



STATE OF WASHINGTON

**DEPARTMENT OF FISH AND WILDLIFE**

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May 26, 2011

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

**SUBJECT:** Washington Department of Fish and Wildlife (WDFW) **COMMENTS** on the April 6, 2011 Draft Environmental Impact Statement (DEIS) for the Wells Hydroelectric Project, No. 2149, prepared by the Federal Energy Regulatory Commission staff (Commission staff).

Dear Ms. Bose:

The WDFW has reviewed the April 6, 2011 DEIS prepared by the Commission as part of the relicensing process for the Wells Hydroelectric Project (Project), No. 2149.

WDFW appreciates the Commission staff recommendations to adopt several recommendations proposed by WDFW which are very important to the protection and enhancement of public natural resources. We do, however, have some concerns with the Commission staff analysis and recommendations as contained in the Wells DEIS and we appreciate the opportunity to provide the following additional comments for filing in the above-referenced proceeding.

### Jurisdictional Authority

The WDFW jurisdictional authority is in accordance with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), as amended; the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 et seq.), as amended; the Federal Power Act (FPA) (16 U.S.C. 791-828c et seq.), as amended, and in accordance with WDFW's legislative mandate to preserve, protect, perpetuate and manage the wildlife, game fish, food fish and shellfish resources of the State of Washington.

### Consultation History

On May 13, 2011 at the Commission's 10(j) public meeting, WDFW recommended Commission staff include the Wells Aquatic Settlement, including the six aquatic resource management plans that make up material portions of the plan in the staff

alternative to be included in the Final Environmental Impact Statement as an element of the preferred alternative.

On October 8, 2010, WDFW submitted recommended terms and conditions to the Commission pursuant to Section 10(j) of the FPA for the purpose of providing for the protection, mitigation, and enhancement of wildlife and fish resources, in which WDFW provided a recommendation to the Commission to adopt the Aquatic Settlement, the Wells Anadromous Fish Agreement, and Habitat Conservation Plan (AFA/HCP) into the next long-term license for the Project.

Stakeholders participating in the development and future implementation of the Aquatic Settlement include WDFW, the United States Fish and Wildlife Service (USFWS), the Bureau of Land Management (BLM), NOAA Fisheries, Washington Department of Ecology (Ecology), the Confederated Tribes and Bands of the Colville Reservation (CIN), and Confederated Tribes and Bands of the Yakama Nation (YIN). The final Agreement was distributed for execution in October 2008 and signed by the WDFW, USFWS, BLM, Ecology, CIN, YIN and Douglas County PUD. The Aquatic Settlement was submitted to the Commission on May 27, 2010. The Aquatic Settlement and the six aquatic resource management plans intend to protect and enhance populations of white sturgeon, Pacific lamprey, bull trout and native resident fish; protect and restore water quality within the Project; and prevent the introduction and further spread of aquatic nuisance species. These resource management plans have been identified and included in their entirety in the Final License Application as the Applicant's proposed environmental measures. The Applicant and parties to the Aquatic Settlement, including WDFW, requested the Commission incorporate, without modification, the proposed license articles and aquatic resources management plans as conditions of the new license.

The six aquatic resource management plans, together with the Wells AFA/HCP, form the foundation of the Applicant's Final License Application for the Project with respect to management of aquatic resources. In addition to measures for the protection of aquatic resources, the Final License Application includes several management plans for the protection and enhancement of terrestrial, recreation, and cultural resources associated with the Project. Similar to the HCP and the Aquatic Settlement, WDFW participated in the development of these management plans and supports them, including the Wildlife and Botanical Resource Management Plan, Avian Protection Plan, Recreation Management Plan, and Land Use Policy.

## General Comments

The action alternatives are incorrectly evaluated because they are based on a mischaracterization of the applicant's proposed measures for aquatic resources not covered by the Wells HCP and the Aquatic Settlement. WDFW recommends the Commission staff evaluate the environmental effects of approving the Aquatic Settlement and reauthorizing the recently modified Wells HCP.

Commission staff recommends a non-viable alternative as the preferred alternative, which is the Staff Alternative without Mandatory Conditions. This alternative ignores the requirements of the FPA (i.e. mandatory conditions must be included in any license issued by the Commission).

WDFW recommends the Commission staff provide a corrected analysis in the final Wells EIS that accurately characterizes the applicant's proposed action, and that eliminates the staff alternative without mandatory conditions from further consideration. We disagree with staff's exclusion of individual measures within the management plans that provide the technical support for the Aquatic Settlement.

### Specific Comments

P.xxii, Executive Summary, Alternatives Considered, second paragraph:

Alternative Considered No. (1): WDFW is concerned with the staff's recommended alternative: It recommends that specific measures within management plans be excluded because they rely upon an adaptive management construct to resolve existing uncertainty. In particular, the following statements are of concern:

*"The staff alternative includes Douglas PUD's proposal without the following measures: (1) implementing as-yet unspecified measures or studies included in the Water Quality Management Plan, Bull Trout Management Plan, Pacific Lamprey Management Plan, White Sturgeon Management Plan, Resident Fish Management Plan, and Aquatic Nuisance Species Management Plan (implementation of any as-yet unspecified measures would require prior Federal Energy Regulatory Commission (Commission) approval after the filing of an application to amend any license issued)..."*

We contrast the staff's treatment of the Wells Joint Offer of Settlement with the April 8, 2011, DEIS for the Boundary Project Relicensing and the Sullivan Creek Project license surrender (FERC Project Nos. 2144-038 and 2225-015 respectively), which clearly describe the applicant's offer of settlement and settlement agreements as the proposed action, and which recommends the Commission adopt all of the measures contained within the Boundary Settlement as license measures, including those measures that contain adaptive management and uncertainty regarding future implementation.

Recommended Corrective Action: WDFW recommends the following changes be consistently applied to the Wells DEIS to ensure consistency within the final EIS with the applicant's proposed action:

1. Please revise the Wells DEIS to reflect the proposal submitted by Douglas PUD to the Commission. Wells DEIS Alternative No. 2 should include an accurate description of the applicant's proposed measures and costs. The Wells Final License Application proposed to implement the Aquatic Settlement, which consists of the previously mentioned six aquatic resource management plans. The Aquatic Settlement also proposes to establish a work

group to oversee the implementation of the measures and a timeline for decision and implementation. The Aquatic Settlement also proposes a rigorous and well-defined adaptive management process to address future new information and technologies, and dispute resolution process to address conflicts within the working group. A description of the issues addressed by the Aquatic Settlement, including the sections of the Federal Power Act, Clean Water Act and Endangered Species Act which are addressed by this agreement, should also be included in at least one of the sections of the EIS describing the Applicant's Proposed Action.

2. Analyze the environmental effects of implementing the Aquatic Settlement as a comprehensive package of agreed-upon measures to address the Project's effects on aquatic resources not covered by the Wells HCP.
3. The Staff Alternative with mandatory conditions (Wells DEIS Alternative No. 4) should also include all of the measures and costs of the Aquatic Settlement because Ecology has provided the Commission with substantial evidence of their intent to include the Aquatic Settlement in the Clean Water Act, section 401 Water Quality Certification, for the Project. In this instance, ignoring Ecology's proposed mandatory conditions could result in a flawed NEPA analysis and Endangered Species Act consultation on the proposed action of relicensing the Wells Project.

P. xxii, Executive Summary, Alternative Considered No. (4) The Wells DEIS excludes the requirement that Douglas PUD monitor and study bull trout passage performance at off-project hatcheries and broodstock collection facilities.

*WDFW response:* The Bull Trout Management Plan was developed by the USFWS, Douglas PUD and the other Aquatic Settlement Work Group parties, to address the incidental take of ESA listed bull trout at Wells Dam and at adult salmon and steelhead trapping sites both within and outside the Project boundary. Annually the adult salmon and steelhead brood stock trapping facilities operated as part of the mitigation requirements of the Wells HCP incidentally encounter over 100 adult bull trout per year. The intent of this one-time off-site study is to determine whether there is incidental take associated with the operation of those "hatchery" facilities. If there is incidental take or significant delay at those sites, then the Aquatic Settlement Work Group/HCP coordinating committee, in concert with USFWS and Douglas PUD will develop measures to reduce the take and/or delay at those hatchery mitigation facilities.

P. xxii, Executive Summary, Alternative Considered No. (5): The Wells DEIS excludes the requirement that Douglas PUD collects genetic tissue samples, and fund the genetic analysis of the bull trout tissue samples.

*WDFW response:* Douglas PUD has agreed to participate in the collection of population level information on bull trout in an effort to correctly assign the fish passing Wells Dam to one of several core populations of bull trout within the Upper Columbia Basin. Without the suggested genetic analysis data, it will be difficult to accurately determine which population of bull trout is interacting with Wells Dam and with the Wells HCP

hatchery facilities located in the Methow Basin. The completion of proposed tributary enhancements will benefit bull trout which pass upstream and downstream through the Project. Having genetic information to focus tributary enhancement efforts at the local population level and within certain watersheds located upstream of the Project is important, as the tributary enhancements are costly.

P. 110, Section 3.3:1.3 Cumulative Effects, Pacific Lamprey Management Plan: WDFW has concerns with the statement “*Additionally, we have no information to indicate that adult Pacific lamprey failing to pass the project cannot successfully reproduce in areas downstream of the project.*”

WDFW response: Whether lamprey can successfully reproduce below Wells Dam is not relevant. Whether or not the reduction of the home range of Pacific lamprey negatively impacts their ability to sustain their population is relevant. We question whether Commission staff can provide a citation from scientific literature which states that limiting the home range of Pacific lamprey in the Upper Columbia River does not negatively impact the population’s ability to be self sustaining. We recommend deleting the statement “Additionally, we have no information to indicate that adult Pacific lamprey failing to pass the project cannot successfully reproduce in areas downstream of the project.” The Project has impeded passage (*Robichaud, D., B. Nass, and J. G Murauskas. 2009*) and reduced the historic range of Pacific lamprey in the Upper Columbia River (*Moser, M., P. Ocker, L. Stuehrenberg, and T. Bjornn. 2002*). We recommend the adoption of the Aquatic Settlement and implementation of the Pacific Lamprey Management Plan in order to provide Pacific lamprey safe, effective, and volitional passage at the Project.

The Commission’s April 6, 2011 DEIS for the relicensing of the Wells Project failed to analyze the effects of approving or disapproving the Joint Offer of Settlement for the Aquatic Settlement. We recommend that the final EIS include an analysis of the proposed action submitted jointly by WDFW and all of the Aquatic Settlement parties.

Further, Commission staff’s analysis of individual measure within each of the six aquatic resource management plans that support the Aquatic Settlement is inconsistent with the Commission’s analysis of similar settlement agreements (e.g., Boundary and Niagara) and is inconsistent with the Commission’s own NEPA recommendation and Settlement Guidance Policy for a comprehensive analysis of the measures proposed within the context of a settlement agreement.

Commission staff proposal states that their proposal is the applicant’s proposal with staff additions and modifications: it fails to properly characterize the applicant’s proposal, and fails to analyze the proposed measure which is the Aquatic Settlement. This constitutes material changes in the agreement by removing numerous agreed-upon measures from the Aquatic Settlement’s six component aquatic resources management plans, and failing to make a recommendation to approve the Joint Offer of Settlement.

WDFW and the Aquatic Settlement Parties carefully developed the six component management plans and the measures proposed therein, and determined that they are consistent with the Federal Power Act (FPA) and the Commission’s 2006 Policy Statement on Hydropower Licensing Settlements. The parties intent in this regard was to

ensure that the Commission could, should they determine that the proposal meets the Section 10(a)(1) of the FPA public interest standard, approve the Parties' Joint Offer of Settlement and thereby incorporate, without material modification, the parties proposed license articles contained within the Aquatic Settlement.

WDFW contrasts the treatment of the Aquatic Settlement and Joint Offer of Settlement with the April 8, 2011, DEIS for the Boundary Project Relicensing and Sullivan Creek Project surrender (FERC Project Nos. 2144-038 and 2225-015 respectively), which clearly describes the applicant's jointly filed offer of settlement and settlement agreements as the proposed action, and recommends the Commission approve the Joint Offer of Settlement with staff's modifications.

WDFW recommends the following changes be consistently applied throughout the Wells DEIS:

1. Analyze the environmental effects of implementing the Aquatic Settlement as a comprehensive package of agreed-upon measures to address the Project's effects on aquatic resources not covered by the Wells HCP.
2. Make a recommendation based on the approval of the Joint Offer of Settlement and the Aquatic Settlement.
3. The staff alternative and the staff alternative with mandatory conditions should include both the measures and costs of the proposed implementation of the Aquatic Settlement. If Commission staff determines that it is not in the public's interest to approve the Joint Offer of Settlement, then the Wells DEIS should at a minimum include the Aquatic Settlement in the staff alternative with mandatory conditions as all of the settlement parties have proposed to include the Aquatic Settlement as a mandatory condition of the new license.

Thank you for your consideration of our comments. In summary we recommend incorporation of all elements of the Aquatic Settlement into the Wells EIS preferred alternative. If you have comments or need clarification on our requests regarding the Wells DEIS, please contact me by email at: [Dennis.Beich@dfw.wa.gov](mailto:Dennis.Beich@dfw.wa.gov) or telephone me at (509) 754-4624 ex. 219.

Sincerely,



cc: Dennis Beich  
Region 2 Director

cc: Federal Energy Regulatory Commission Service List

## **Literature Cited**

Moser, M., P. Ocker, L. Stuehrenberg, and T. Bjornn. 2002. Passage efficiency of adult Pacific lampreys at hydropower dams on the Lower Columbia River, USA. *Trans. Am Fish. Soc.* 131:956-965.

Robichaud, D., B. Nass, and J. G Murauskas. 2009. Adult Pacific lamprey passage and behavior study (adult passage study). Wells Hydroelectric Project, FERC No. 2149. Prepared for Public Utility District No. 1 of Douglas County, East Wenatchee, WA.

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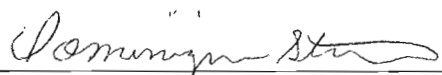
**PROOF OF SERVICE**

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

*U.S. Mail Postage Prepaid via Consolidated Mail Service, or E-mail Delivery, to all parties listed on the Service List for FERC Project No. 2149.*

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 31st day of May, 2011, at Olympia, Washington.

  
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Dominique Starnes  
Legal Assistant