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Via Electronic Filing

November 23, 2010

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

Subject: **Wells Hydroelectric Project No. 2149-152**
Douglas PUD's Reply Comments to Agency Comments, Recommendations, Preliminary Terms and Conditions and Preliminary Fishway Prescriptions

Dear Secretary Bose:

In accordance with 18 C.F.R. §5.23(a) (2010), the Public Utility District No. 1 of Douglas County, Washington (Douglas PUD), licensee for the Wells Hydroelectric Project (Wells Project), hereby encloses for filing its Reply Comments to Agency Comments, Recommendations, Preliminary Terms and Conditions and Preliminary Fishway Prescriptions related to the relicensing of the Wells Project.

If you have any questions regarding these reply comments or require further information, please contact me at (509) 881-2208 or sbickford@dcpud.org.

Sincerely,

Shane Bickford
Natural Resources Supervisor

Enclosure

cc: Official Service List

CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents have been served upon each person designated on the official service list compiled by the Secretary in this proceeding via electronic or first-class mail.

Dated on this 23rd day of November 2010.

Mary E. Mayo
Administrative Assistant
Douglas PUD
1151 Valley Mall Parkway
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DOUGLAS PUD'S REPLY COMMENTS

Douglas PUD's Reply Comments to Agency Comments, Recommendations, Preliminary Terms and Conditions and Preliminary Fishway Prescriptions for the Wells Project

WELLS HYDROELECTRIC PROJECT
FERC PROJECT NO. 2149-152
SECURITY LEVEL: PUBLIC

Prepared by:
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November 23, 2010

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1.0 INTRODUCTION

Public Utility District No. 1 of Douglas County (Douglas PUD) is the owner, operator and licensee of the 774.3 Megawatt (MW) Wells Hydroelectric Project (Wells Project), located on the Columbia River in central Washington. The Wells Project's current Federal Energy Regulatory Commission (FERC or Commission) license expires on May 31, 2012. Douglas PUD is seeking a new 50-year FERC license to continue to operate the Wells Project.

On May 27, 2010, Douglas PUD filed with the FERC the Final License Application (FLA) for the Wells Project. On August 10, 2010 the FERC issued its Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions for the Wells Project (NREA).

Prior to the October 12, 2010 deadline established by the NREA, six agencies and/or tribes filed comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions (PT&Cs) related to the relicensing of the Wells Project. PT&Cs were filed by the Bonneville Power Administration (BPA) and United States Army Corps of Engineers (Corps), the United States Department of the Interior (DOI), the National Marine Fisheries Service (NMFS), the Washington State Department of Ecology (Ecology), the Washington State Department of Fish and Wildlife (WDFW), and the Confederated Tribes of the Umatilla Indian Reservation (Umatilla).

Douglas PUD's reply comments to the foregoing agency and tribal PT&Cs are provided below.

2.0 OVERVIEW OF REPLY COMMENTS

2.1 Reply Comments to Bonneville Power Administration and US Army Corps of Engineers

On October 7, 2010, the BPA and the Corps filed comments in response to the NREA for Douglas PUD's application for a new license for the Wells Project. In their October 7, 2010 filing, the BPA and the Corps recommended that several items be included in the new license for the Wells Project including their preferred approach to address: 1) Encroachment at Chief Joseph Dam; 2) Canadian Entitlement Payments related to the Columbia River Treaty; 3) Headwater Benefit Payments related to the Pacific Northwest Coordination Agreement; 4) accommodations for Flood Damage Reduction; and 5) Navigation.

Douglas PUD has several concerns with BPA's suggested language and preferred methodologies for calculating encroachment. Douglas PUD also disagrees with BPA regarding the need to include a license article to address deliveries of power to BPA associated with the Canadian Entitlement and BPA's description related to the calculation of Headwater Benefits. Douglas PUD does not have any concerns with BPA's comments associated with Flood Control or Navigation.

Douglas PUD's Reply Comments to BPA's comments associated with Encroachment, Canadian Entitlement Payments and Headwater Benefit Payments can be found below in sub-sections 2.1.1.2, 2.1.2.2, and 2.1.3.2, respectively.

2.1.1 Encroachment Comments

2.1.1.1 Summary of BPA's Comments on Encroachment

BPA and the Corps state that when the Commission initially authorized the construction of the Wells Project, approximately four years after Chief Joseph generating units 1-16 were completed in 1958, it was recognized that encroachment upon Chief Joseph would occur. BPA's comments also restate the terms of article 32 of the initial license, which established Douglas PUD's obligations to compensate the United States for the losses caused to the Chief Joseph Project by encroachment upon its tailwater by the operation of the Wells Project at a forebay elevation of 779 feet above mean sea level (msl).

Clause (i) of article 32 directed Douglas PUD to enter into an agreement with the Corps to compensate the United States for encroachment resulting from the operation of the Wells Project. Clause (i) specified that the agreement provide for replacement of power loss at Chief Joseph in time and in kind, unless otherwise mutually agreed; that the loss be computed on the basis of using the same quantity of water at any given time through the units of the Chief Joseph powerhouse with and without the Wells Project; that the difference in power output is the loss to be replaced; that in any computation pertaining to the power loss, the generating capacity will be limited to 125 percent of nameplate rating; and that the turbine and generator units to be used in computing the loss will be those in existence at Chief Joseph at the time the Wells Project is licensed, i.e., units 1-16.

Clause (ii) of article 32 provided that Douglas PUD compensate the United States for the increased cost of future turbines, units 17 through 27, required to generate the same amount of power under reduced head conditions as a result of the encroachment of the Wells pool on Chief Joseph tailwater. Such compensation was specified as a capital sum of $294,000 payable to the United States on or before initial operation of the Wells Project.

2.1.1.2 Reply Comments on Encroachment

Pursuant to clause (i) of article 32, Douglas PUD and the Corps entered into the 1968 encroachment agreement to compensate for the power loss at units 1-16, which will expire concurrently with the current FERC license for Wells. In addition, pursuant to clause (ii) of article 32, Douglas PUD made a payment of $294,000 to the United States for the increased cost of units 17-27.

In 1982 the FERC issued an order amending the license for the Wells Project to raise the maximum normal pool elevation of the reservoir from 779 to 781 msl.[1] Since the proposed change in reservoir elevation would affect the operating head at Chief Joseph Project, the FERC

[1] Public Utility District No. 1 of Douglas County, 25 FERC ¶62,577 (1982).

determined that compensation should be provided. Therefore, the FERC added article 52 to the license, which provides:

> "The Licensee shall, prior to the raising of the water surface elevation of the project reservoir, enter into an agreement with the Chief of Engineers, Department of the Army, or his designated representative, to compensate the United States for encroachment at the Chief Joseph Dam resulting from the higher normal water surface elevation of the Wells Project. A copy of the signed agreement shall be filed with the Director, Office of Electric Power Regulation, and the San Francisco Regional Engineer. In the event that the parties cannot reach agreement on the compensation to be provided for head encroachment at Chief Joseph Dam, the compensation to be provided by Licensee shall be determined by the Director, Office of Electric Power Regulation, prior to raising the operating level of the Wells Reservoir."

In 1982 Douglas PUD entered into a supplement to the 1968 encroachment agreement with the Corps to compensate for the additional encroachment caused by the higher water surface elevation. Under the 1982 supplement Douglas PUD replaces the power loss resulting from: 1) encroachment on units 1-16 in accordance with the 1968 agreement to forebay elevation 781 feet; and 2) the additional encroachment caused by any operation of Wells within the forebay range elevation 779 to 781 feet (a) on units 17-27 and (b) on units 1-16 taking into consideration only the incremental increase in generation due to uprating (authorized rewinds and new transformers with increased ratings). Thus, the parties recognized that there should be no additional compensation for encroachment on units 17-27 below elevation 779 feet.

BPA and the Corps encourage FERC to include provisions in the new license that will "guarantee continued compensation" to the United States for the losses resulting from the operation of Wells. According to BPA this compensation should provide for replacement of power loss at Chief Joseph in time and kind "for the units in existence at Chief Joseph Dam at the time Wells is licensed." Second, BPA maintains that the license should also include a "provision to compensate the United States for the planned and funded turbine runner upgrades on units 5-14." BPA also proposes that "the loss calculation should use the same quantity of water at any given time through the units of the Chief Joseph powerhouse with and without the Wells Project" and that "the difference in power output will be the loss to be replaced." Thus, it appears that BPA and the Corps are seeking additional compensation under the new license by proposing to expand the loss calculation to include future losses at units 17 through 27 due to encroachment when the Wells forebay elevation is below 779 feet and additional losses due to planned upgrades of units 5-14.

In principle Douglas PUD does not object to including an article in the new license to address its obligation to compensate the United States for losses caused to the Chief Joseph Project by encroachment upon its tailwater. However, Douglas PUD urges the FERC to reject the conditions sought by BPA because they are inconsistent with articles 32 and 52, unsupported in the record and inequitable. Instead, Douglas PUD recommends that FERC include a license condition that would direct it to negotiate a new agreement with the Corps within one year of issuance of the new license, consistent with the terms of articles 32 and 52 of the initial license,

and that FERC reserve the authority to fix such compensation in the event the parties are unable to reach agreement. Douglas PUD proposes the following article:

> "The licensee shall within one year of issuance of the new license enter into an agreement with the Corps of Engineers, consistent with articles 32 and 52 of the original license, to compensate the United States for the losses caused to the Chief Joseph Project by encroachment upon its tailwater by the operation of the licensee's project. In the event no satisfactory agreement is concluded by such time, then upon application by the licensee the Commission shall fix and determine the compensation to be made by the licensee to the United States for such encroachment after notice and opportunity for hearing."

The article proposed by Douglas PUD will provide each party with an opportunity to negotiate in good faith and reach an agreement without any pre-conditions or alteration of the determinations reflected in articles 32 or 52 that could unfairly compromise a party's position in the negotiating process.

As indicated above, BPA is seeking several major changes in the established methodology for determining compensation for encroachment. First, BPA proposes to revise the loss calculation to include losses at units 17-27 below elevation 779 feet, notwithstanding payment already made for the capital cost of larger units to generate the same amount of power as specified in clause (ii) of article 32. Second, BPA also proposes to revise the loss calculation to include additional compensation for losses due to the proposed upgrades of units 5-14 set to take place between 2010 and 2014. Lastly, BPA proposes that the new article require replacement of power loss "in time and kind." For the reasons set forth below, Douglas PUD urges the Commission to reject BPA's recommendations and adopt Douglas PUD's proposed article instead.

The proposal to seek additional compensation for units 17-27 is inconsistent with clause (ii) of article 32 of the current license and unfair to Douglas PUD. As shown above, Douglas PUD has already compensated the United States for all unit 17-27 losses up to elevation 779 feet through the one-time payment of $294,000, which was calculated on the basis of paying for the incremental cost of larger turbines "required to generate the same power under reduced head conditions as a result of the encroachment." This compensation is independent of the term of the initial license, because it is explicitly a "capital sum" to cover the cost of the larger units over their useful life, which should be in excess of 75 years if properly maintained. Thus, the upfront, lump sum payment was intended to be full compensation for units 17-27 and that is why those units were excluded from the ongoing loss calculations to be performed for units 1-16 pursuant to clause (i) of article 32. If the Commission had intended to treat these units in the same manner as the existing units, it would have included them in clause (i) and there would have been no need for a separate payment under clause (ii). However, the Commission decided to address encroachment on the new units separately and fixed compensation based upon a one-time payment of the capital sum, which is all that the United States is entitled to recover. Douglas PUD's position is confirmed by the 1982 supplement to the 1968 agreement with the Corps, which limits the additional compensation for units 17-27 to any encroachment caused by operation of Wells between elevation 779 and 781 feet. BPA's belated attempt to get double compensation by including units 17-27 in the loss calculations for units 1-16 below elevation 779

feet is inequitable and contrary to the determination made in the order issuing the initial license. As such, it is an impermissible collateral attack on a final Commission order, which should be rejected.

BPA's proposals to continue with the loss calculation for units 1-16 based upon the same quantity of water at any given time through the units of the Chief Joseph powerhouse "with and without the Wells Project" and to include the upgrades to units 5-14 in such calculations are also flawed and without support in the record.

In the context of existing environmental policy and regulations, the Wells Project provides substantial power and energy benefits to the Grand Coulee/Chief Joseph system yet Wells receives no credit. The existence of the Wells reservoir dampens the negative effects of power peaking at Chief Joseph on environmental resources downstream from that project. In essence, the Wells reservoir absorbs the discharge fluctuation from Chief Joseph, which is a distinct benefit to BPA. If Wells were not in place to provide the flow smoothing/damping, BPA would not be permitted to operate Grand Coulee and Chief Joseph as it currently does due to the adverse impacts to aquatic, terrestrial and cultural resources caused by extreme flow variations. Restrictions to protect such resources, such as ramping rates and discharge limitations, would be necessary and the peaking potential and energy output of the Grand Coulee/Chief Joseph system would be reduced. Since the encroachment analysis is supposed to evaluate power losses with and without Wells Dam, as BPA proposes, it should include all of the consequences of operating without Wells in place, including restrictions on peaking to comply with environmental requirements.

The existence of the Wells reservoir has also made it possible for the Corps to propose upgrades to units 5-14 without having to address the additional environmental impacts of operating the upgraded units. Absent the Wells reservoir it is doubtful that the Corps could realize the intended benefits of the proposed upgrade to units 5-14 consistent with current environmental policy and regulations. Thus, the existence of the Wells reservoir has made it possible for the Corps and BPA to upgrade the units at Chief Joseph and to plan on operating the upgraded units at their maximum peak capability, a significant benefit for which Wells receives no credit.

BPA also proposes that Douglas PUD be required to provide replacement of power loss at Chief Joseph "in time and kind" and to include losses resulting from planned upgrades for units 5-14. This recommendation is inconsistent with article 32 for several reasons. First, the recommendation for replacement "in kind and time" overlooks the fact that the parties are free to "otherwise agree" under the terms of article 32. BPA provides no support for eliminating this important feature of article 32 and thus the proposed change should be rejected.

Second, BPA's proposal to include additional losses based on the upgrades to units 5-14 is also contrary to the determination of compensation made by the Commission. Article 32 explicitly limits the power loss computation in two important respects. First, the generating capacity must be limited to 125 percent of nameplate rating. Second, the turbine and generator units to be used in computing the loss are limited to those in existence at Chief Joseph at the time the Wells Project was initially licensed. These limitations preclude using any capacity greater than 125 percent of the nameplate rating of the turbines and generating units in existence at Chief Joseph

on July 12, 1962, the date of issuance of the Wells license, for power losses up to elevation 779 feet. In the absence of any change in the maximum normal pool elevation of the Wells reservoir, the fact that the Project is subject to relicensing is not a basis to reopen the prior determinations of compensation for encroachment that were made by the Commission in articles 32 and 52. This is also confirmed by the 1982 supplement where the parties agreed that the additional compensation for the incremental increase in generation due to uprating units 1-16 was limited to any additional encroachment between elevation 779 and 781 feet. In the relicensing there is no proposal to change the maximum normal pool elevation and hence no basis to include any losses due to planned upgrades to units 5-14. As BPA noted, the Commission established the compensation obligation to address the losses resulting from the encroachments that were authorized in 1962 and 1982. However, there is no basis in the Federal Power Act to conduct a de novo review of such determinations in connection with the relicensing of the project. BPA's attempt to do so here should be rejected.

Douglas PUD has provided these comments to show that BPA's requests are inconsistent with articles 32 and 52 and unsupported, and thus should be denied. Consistent with the orders issued in 1962 and 1982, the Commission should defer ruling on the merits of the compensation issues and adopt the license condition proposed by Douglas PUD. This approach would allow the parties a fair opportunity to negotiate a new agreement consistent with prior determinations made by the Commission as reflected in articles 32 and 52.

2.1.2 Canadian Entitlement Comments

2.1.2.1 Summary of BPA's Comments on the Canadian Entitlement

The BPA and Corps comments on Canadian Entitlement state that the Columbia River Treaty prohibits use for power generation of improved streamflows in the U.S. resulting from the operation of Canadian storage developed under the Treaty without the prior approval of the U.S. Entity, and that the U.S. Entity is authorized to set conditions on any such use allowed by the U.S. Entity. BPA states that Wells, along with other non-Federal dams, is situated in the mid-Columbia River system where improved streamflows in the U.S. pursuant to the Treaty[2] occur, and that since 1964 Douglas PUD and the other non-Federal dam owners have sought use of the improved streamflows for power generation purposes. BPA further states that the U.S. Entity has entered into a series of agreements with Douglas PUD and the other non-Federal dam owners to allow use of the improved stream flow, so long as these non-Federal dam owners deliver to BPA a "portion of the Canadian Entitlement generated at their projects."

BPA's comments also restate article 38 of the initial license, which directs Douglas PUD to use the improved streamflows from Canadian storage projects for power production purposes, and make available to the Federal system for delivery to Canada the Project's share of coordinated system benefits resulting from such flows, as determined to be due to Canadian interests under the terms of the Treaty. BPA recommends that FERC include this same provision concerning the Canadian Entitlement in the new license.

[2]Treaty between the United States of America and Canada relating to cooperative development of the water resources of the Columbia Basin, 15.2 U.S.T. 1555 1964.

2.1.2.2 Reply Comments on the Canadian Entitlement

Douglas PUD's existing agreement with BPA to deliver its share of the Canadian Entitlement will expire in 2024. In principle, Douglas PUD does not object to entering into a negotiated contract with BPA for the post-2024 period to contribute an equitable portion of the coordinated system benefits actually realized at the Wells Project by operation of the Treaty. However, as explained below, FERC should not include the language of article 38 in the new license because it is unnecessary, and because such action would be inconsistent with the new licenses issued to the other non-Federal dam owners in the mid-Columbia who are also permitted to use the improved streamflows under the Treaty subject to the same terms and conditions applicable to Douglas PUD.

It is not necessary to roll over article 38 to the new license because the new license will include Form L-5 (Revised, October 1975), which includes a standard article reserving the Commission's authority to require the licensee to coordinate operations and share power benefits consistent with the terms of the Treaty. Standard article 10 provides that the licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interests of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the licensee as the Commission may order. Thus, the language of article 10 is sufficiently broad to cover the equitable sharing of coordinated system benefits resulting from the use of the improved streamflows, if any, realized as a result of the Treaty.

Second, including the language of article 38 in the new license for Wells would be inconsistent with the new licenses which the Commission has issued for several other non-Federal dams on the Columbia River system and which also use the improved streamflows under the Treaty. None of the new licenses for the Priest Rapids, Rock Island and Rocky Reach projects includes the language set forth in article 38.[3] The new licenses for these projects include Form L-5 (October 1975), and thus it is apparent that standard article 10 was deemed sufficient to address the licensee's obligations with respect to improved streamflows under the Treaty. BPA offers no support to justify a different treatment for Douglas PUD under the same facts and circumstances. Accordingly, it would not be appropriate to include article 38 in the new license for the Wells Project.

The Treaty provides that the Canadian Entitlement is equal to one half of the estimated increase in power generated at downstream U.S. dams as a result of the improved streamflows made available by Canada. In this regard, Douglas PUD wishes to call the Commission's attention to Article III of the Treaty as it affects the portion of Canadian Entitlement attributable to Wells. This article provides that Canada's interest in and entitlement to power benefits realized in the U.S. shall be based upon the U.S. operating its facilities to make the most effective use of the improved streamflows "*for hydroelectric power generation in the United States of America power system*" (emphasis added) whether or not the U.S. actually operates in the manner prescribed. The U.S. currently does not operate its storage projects to make the most effective

[3] Public Utility District No. 1 of Chelan County, 126 FERC ¶61,138 (2009); Public Utility District No. 2 of Grant County, 123 FERC ¶61,049 (2008); Public Utility District No. 1 of Chelan County, 46 FERC ¶61,033 (1989).

use of the improved streamflows for power generation in the U.S. For example, the Corps and Bureau of Reclamation currently operate their reservoir storage for a variety of non-power uses and restrictions in a manner that negates a substantial portion of the power benefits that otherwise would be available to Douglas PUD from the improved streamflows. However, under existing agreements Douglas PUD's share of the Canadian Entitlement is computed based on the assumption that U.S. facilities are operated to make the most effective use for power generation. Therefore, under existing agreements Douglas PUD may be required to deliver to BPA a share of the Canadian Entitlement that is more than half of the actual power benefits at Wells due to the improved streamflows.

Since the existing agreements will expire in 2024, Douglas PUD will have to negotiate a new agreement for delivery of its share of the Canadian Entitlement during the term of the new license. Douglas PUD wishes to preserve the opportunity to negotiate a new agreement that would include a condition limiting the Wells Project's share of the Canadian Entitlement to an amount not to exceed one half of the amount of the coordinated system power benefit attributable to the improved stream flow actually realized at the Wells Project. Douglas PUD believes that standard article 10 of the new license would allow pursuit of this objective and protect BPA's interests consistent with the terms of the Treaty. In the alternative, if the Commission considers it appropriate to include a special article in the new license concerning Canadian Entitlement, Douglas PUD respectfully requests that such article include a proviso recognizing that Douglas PUD may attempt to negotiate a new agreement for the post 2024 period limiting the Wells Project's share of the Canadian Entitlement to an amount not to exceed one half of the amount of the coordinated system power benefit attributable to the improved stream flow actually realized at the Wells Project.

2.1.3 Headwater Benefits Comments

2.1.3.1 Summary of BPA's Comments on Headwater Benefits

BPA's comments on headwater benefits state that there are four Federal storage projects upstream of the Wells Project that provide headwater benefits to the Wells Project. BPA's comments acknowledge that Douglas PUD is a party to the Pacific Northwest Coordination Agreement (PNCA), which establishes a mechanism, in section 13 thereof, for calculating and collecting headwater benefits. BPA also restates article 47 of the existing license in its entirety, which provides a specific methodology for the computation of annual charges for benefits made available to Douglas PUD by upstream storage improvements. Lastly, BPA and the Corps "encourage" FERC to "keep the Headwater Benefits requirement in the new license." BPA reasons that because the Wells Project continues to receive headwater benefits from the operation of upstream Federal projects, it is appropriate to continue this requirement in the new license. Thus, BPA is apparently recommending that article 47 be rolled over and made a condition of the new license.

2.1.3.2 Reply Comments on Headwater Benefits

In principle, Douglas PUD does not object to including an article in the new license to address its obligations to pay annual charges for headwater benefits provided by upstream storage projects. However, Douglas PUD does not believe that it is necessary or appropriate to include the language of article 47 in the new license.

The existing license, issued July 12, 1962, included the standard terms and conditions of Form L-6 (December 15, 1953), except for articles 23 and 24 and the last sentence of article 17, and added special conditions set forth as additional articles 28-47. At that time the standard terms and conditions of Form L-6 did not address a licensee's obligations to pay annual charges for headwater benefits. Accordingly, it was appropriate to include special article 47 in the current license to establish Douglas PUD's obligations with respect to such charges.

In accordance with FERC policy, the new license will include the standard terms and conditions of the current version of Form L-6 (Revised October 1975). Article 11 of current Form L-6 provides that whenever the licensee is directly benefited by a storage reservoir or other headwater improvement constructed by another licensee or the United States, the licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable.

It is also FERC policy to include an additional standard article in new licenses, which provides that if the licensee was directly benefited by a storage reservoir during the term of the original license and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater benefit improvement, the licensee shall reimburse the owner for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of the new license.[4] The article also provides that such benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.[5]

In view of the standard articles on headwater benefits that are included in new licenses, there is no need to incorporate the specific language of article 47 from the original license into the new license for the Wells Project. BPA's interests will be adequately protected by article 11 of Form L-6 for benefits received during the term of the new license and by the additional standard article for any benefits during the term of the original license that were not previously assessed and reimbursed. Moreover, including article 47 in the new license as a default provision would not be appropriate, because it would potentially conflict with the standard articles on headwater benefits included in the new licenses for several other projects that are also subject to section 13 of the PNCA.

[4] See, e.g., Avista Corp., 127 FERC ¶61,265 (2009) (article 205); Public Utility District No. 2 of Grant County, 123 FERC ¶61,049 (2008) (article 204); Public Utility District No. 1 of Pend Oreille County, 112 FERC ¶61,055 (2005) (article 203); Public Utility District No. 1 of Chelan County, 126 FERC ¶61,138 (2009) (article 205); Public Utility District No. 1 of Chelan County, 117 FERC ¶62,129 (2006) (article 204); Idaho Power Co., 108 FERC ¶61,128 (2004) (article 204).

[5] 18 C.F.R. Part 11 (2010).

As indicated in BPA's comments, the language of article 47 is very specific as to how the annual cost of interest, maintenance and depreciation of each headwater improvement is to be apportioned to storage and head functions. The amount apportioned to the storage function is determined by multiplying such total cost by the ratio of the average power (at-site and downstream) from at-site storage during the critical period to the sum of the average power (at-site and downstream) from at-site storage during the critical period and the total average power at-site (from natural flow and from at-site and upstream storage) during the critical period. The article also provides that the cost apportioned to the storage function must be apportioned to the at-site power plant and to each downstream plant in direct proportion to the average power from at-site storage at each plant during the critical period. Thus, the apportionment is based upon a ratio of average power attributable to different sources (natural flow and at-site and upstream storage) produced during the critical period. This apportionment methodology is also reflected in section 13 of the PNCA. Article 47 also provides that the Commission may on its own motion or upon a request by the licensee prescribe another formula or procedure to determine the annual payment for future years.

In Order No. 453[6], issued June 24, 1986, the Commission adopted the energy gains method for calculating headwater benefits charges, which apportions the costs to each downstream project according to its share of the total extra power generation made possible by the headwater project, and which is codified in Part 11 of the Commission's regulations. The energy gains method differs from the methodology set forth in article 47 and section 13 of the PNCA. However, section 11.11(a) of the Commission's regulations provides that the energy gains method will not apply if the Commission has approved headwater benefits charges pursuant to an existing coordination agreement among the parties, or the parties reach, and the Commission approves a settlement with respect to headwater benefits charges pursuant to section 11.14(a) of the regulations. By order issued September 15, 2000, the Commission approved section 13 of the PNCA as a headwater benefits settlement agreement and authorized the payment for headwater benefits pursuant to its methodology until changed circumstances warrant reappraisal.[7]

Since the PNCA expires in 2024, the term of the new license will extend beyond the term of the PNCA. In the absence of a new settlement agreement, the Commission would determine payments for headwater benefits for the remainder of the term of the new license. As noted above, the Commission's order provides that section 13 of the PNCA may be used until such time as the development or operation of hydroelectric projects in the Columbia Basin warrants a reappraisal. Thus, the Commission could conduct such a reappraisal prior to expiration of the PNCA. In view of the potential for such reappraisal during the new license term, it is appropriate to have the same headwater benefits articles in the new licenses for each of the projects that are subject to section 13 of the PNCA. To date, the Commission has issued new licenses for Box Canyon, Rocky Reach, Lake Chelan, Priest Rapids and Spokane River projects, which are subject to section 13 of the PNCA, and which contain standard article 11 and the additional standard article on headwater benefits discussed above.[8] Therefore, it is appropriate to

[6] Payments for Benefits from Headwater Improvements, Order No. 453, June 24, 1986, Docket No. RM83-57-000, 51 F.R. 25362.
[7] Public Utility District No. 1 of Chelan County et al., 92 FERC ¶61,218 (2000).
[8] See footnote 2.

include the same articles in the new license for the Wells Project and avoid the potential for inconsistencies that would exist if article 47 were included.

2.2 Reply Comments to Department of the Interior

On October 6, 2010, the DOI filed comments and preliminary recommendations, terms and conditions, and prescriptions in response to the NREA issued by the FERC for Douglas PUD's application for a new license for the Wells Project. DOI's October 6, 2010 filing included PT&Cs under Sections 10(a), 10(j) and 18 of the Federal Power Act. This filing contained several Section 10(j) recommendations that conflicted with the terms of the Aquatic Settlement Agreement (Aquatic Settlement) and Anadromous Fish Agreement and Habitat Conservation Plan (HCP). On November 19, 2010 the DOI filed amended comments, recommendations, terms and conditions, and prescriptions.

Douglas PUD appreciates DOI's November 19, 2010 filing, which addresses the material conflicts between the October 6, 2010 PT&C filing (10(j) recommendation Nos. 1, 4, 5, 6, 7, 8, 9 and 10) and the Aquatic Settlement and HCP.

2.2.1 License Term

Douglas PUD is particularly pleased that DOI supports a 50-year term for the new Wells Project license. The license term is an essential component of the Aquatic Settlement and other relicensing settlement agreements. The extensive commitments made in the Wells relicensing settlement agreements and management plans also warrant the longest license term possible. The conservative cost estimate for implementation of the relicensing settlement agreements and management plans is more than $643 million over the term of the new license.

2.2.2 Section 18 Fishway Prescriptions

In light of the substantial financial commitments contained within the relicensing settlement agreements, Douglas PUD appreciates DOI's recent filing that includes a comprehensive set of Section 18 Fishway Prescriptions that match the terms and conditions associated with the Aquatic Settlement and the HCP. This includes Section 18 Fishway Prescriptions that will ensure the safe, timely and effective upstream and downstream passage for anadromous spring Chinook, summer/fall Chinook, sockeye, coho, steelhead and Pacific lamprey and resident bull trout.

2.2.3 Section 10(j) Recommendations

The DOI's PT&C filed on October 6, 2010, and as amended on November 19, 2010, include an extensive list of fish and wildlife recommendations pursuant to Section 10(j) of the Federal Power Act. As amended, the DOI's 10(j) recommendations are consistent with the Aquatic Settlement and HCP and are consistent with the proposed measures for the protection, mitigation and enhancement of aquatic and terrestrial resources in the Final License Application for the Wells Project.

2.2.4 Section 10(a) Recommendations

Lastly, DOI's PT&C filing also contains a recommendation pursuant to Section 10(a) of the Federal Power Act, which is consistent with the measures proposed in Douglas PUD's Final License Application. Specifically, Douglas PUD supports DOI's 10(a) No. 1 that recommends Douglas PUD implement the Recreation Management Plan for the enhancement of recreation resources at the Wells Project.

2.3 Reply Comments to National Marine Fisheries Service

On October 8, 2010, the NMFS filed comments in response to the NREA for Douglas PUD's Final License Application for the Wells Project. NMFS's filing included PT&Cs under Sections 10(j) and 18 of the Federal Power Act for the relicensing of the Wells Project.

Douglas PUD appreciates NMFS's continued support for the Anadromous Fish Agreement and Habitat Conservation Plan (HCP) and its expectation that all of the substantive measures for the new license and other provisions pertaining to anadromous fish will be governed by the HCP.

NMFS's comments reaffirm that the HCP is a comprehensive and long-term adaptive management plan for salmon and steelhead and their habitats associated with the Wells Project. The primary goal of the HCP is to rebuild and then maintain healthy self-sustaining populations of anadromous salmon and steelhead in the waters associated with the Wells Project. The species benefiting from the HCP include Endangered Species Act (ESA) listed Upper Columbia River spring Chinook and Upper Columbia River steelhead, as well as unlisted populations of sockeye, summer/fall Chinook and coho. On October 16, 2007 the FERC determined that the HCP is a qualifying Comprehensive Plan pursuant to Section 10(a)(2)(A) of the Federal Power Act.

NMFS and the other parties to the HCP have agreed that the HCP is intended to address all of the anadromous fish issues associated with the Wells Project, including terms and conditions to support relicensing, for a term of 50 years (2004-2054). The HCP became effective in 2004 following FERC's approval of the HCP as an Offer of Settlement and amendment of the original license for the Wells Project to include the terms and conditions of the HCP.

Over a proposed license term of 50 years, implementation of the HCP measures are expected to cost Douglas PUD in excess of $550 million (2012 dollars). In light of these substantial commitments in the HCP, Douglas PUD appreciates NMFS's recent filing that supports and contains an accurate description of the HCP, including a preliminary Section 18 Fishway Prescription that incorporates the HCP into the new license in its entirety and without material modification (Article 1).

NMFS's October 8, 2010 filing also includes recommended terms and conditions pursuant to Section 10(j) of the Federal Power Act, which are consistent with the HCP. Specifically, NMFS recommends that Douglas PUD be required to implement the Tributary Conservation Plan and the Hatchery Compensation Plan in their entirety, as set forth in the HCP (Article 2). Douglas PUD appreciates and supports NMFS's 10(j) recommendation regarding the Tributary

Conservation Plan and the Hatchery Compensation Plan as these plans are integral to the long-term implementation of the HCP and the rebuilding of salmon and steelhead populations upstream of Wells Dam.

Lastly, NMFS has recommended that the term for the new license be no longer than the term of the HCP, which expires in 2054. However, NMFS has also recognized that the Wells Project is the first project on the Columbia River to achieve the HCP survival performance standards of 93 percent, and that verification studies in 2010 confirmed this attainment by generating an estimate of 96.4 percent, well in excess of the HCP survival standard. In addition, NMFS acknowledged that options exist to extend ESA coverage, currently provided by the HCP through 2054, for the remaining 8 years of a 50-year license term, which other parties have proposed. NMFS stated that if the HCP parties wish to extend the HCP to the end of a 50-year license, the FERC possesses the necessary authority to accommodate such a plan. Therefore, if the FERC, in its discretion, opts for a 50-year license term, as proposed by the Wells settlement agreements and parties, NMFS will respond accordingly and discuss extensions of the HCP with the appropriate parties prior to 2054.

Douglas PUD appreciate NMFS's willingness to provide ESA coverage should the FERC determine that the merits of the Wells relicensing proceeding warrant a 50-year term. In order to ensure that this mechanism can be implemented with full support from all parties to the HCP, Douglas PUD is firmly committed to negotiating a replacement agreement for the HCP well in advance of the expiration of the existing agreement in 2054.

2.4 Reply Comments to Washington Department of Fish and Wildlife

On October 8, 2010, the WDFW filed comments in response to the NREA for Douglas PUD's application for a new license for the Wells Project. WDFW's filing included preliminary recommendations for terms and conditions to protect, mitigate and enhance fish and wildlife resources under Sections 10(a) and 10(j) of the Federal Power Act as it pertains to the relicensing of the Wells Project. WDFW also included their rationale for supporting a 50-year license for the Wells Project and for opposing a coordinated relicensing of the Wells Project with the Rocky Reach and Priest Rapids projects in 2052. WDFW also included in their filing their rationale for supporting the Aquatic Settlement, the HCP and the TRMPs.

Douglas PUD concurs with the recommendations made in WDFW's October 8, 2010 filing. In particular, Douglas PUD appreciates WDFW's support for the HCP, the Aquatic Settlement, and the TRMPs (Wildlife and Botanical, Avian Protection, and Recreation management plans) contained within the Final License Application for the Wells Project. Douglas PUD also concurs with WDFW's recommendation that the FERC approve the Aquatic Settlement, without modification, and that the Aquatic Settlement and HCP should be incorporated into the new long-term license for the Wells Project.

Douglas PUD also appreciates WDFW's recommendation that the FERC issue a new 50-year license for the Wells Project. WDFW's rationale for recommending a 50-year license includes the fact that the Wells Project has already achieved the No Net Impact survival standards consistent with the HCP, the fact that the term of license is an essential component of the

Aquatic Settlement and the Off-License Settlement Agreement, and the fact that procedurally relicensing three large mid-Columbia projects, with very distinct issues, will pose significant challenge for state resource personnel.

Douglas PUD also agrees with WDFW's opposition to the potential coordinated expiration of the Wells license with the new licenses for the Wells, Rocky Reach and Priest Rapids projects. WDFW's opposition is based upon the fact that a coordinated relicensing for three of the largest FERC licensed dams in the nation, at the same time, is not in the public interest as the associated workload would exceed WDFW's staff and resources. WDFW also opposes a coordinated relicensing because it would place an undue burden upon other state, federal, tribal and non-governmental organizations expected to be involved in these future relicensing proceedings and that this undue burden would be incurred without providing any corresponding benefits.

Douglas PUD agrees with WDFW on all of these points and would like to add that the potential coordination of the relicensing for Wells with the other PUD dams to better evaluate cumulative impacts to anadromous fish is not warranted. Cumulative impacts on salmon and steelhead have been and will continue to be address at the Wells Project, because No Net Impact survival levels have been achieved at Wells and the corresponding mitigation programs have been fully implemented and are proposed to continue over the new license term. Douglas PUD would also like to add that a coordinated relicensing of Wells with two other PUD projects, as intimated in the Rocky Reach and Priest Rapids license orders, would necessarily diminish the level of rigor by all participants as the associated workloads would be overwhelming due to the synchronized ILP schedules for all three projects. Further, the conduct of relicensing studies and identification and resolution of issues will be negatively impacted by the fact that the three projects are operated by three different owners. In addition to separate ownership there are distinct sets of issues related to recreation, wildlife, botanical, cultural, erosion, socioeconomic, water quality and resident fish at each project. It will be impossible for stakeholders and staff from each of the three PUDs to manage the competing requests for review and participation in the various relicensing processes.

The only resource of common impact is anadromous fish, which is covered by the HCP for two of the three projects. As explained earlier, at the Wells Project No Net Impact was achieved in 2005, verified again in 2010 and is expected to be maintained for the next 50 years.

2.5 Reply Comments to Washington Department of Ecology

On October 8, 2010, Ecology filed comments in response to the NREA for Douglas PUD's application for a new license for the Wells Project. Ecology's filing included both comments and recommendations associated with the relicensing of the Wells Project.

In their comments, Ecology included a description of the Aquatic Settlement and the HCP, a statement of their intention to issue a Water Quality Certification for the Wells Project shortly after the draft Environmental Assessment is issued by the FERC, a recommendation that Ecology be added to the terrestrial work group that will be overseeing the Wildlife and Botanical Management Plan, a recommendation that the new license for the Wells Project be issued for a

term of 50 years, and an expression of opposition to the potential synchronization of the future relicensing of the Wells Project together with Rocky Reach and Priest Rapids.

Douglas PUD agrees with the recommendations made in Ecology's October 8, 2010 filing as they relate to the new license for the Wells Project. In particular, Douglas PUD appreciates Ecology's support for the Aquatic Settlement and Ecology's indication that they will issue a Water Quality Certification for the Wells Project in a timely manner, shortly after the FERC issues the Draft Environmental Assessment for the Wells Project. Douglas PUD also supports Ecology's proposed use of the Aquatic Settlement and HCP as the foundation for their certification conditions related to water quality and aquatic life designated uses for Wells. Douglas PUD also supports Ecology's request to be added to the Terrestrial Resource Work Group that will be in charge of implementing the Wildlife and Botanical Management Plan, as proposed in the Final License Application for the Wells Project. However, Douglas PUD does not agree with Ecology that a license article is needed for Ecology to participate in this work group. Douglas PUD welcomes Ecology's participation in this work group and will ensure that Ecology is invited to participate in the Terrestrial Resources Work Group following the issuance of the new license.

Douglas PUD also agrees with Ecology's recommendation that FERC issue a new 50-year license for the Wells Project. Ecology's reasons for recommending a 50-year license include: 1) the fact that the management plans contained within the Aquatic Settlement provide strong, clear goals and objectives, with flexibility via adaptive management to meet these goals in cases of new or changing circumstances; 2) synchronizing the Wells relicensing process with other mid-Columbia PUDs would put an undue burden on state agencies that are consulting on the multiple relicensing processes; 3) coordinating the relicensing of three of the largest projects in the nation at the same time will significantly compound that burden without providing any corresponding benefit; 4) the relicensing of the Rocky Reach and Priest Rapids projects will provide federal and state staff with experience to be applied to the Wells Project relicensing; and 5) support for a 50-year term for Wells is an essential component of the Aquatic Settlement. The Parties to the Aquatic Settlement want a longer term to ensure that the benefits of the Wells Project are available for the longest term possible.

2.6 Reply Comments to the Confederated Tribes of the Umatilla Indian Reservation

On October 8, 2010, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) filed a motion to intervene and comments, recommendations, and preliminary terms and conditions in response to Douglas PUD's application for a new license for the Wells Project. The CTUIR averred that anadromous fish have cultural and religious significance to tribal members and recommended that adequate measures be included in the new license for the Wells Project to address protection, mitigation and enhancement measures for Pacific lamprey in addition to the anadromous fish species covered by the HCP.

On October 12, 2010, the CTUIR submitted a second filing to the FERC in response to the NREA. This filing was a copy of the letter previously sent to Mr. Shane Bickford of Douglas PUD by Chairman Jay Minthorn of CTUIR in August 2007. Doulas PUD's response to that

letter was filed within Douglas PUD's Revised Study Plan Document, which was previously filed with the FERC on September 14, 2007.

Douglas PUD's Final License Application fully addressed the comments and recommendations of the CTUIR. Incorporation of the Wells HCP into the new license will provide protection, mitigation and enhancement measures that assure continued protection of Plan Species (anadromous spring Chinook, summer/fall Chinook, steelhead, sockeye and coho). Incorporation of the Aquatic Settlement, including the Pacific Lamprey Management Plan contained therein, will provide new measures to protect and ensure the safe, timely and effective passage of Pacific lamprey through the Wells Project.

Incorporation of the Aquatic Settlement will also provide protection, mitigation and enhancement measures for all other elements of the aquatic environment affected by the Project, including water quality, bull trout, resident fish and white sturgeon. Additionally, the Aquatic Nuisance Species Management Plan will protect native aquatic species through the prevention and the containment of existing nuisance aquatic species at the Wells Project. In combination, the Wells HCP and Aquatic Settlement comprise an extensive and comprehensive suite of measures to protect and enhance all aquatic resources including the species of most concern to the CTUIR, anadromous salmon, steelhead and lamprey.