroelectric dams and other diversion structures, forest management practices, livestock grazing, agriculture, road construction and maintenance, mining, and urban and rural development. Implementation of the applicant's project-specific BTMP will minimize take of bull trout at the Project and greatly assist the recovery of bull trout within the mid-Columbia River Basin.

AMENDED 10(j) RECOMMENDATION NO. 5

Douglas PUD believes 10(j) recommendation No. 5 incorrectly inserts involvement of outside entities into this recommendation, which have not signed the Settlement Agreement. Douglas PUD also notes that the Pacific Lamprey Management Plan inherent to this recommendation has been completed and filed with the Commission. They further believe that the insertion of other entities into this recommendation is a violation of or is materially inconsistent with the Settlement Agreement. It is also our understanding that there is no definition of what constitutes a "violation" or a "material inconsistency" within the confines of the Settlement Agreement.

It was not the intention of the Service to create roles or rights for non-signing parties, such as NOAA-Fisheries and BIA, or a new forum, but rather to create a means for communication and coordination between entities with specific fish management authorities. While the Service agrees that the Pacific Lamprey Management Plan has been completed by Douglas PUD, there is no guarantee that it will be fully adopted by the Commission and implemented into the new license. Subsequently, the Service and Douglas PUD have worked together to develop amended language that meets the Service's intent. Based upon these discussions, 10(j) Recommendation No. 5 is hereby amended to read as follows:

10(j) Recommendation No. 5: Pacific Lamprey Management Plan

For the conservation, development, and mitigation of damages to fish and wildlife resources, the Licensee shall, in consultation with the Aquatic SWG, implement the *Pacific Lamprey Management Plan* (PLMP) according to the requirements of the *Aquatic Settlement Agreement*. The PLMP shall be implemented to improve adult upstream passage and juvenile downstream passage of Pacific lamprey through the Project. The PLMP shall include the development of studies to monitor the movement, behavior, and passage of adults through the Project's existing fishways and reservoir. The PLMP shall include assessments of fishway modifications made to improve the passage of adult lamprey at other hydroelectric developments in the Columbia River Basin for potential implementation at the Wells Project. The PLMP shall also include the following measures to be implemented by the Licensee for the conservation and development of Pacific lamprey:

a. Downstream Bypass Operations Criteria (PLMP Section 4.2.1): The Licensee shall operate the downstream bypass system at Wells Dam in accordance with criteria outlined in the Wells AFA/HCP.

b. Salvage Activities During Ladder Maintenance Dewatering(PLMP Section 4.2.2): The Licensee shall continue to conduct salvage activities as required by the Wells AFA/HCP's Adult Fish Passage Plan during fishway dewatering operations. All fish species, including Pacific lamprey that are encountered during dewatering operations shall be salvaged using protocols identified in the Wells AFA/HCP. Any juvenile Pacific lamprey that are captured during salvage activities will be released

unharmed downstream of Wells Dam. The Licensee shall coordinate salvage activities with the Aquatic SWG and allow for member participation. The Licensee shall provide a summary of salvage activities in the annual report.

c. Juvenile Pacific Lamprey Passage and Survival Literature Review (PLMP Section 4.2.3): Beginning in year five and every five years thereafter during the new license, the Licensee, in consultation with the Aquatic SWG shall conduct a literature review to summarize available technical information related to juvenile lamprey passage and survival through Columbia and Snake river hydroelectric facilities. This information will be used to assess the feasibility of conducting activities identified in Section 4.2.4 of the PLMP.

d. Juvenile Pacific Lamprey Habitat Evaluation (PLMP Section 4.2.5): Within three years of the effective date of the new license, the Licensee shall implement a one-year study to examine presence and relative abundance of juvenile Pacific lamprey in habitat areas within the Project that may be affected by Project operations. As part of this measure, the Licensee shall identify areas of potential juvenile Pacific lamprey habitat for future evaluation. Sampling of these areas will assess presence/absence and relative abundance. Any sampling methodologies used in support of this activity will require coordination with the Habitat Conservation Plan Coordinating Committee and regulatory approval of the federal and state agencies.

e. Regional Lamprey Working Groups (PLMP Section 4.3.1): The Licensee shall participate in Pacific lamprey work groups in order to support regional conservation efforts (e.g., the Pacific Lamprey Technical Work Group and the Service's Lamprey Conservation Initiative). Activities may include, but are not limited to, information exchanges with other entities, meeting attendance, and coordination of the Licensee's Pacific lamprey activities with other entities conducting lamprey research in the mid-Columbia River. Activities shall also include conducting PLMP research within the Project, and sharing that information with other entities.

Justification

To address the Project's effects on Pacific lamprey, the applicant proposes to implement the Wells Comprehensive Pacific Lamprey Management Plan (PLMP) (Douglas PUD 2010**)**. The goal of the PLMP is to implement measures to monitor and address impacts, if any, on Pacific lamprey resulting from the Project during the term of the new license. To achieve this goal, the PLMP includes measures to: (1) identify and address any adverse Project-related impacts on passage of adult Pacific lamprey; (2) identify and address any Project-related impacts on downstream passage and survival, and rearing of juvenile Pacific lamprey; and (3) participate in the development of regional Pacific lamprey conservation activities. Specific measures to be implemented include conducting

accurate adult lamprey passage counts; fishway modifications to improve upstream passage; upstream passage evaluations; juvenile downstream passage and survival evaluation; determining juvenile lamprey presence/absence and relative abundance in the project area; supporting regional lamprey conservation efforts through lamprey research and information exchanges; and implementing the Wells AFA/HCP. The PLMP is intended to be an adaptive management approach by which specific actions are implemented to mitigate ongoing negative impacts on Pacific lamprey passage. Actions may be adjusted through collaborative efforts of the Aquatic SWG, based on new information and ongoing monitoring results. The plan is also intended to be consistent with other management plans in the mid-Columbia region.

The Service concurs with the applicant's proposed protection, mitigation, and enhancement measures for Pacific lamprey. However, the specific details for some of the proposed measures related to the safe, timely, and effective passage of Pacific lamprey are not fully defined at this time and other parts of the proposed Pacific Lamprey Management Plan lack specificity. There is an absence of specific milestones in the plan regarding the upstream and downstream passage of Pacific lamprey; however, measures have been drafted using the available science for the Project and ensure that steady progress is made towards improving lamprey passage and reducing lamprey mortality. The Service provides further specificity regarding these milestones in its fishway prescription for this Project to expedite steady progress towards the development of the information needed to minimize project impacts on adult and juvenile Pacific lamprey. These prescribed measures are important because there is significant regional concern regarding lamprey populations in the Columbia River Basin.

In 1993, the Oregon Department of Fish and Wildlife designated Pacific lamprey at risk of being listed as threatened or endangered. The Service designated Pacific lamprey as a Category 2 candidate species under the ESA in 1994. The Northwest Power and Conservation Council's 1994 Fish and Wildlife Program acknowledged the apparent decline of Pacific lamprey and requested a status report to identify research needs. The Columbia River Treaty Tribes have repeatedly voiced concern about the decline of Pacific lamprey, a culturally important species. In January of 2003, four species of lamprey were petitioned for listing under the ESA. As part of the Aquatic Settlement Agreement developed during the relicensing of the Project, the applicant was required to develop its PLMP to identify and address the Project's effects on this important species. The information developed through the implementation of the PLMP will guide the applicant and resource managers in the development and implementation of suitable facilities, structural modifications, and/or changes to Project operations to minimize or eliminate ongoing negative impacts on Pacific lamprey.

AMENDED 10(j) RECOMMENDATION NO. 6

Douglas PUD believes 10(j) recommendation No. 6 incorrectly inserts involvement of outside entities into this recommendation, which have not signed the Settlement Agreement. Douglas PUD also notes that the White Sturgeon Management Plan inherent to this recommendation has been completed and filed with the Commission. They further believe that the insertion of other entities into this recommendation is a violation of or is materially inconsistent with the Settlement Agreement. It is also our understanding that there is no definition of what constitutes a "violation" or a "material inconsistency" within the confines of the Settlement Agreement.

It was not the intention of the Service to create roles or rights for non-signing parties, such as NOAA-Fisheries and BIA, or a new forum, but rather to create a means for communication and coordination between entities with specific fish management authorities. While the Service agrees that the White Sturgeon Management Plan has been completed by Douglas PUD, there is no guarantee that it will be fully adopted by the Commission and implemented into the new license. Subsequently, the Service and Douglas PUD have worked together to develop amended language that meets the Service's intent. Accordingly, 10(j) Recommendation No. 6 is hereby amended to read as follows:

10(j) Recommendation No. 6: White Sturgeon Management Plan

Within one year of license issuance, the Licensee shall, for the conservation, development, and mitigation of damages to fish and wildlife resources, implement the WSMP for the Project. The goal of the WSMP is to increase the white sturgeon population in the Wells Reservoir to a level that can be supported by the available habitat and create a diverse age structure in the population that consists of multiple cohorts (adults and juvenile age classes). The WSMP includes the following measures to be implemented in Phase I and Phase II of the plan:

a. Phase 1 (Years 1-10):

- Development of a Brood Stock Collection and Breeding Plan (Year 1 and updated as determined by the Aquatic SWG)(*WSMP Section 4.1.1*);
- Brood Stock Collection (Years 1-4 and other years to be determined by the Aquatic SWG)(*WSMP Section 4.1.1*);
- Juvenile Stocking (Years 2-5 and other years to be determined by the Aquatic SWG)(*WSMP Section 4.1.2*);
- Index Monitoring Program implementation (Years 3-5 and 2 more years prior to Year 10 to be determined by the Aquatic SWG)(*WSMP Section 4.2.1*);
- Marked Fish Tracking (Years 3-5 and 2 more years prior to Year 10 to be determined by the Aquatic SWG)(*WSMP Section 4.2.2*);
- Natural Reproduction Assessments (5 annual assessments over the license term) (*WSMP Section 4.2.3*). Natural reproduction assessments can be implemented over the term of the license (Phase I and Phase II) as determined by the Aquatic SWG;

b. Phase II (Years 11-50):

- Long-term juvenile stocking (Stocking rate and frequency to be determined by Aquatic SWG in Years 11-50)(*WSMP Section 4.4.1*);
- Supplementation Program Review (Years 11-50 to be determined by the Aquatic SWG)(*WSMP Section 4.4.2*);
- Long-term Index Monitoring Program (Year 12 and once every 3-5 years thereafter to be determined by the Aquatic SWG)(*WSMP Section 4.4.3*);
- Adult Passage Evaluation (Year 11 and once every 10 years thereafter)(*WSMP Section 4.4*)

Justification

The current status of the mid-Columbia River white sturgeon population requires immediate action to create a viable population. The ongoing decline of the mid-Columbia population likely began with repeated recruitment failure several decades ago. The population decline has only been recently recognized and there is concern that extirpation may occur before effective actions to arrest the decline can be implemented. The applicant's proposed protection, mitigation, and enhancement measures for white sturgeon include an augmentation program to enhance white sturgeon populations through the use of hatchery fish or other measures to achieve specific population goals; a monitoring and evaluation program to evaluate the effectiveness of the plan and augmentation program, and to adjust population targets; and provisions for coordination with other mid-Columbia River regional sturgeon planning groups. The Service concurs with these measures. These measures are consistent with other regional plans developed to arrest the decline of the white sturgeon in the Columbia River Basin (Upper Columbia White Sturgeon Recovery Initiative 2002). The augmentation/supplementation of white sturgeon in the Wells reservoir will help to offset some of the Project's continuing effects on the natural recruitment of this popular sport fish, as well as improve recreational fishing opportunity within the reservoir and tribal use of white sturgeon.

AMENDED 10(j) RECOMMENDATION NO. 10

The Service's 10(j) Recommendation No. 10 recommended that the Licensee create a forum of State and Federal resource agencies and Tribes to ensure consistency and timely coordination between the implementation of the Wells AFA/HCP and the environmental measures incorporated into the new license for the protection, mitigation and enhancement of non-Plan species. Douglas PUD believes that this recommendation directly conflicts with the terms of the Wells Anadromous Fish Agreement and Habitat Conservation Plan (HCP) and the Settlement Agreement, and the rights of the parties to the HCP, the Settlement Agreement, and the Terrestrial Resource Work Group as proposed in the Final License Application (FLA).

It was not the intention of the Service to create roles or rights for non-signing parties or a new forum, but rather to create a means for communication and coordination among the different committees and work groups so that the actions of one, i.e., the implementation of measures and

management plans, would not create unintended consequences for the others. Subsequently, the Service and Douglas PUD have worked together to develop amended language that meets the Service's intent. Douglas PUD will be responsible for coordination and implementation of studies and associated management plans as set forth in the new license by working directly with the established work groups and committees, as they have under the current license. Accordingly, 10(j) Recommendation No. 10 is hereby amended to read as follows:

> 10(j) Recommendation No. 10: Coordination of the Wells Aquatic Settlement Work Group (Aquatic SWG) and Terrestrial Work Group (TWG) with the Wells AFA/HCP Committee
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> The Licensee shall, for the conservation, development, and mitigation of damages to fish and wildlife resources, use the Wells Aquatic SWG and the TWG as the primary forums to ensure consistency and timely coordination with the committees established by the Wells AFA/HCP. Coordination between these three entities will be important during the implementation of the environmental measures incorporated into the new license for the protection, mitigation, and enhancement of aquatic resources, terrestrial resources and Plan Species. The Licensee will be responsible for coordination and implementation of studies and associated management plans set forth in the new license by working directly with these work groups and committees. Consistent with the Wells Aquatic Settlement Agreement and Wells AFA/HCP, the work groups and committees shall function to: (1) promote information exchange; (2) review the applicant's choice of specific implementation and monitoring measures and approve their selection; (3) periodically adjust the applicant's PM&Es, as needed to meet the goals and objectives established in the resource management plans; (4) adjust schedules and dates for performance; and (5) determine when the goals and objectives have been achieved and the PM&Es adequately implemented.
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> **Justification**
> Work group and Wells AFA/HCP committee coordination will be an essential element in the successful implementation of measures for aquatic resources (i.e., bull trout, Pacific lamprey, white sturgeon, resident fish, water quality and aquatic nuisance species); Plan Species under the Wells AFA/HCP; and terrestrial resources under the applicant's Terrestrial Resources Management Plan. This coordination will ensure that the implementation of environmental measures for the benefit of Plan Species is consistent with the implementation of environmental measures for aquatic resources. Coordination regarding the applicant's obligations to implement measures associated with terrestrial resources at the Project will also be ensured for the duration of the new license, through existing agreements.
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> Specifically, the Wells AFA/HCP is the major plan for implementing the applicant's proposed salmon and steelhead PM&E measures. Coordinating the implementation of survival standards for salmon and steelhead with the PM&E measures for aquatic resources will require a major effort by the settlement parties (Licensee, federal and state resource agencies and tribes), and will need to be

carefully planned and executed to be successful. The complexity of the Wells AFA/HCP and measures designed for aquatic resources will necessitate effective and committed involvement of the settlement parties to coordinate changing management philosophies, new technologies, and compliance with changing policies. Coordination and participation by the settlement parties will provide guidance, special expertise, and information exchange through the term of the next license, to effectively implement the Wells AFA/HCP.

AMENDED 10(j) RECOMMENDATION NO. 7

The amended recommendations above alleviate many of the concerns identified by Douglas PUD for 10(j) recommendation No. 7. In order to provide consistency with the amendments outlined in the above recommendations, the Service has agreed to amend 10(j) Recommendation No. 7 to avoid any future misunderstandings. Accordingly, 10(j) Recommendation No. 7 is hereby amended to read as follows:

10(j) Recommendation No. 7: Resident Fish Management Plan

Within one year of license issuance, the Licensee shall, for the conservation, development, and mitigation of damages to fish and wildlife resources, fund and implement its comprehensive Resident Fish Management Plan (RFMP) in accordance with the Aquatic Settlement Agreement. The RFMP shall be implemented in consultation with the Aquatic SWG. The goal of the RFMP is to protect and enhance native resident fish populations and habitat in the Project during the term of the new license. The RFMP shall include the following measures:

a. HCP Predator Control Program (RFMP Section 4.1, sub-section 4.1.1): The Licensee shall continue to conduct annual predator control activities for northern pikeminnow and avian predators as outlined in the Wells AFA/HCP (Douglas PUD 2002).

b. Project Shoreline Management and Land Use Policy (RFMP Section 4.1, sub-section 4.1.2): The Licensee shall continue to implement the Douglas Land Use Policy which requires approval of all land use activities that take place within the Project Boundary. All permit activities such as construction of boat docks, piers, and landscaping within the Project Boundary shall be subject to review and approval by the Licensee, only after the permit applicant has received all other required regulatory permits. In addition, proposed permits must receive consideration by the Wells AFA/HCP signatory parties and be reviewed by state and federal action agencies.

c. Monitoring the Resident Fish Assemblage within the Wells Reservoir (Objective 2) (RFMP Section 4.2): The Licensee shall conduct a resident fish study to determine the relative abundance of the various resident fish species found within the Wells Reservoir. This assessment shall occur in

year 2 and every 10 years thereafter during the term of the new license. The study objectives will focus on (1) identifying whether there have been major shifts in the resident fish populations resulting from the implementation of the White Sturgeon, Bull Trout, Pacific Lamprey, and Aquatic Nuisance Species Management Plans, and the Wells AFA/HCP Predator Control Program, and (2) collecting information on resident predator fish populations found within the Wells Reservoir.

To maintain comparative assemblage information over time and to inform Project resident fish status and trends, methodology for monitoring activities shall remain consistent with the methods described in Beak (1999). Information collected from these monitoring activities may be used to inform the implementation activities of the other Wells aquatic resource management plans and the Wells AFA/HCP predator control activities.

d. Actions to Address Major Shifts in Native Resident Fish Assemblage (Objective 3)(RFMP Section 4.3): Based upon information collected during the resident fish status and trends monitoring (Section 4.2), if any statistically significant negative changes to native resident fish populations of social, economic, and cultural importance are identified, and are not caused by and cannot be addressed through the implementation of other Aquatic Resource Management Plans or activities (white sturgeon, Pacific lamprey, bull trout, ANS, HCP, predator control), reasonable and appropriate implementation measures to address negative changes, if any, will be undertaken by the Licensee.

e. Monitoring in Response to Proposed Changes in Project Operations (Objective 4)(RFMP Section 4.4): If at any time during the new license term, future changes in Wells Dam operations are proposed that require FERC approval and the Aquatic SWG concludes that either reservoir or tailrace habitat within Project boundary may be affected with regards to spawning, rearing, and migration (aquatic life designated uses) of native resident fish, an assessment will be implemented to identify potential effects, if any, in order to make informed license decisions. If the results of the assessment identify adverse effects to native resident fish species of social, economic and cultural importance, attributable to such changes in Project operations, then the Licensee shall consult with the Aquatic SWG to select and implement reasonable and appropriate measures to address such effects.

f. Reporting (RFMP Section 4.5): The Licensee shall provide a draft annual report to the Aquatic SWG summarizing the previous year's activities undertaken in accordance with the RFMP. The report will document all native resident fish activities conducted within the Project. Furthermore, any decisions, statements of agreement, evaluations, or changes made pursuant to this RFMP will be included in the annual report. If significant

activity was not conducted in a given year, Douglas will prepare a memorandum providing an explanation of the circumstances in lieu of the annual report.

Justification

The applicant has documented numerous species of resident fish which reside in the project area (Douglas PUD 2010; Exhibit E). Species abundance and composition of these resident fish have been relatively constant over time. However, to continue the monitoring and management of resident fish and associated impacts resulting from the continued operation of the Project, the applicant has developed the RFMP as part of the ASA. In conjunction with the Wells AFA/HCP, the ASA was developed in collaboration with federal, state, and tribal entities to address all of the aquatic resource issues related to the relicensing of the Project, including impacts on resident fish.

The applicant identifies in its FLA that the Project may have an adverse effect on resident fish (Douglas PUD 2010, Exhibit E). The planned implementation of the RFMP, during the term of the new license, is expected to fully address any measureable adverse effects on resident fish. The applicant notes in its FLA that reservoir fluctuations resulting from the Project may have an effect on resident fish and benthic macroinvertebrates (Douglas PUD 2010, Exhibit E). Effects of the applicant's northern pikeminnow removal program associated with the Wells AFA/HCP may also have an effect on native resident fish. Although implementation of this program is targeted at reducing predation on anadromous fish species covered by the Wells AFA/HCP, it is also anticipated to have direct benefits to resident fish in the project area. Accordingly, the implementation of the RFMP will minimize the effect of future project operations on resident fish resources and ensure that the benefits of those measures are sustained for the duration of the new license term.

AMENDED 10(j) RECOMMENDATION NO. 8

The amended recommendations above alleviate many of the concerns identified by Douglas PUD for 10(j) recommendation No. 8. In order to provide consistency with the amendments outlined in the above recommendations, the Service has agreed to amend 10(j) Recommendation No. 8 to avoid any future misunderstandings. Accordingly, 10(j) Recommendation No. 8 is hereby amended to read as follows:

10(j) Recommendation No. 8: Wildlife and Botanical Management Plan

Within one year of license issuance, the Licensee shall, for the conservation, development, and mitigation of damages to fish and wildlife resources, fund and implement its comprehensive Wildlife and Botanical Management Plan (WBMP). The WBMP shall be implemented in consultation with the U.S. Fish and Wildlife Service (Service) and the Terrestrial Work Group (TWG). The goal of the WBMP is to protect, maintain and enhance wildlife and habitat on Project lands commensurate with ongoing effects of operating the Project. The WBMP is also

intended to guide wildlife management activities and to protect rare, threatened and endangered wildlife and plant species on Project lands during the term of the new license for the Project. The WBMP includes goals, objectives, and procedures for the management of RTE wildlife and botanical species' habitats, noxious weeds, bald eagle habitat (perching and nesting structures), and wildlife monitoring on project lands, other lands adjacent to the reservoir, and on lands that may be purchased to meet mitigation objectives. The WBMP shall be tiered to any Commission-approved Recreation Resources Management Plan so that goals and objectives of both plans are integrated and not in conflict. The plan shall be updated in consultation with the resource agencies referenced herein. Lastly, the Licensee shall provide annual progress reports and conduct annual coordination meetings with the resource agencies referenced herein to provide updates on the success of the mitigation measures implemented under the WBMP. The meetings shall be initiated, coordinated, and documented by the Licensee.

Justification

The primary goal of the Licensee's WBMP is to protect, maintain and enhance wildlife and habitat on Project lands commensurate with ongoing effects of operating the Project. Secondary goals are to restore or improve ecological quality and diversity, to restore or increase habitat for key indicator species, and to provide for public use. The Service concurs with the goals of the proposed WBMP.

The WBMP was also developed in consultation with state and federal agencies. The WBMP will guide implementation of resource protection measures for wildlife and botanical resources during the term of the new license, including maintenance and enhancement of wildlife and habitat, protection for RTE wildlife and plant species, maintaining the Cassimer Bar Wildlife Management Area, and control of noxious weeds in the Project Boundary. The wildlife and botanical protection measures will enhance recreational opportunities in the Project area, including fishing, hunting, and wildlife viewing.

The applicant has also developed the *230 kV Transmission Line Avian Protection Plan (APP),* to protect resident and migrant birds that could potentially interact with the Wells 230 kV transmission lines. The APP is intended to protect both avian migrants interacting with the transmission lines crossing the Columbia River and birds nesting or perching on the transmission line structures.

AMENDED 10(j) RECOMMENDATION NO. 9

The amended recommendations above alleviate many of the concerns identified by Douglas PUD for 10(j) recommendation No. 9. In order to provide consistency with the amendments outlined in the above recommendations, the Service has agreed to amend 10(j) Recommendation No. 9 to avoid any future misunderstandings. Accordingly, 10(j) Recommendation No. 9 is hereby amended to read as follows:

10(j) Recommendation No. 9: Avian Protection Plan

For the conservation, development, and mitigation of damages to fish and wildlife resources, the Licensee shall implement its 230 kV Transmission Line Avian Protection Plan (APP). The APP shall be implemented in consultation with the U.S. Fish and Wildlife Service (Service) and the Terrestrial Work Group (TWG). The goal of the APP is to protect resident and migrant birds that interact with the Wells 230kV transmission lines. The APP includes the following measures:

a. Bird Flight Diverters (APP Section 5.2.1): Bird flight diverters shall be installed on the Wells transmission line river crossing in the event that the transmission line is reconductored, or if the static wire or aviation markers are replaced. The bird flight diverters shall be spaced between the aerial marker balls to increase visibility of the shield wire.

b. Record Keeping (APP Section 5.3): The Licensee shall maintain records of all avian mortalities detected on the 230 kV transmission line right-of-way. The Licensee shall report all avian mortalities caused by the Wells 230 kV transmission lines to the Service through the online USFWS Bird Fatality/Injury Reporting Program (https://birdreport.fws.gov).

c. Nest Management (APP Section 6.1): The Licensee shall implement a nest management protocol that includes: (1) all nest management will be performed in compliance with federal and state laws; (2) the Licensee's Wildlife Biologist shall be consulted before any nest is removed and will secure permits from the Service and WDFW, if necessary, before nest removal proceeds; and (3) active nests shall not be removed from the Wells 230 kV transmission line between February 1 and August 31without prior approval from the Service and WDFW.

d. Tree Removal (APP Section 6.2.1): To protect nesting birds, the Licensee shall only perform tree clearing on the transmission line corridor between August 31 and January 31. Clearing of the conifer trees on the transmission line corridor is anticipated to happen once every ten years beginning in 2018.

e. Training (APP Section 7.0): The Licensee shall train all appropriate utility personnel to understand avian issues on the Wells 230 kV transmission lines. This training shall include background information,

protocols/procedures by which employees are required to report an avian mortality, implement a nest removal action, disposal of carcasses, perform vegetation management and comply with applicable regulations and the consequences of non-compliance.

f. Consultation (APP Section 8.0): The Licensee shall meet with resource agencies or tribes, when requested, to discuss management of wildlife and botanical species on the transmission line corridor. All changes to the APP must be agreed to by the WDFW, Service, and the Licensee. Any agreed-upon changes to the APP will be reported to Commission for review and approval.

Justification

Utility poles and transmission line structures can benefit raptors by providing perch and /or nesting structures in areas where few natural perches or nest sites are available. These same structures can pose a threat to raptors and migratory birds through electrocution and collision with conductors and lines. Avian electrocutions and collisions with power lines have been documented nearly as long as utilities have provided power to the public and industry (APLIC 2006, 1996, and 1994; APLIC and USFWS 2005). Since the 1970s, utilities, the Service, and the National Audubon Society have worked together to document avian mortalities and to develop methods to reduce electrocutions and line collisions. In 2005, the Avian Power Line Interaction Committee and the Service jointly published *Avian Protection Plan Guidelines* to assist utilities in developing voluntary APPs. Therefore, the applicant has proposed to implement its APP to minimize any impacts of the Project on resident and migrant birds for the duration of the new license term.

The Department appreciates the opportunity to file these amended recommendations. If you have any questions regarding these amendments or require additional information, please contact me at (503) 326-2489.

Sincerely,

Preston A. Sleeger
Regional Environmental Officer

cc: Service List

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1 of Douglas County	)	FERC Project No. 2149-152
	)	
Notice of Application Ready for Environmental	)	
Analysis, Soliciting Comments, Recommendations,	)	
Preliminary Terms and Conditions, and Preliminary	)	
Fishway Prescriptions for the Wells	)	
Hydroelectric Project	)	

Certificate of Service

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.
Dated on this 19th day of November, 2010.

Preston Sleeger
Regional Environmental Officer
U.S. Department of the Interior
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Portland, Oregon 97205
(503) 326-2489

Document Content(s)