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Via Electronic Filing

May 31, 2011

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 Comments on Wells Draft Environmental Impact Statement**

Dear Secretary Bose:

In accordance with 18 C.F.R. § 5.25(c) (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 Comments on the Wells Draft Environmental Impact Statement.

If you have any questions regarding these comments or require further information, please contact me at (509) 881-2208 or sbickford@dupud.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 31st day of May 2011.



Mary E. Mayo
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DOUGLAS PUD'S COMMENTS ON WELLS DRAFT ENVIRONMENTAL IMPACT STATEMENT

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



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May 31, 2011

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1.0 BACKGROUND

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 license from FERC 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 the same day, the parties to the Aquatic Settlement Agreement (Aquatic Settlement) jointly filed with the FERC an Application for Approval of the Aquatic Settlement Agreement as an Offer of Settlement. On July 7, 2010, the FERC issued a Notice of Settlement and Solicitation of Comments for the Aquatic Settlement. No negative comments on the Aquatic Settlement were received by the FERC's July 27, 2010 comment deadline.

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). On August 19, 2010 the FERC issued an Errata Notice revising the issues covered by the NREA. Comments, and preliminary recommendations, terms, conditions and fishway prescriptions, were due to the FERC by October 12, 2010.

On October 1, 2010, Douglas PUD filed its Clean Water Act (CWA) section 401 Water Quality Certification Application with the Washington State Department of Ecology (Ecology). Ecology is expected to issue the requested certification by September 30, 2011.

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), Ecology, the Washington State Department of Fish and Wildlife (WDFW), and the Confederated Tribes of the Umatilla Indian Reservation (Umatilla). On November 19, 2010 the DOI filed Amended Comments, Recommendations, Terms and Conditions, and Prescriptions. On November 23, 2010, Douglas PUD filed its Reply Comments to the foregoing agency and tribal PT&Cs.

On December 16, 2010, the FERC issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Wells Project. The draft Environmental Impact Statement (DEIS) for the relicensing of the Wells Project was issued by the FERC on April 6, 2011. Comments on the DEIS are due to the FERC by May 31, 2011.

2.0 DOUGLAS PUD'S COMMENTS ON THE DRAFT EIS

2.1 General Comments

The action alternatives developed in the April 6, 2011 DEIS are incomplete because they do not include Douglas PUD's complete set of proposed measures for aquatic resources. Douglas PUD recommends that the FEIS analyze the environmental effects of approving the Joint Offer of Settlement for the Aquatic Settlement, which establishes an Aquatic Settlement Work Group (Aquatic SWG) to oversee implementation of six aquatic resource management plans.

Douglas PUD is proposing to relicense the Wells Project consistent with the terms of the Wells Anadromous Fish Agreement and Habitat Conservation Plan (Wells HCP) and Aquatic Settlement. Although the FERC Staff agrees that the HCP measures should be continued under a new license, the substantial cost of implementing such measures have been excluded from the analysis. FERC Staff should revise the Developmental Analysis to include all future HCP costs (See FLA Exhibit D, E and H).

2.1.1 Wells Anadromous Fish Agreement and Habitat Conservation Plan

The DEIS (page xxi and 28-30) correctly characterizes Douglas PUD's proposed measure for anadromous salmonids:

“Continue to implement the Wells HCP, which consists of a Passage Survival Plan, a Juvenile Passage Survival Plan, an Adult Passage Plan, a Tributary Conservation Plan, a Hatchery Compensation Plan, and a Predator Control Program.”

However, the Wells HCP is inconsistently described throughout the DEIS, and the costs of continued implementation of this important anadromous fish settlement agreement are not captured within any of the three action alternatives. Douglas PUD recommends that the following changes be consistently applied throughout the DEIS:

1. The No-Action Alternative (DEIS Alternative No. 1) should not include the continued implementation of the Wells HCP, or its attendant costs.
2. Douglas PUD's proposal (DEIS Alternative No. 2) should include an accurate description of Douglas PUD's proposed measures and costs. Douglas PUD's FLA, filed with the FERC on May 27, 2010, proposed to implement the Wells HCP in order to satisfy the relicensing requirements for the protection, mitigation and enhancement of anadromous salmonids impacted by Wells Dam. The applicant's FLA contains a detailed description of the measures and the costs associated with the proposed implementation of the Wells HCP.
3. The Staff Alternative (DEIS Alternative No. 3) should also consider both the measures and costs of the proposed implementation of the Wells HCP since Staff has concluded that the HCP should continue to be implemented under the new license.

4. The Staff Alternative with mandatory conditions (DEIS Alternative No. 4) should also include the costs of the HCP as both NMFS and United States Fish and Wildlife (USFWS) included the Wells HCP as mandatory Section 18 Fishway Prescription for the new license. We also expect, based upon written comments provided to the FERC by Ecology, that the CWA section 401 certification for the Wells Project will include a mandatory requirement that Douglas PUD continue to implement the Wells HCP.

2.1.2 Wells Aquatic Settlement Agreement

We have noted in several locations that the DEIS does not correctly reference Douglas PUD's proposed measures contained within the FLA. Douglas PUD, along with the USFWS, Bureau of Land Management (BLM), Ecology, WDFW, Confederated Tribes of the Colville Reservation (CCT) and the Confederated Tribes and Bands of the Yakama Nation (YN), have all executed and jointly proposed the implementation of a comprehensive Aquatic Settlement that resolves all of the remaining aquatic resources issues associated with the Wells Project.

Instead, FERC Staff has chosen to analyze selected parts of the individual plans that were adopted by the parties under the comprehensive Aquatic Settlement. It is the intent of the parties to the Aquatic Settlement to resolve all of the remaining aquatic resources issues associated with the Wells Project. Together with the Wells HCP, the Aquatic Settlement is intended to form the basis for Ecology's CWA section 401 certification for the Wells Project and is intended to be the terms and conditions of the USFWS Endangered Species Act (ESA) section 7 consultation for bull trout.

Douglas PUD and the Aquatic Settlement parties carefully developed the six component management plans and the measures proposed therein, consistent with the Federal Power Act (FPA) and the FERC's 2006 Policy Statement on Hydropower Licensing Settlements. Issues that did not have a strong nexus to the Project were resolved in off-license settlement agreements, and explicit and detailed management plans were developed that contain the rationale and supporting evidence for each measure proposed and provide a timeline for decisions and implementation. Adaptive management was used to address areas of uncertainty, specific timelines were established for implementation and a committee was formed to oversee implementation and to resolve disagreements amongst the parties to the settlement. The parties' intent for the Aquatic Settlement was to provide the Commission a document that they could approve, enforce and incorporate, without material modification, into the license for the Project.

We contrast the 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.

Douglas PUD recommends the following changes be consistently applied to the Wells DEIS to ensure consistency within the FEIS, with Douglas PUD's proposed action and other FERC issued National Environmental Policy Act (NEPA) documents:

1. Please revise the EIS to reflect the proposal submitted by Douglas PUD to the FERC. DEIS Alternative No. 2 should include an accurate description of the applicant's proposed measures and costs. Douglas PUD's FLA proposed to implement the Aquatic Settlement, which consists of a Water Quality Management Plan, a Bull Trout Management Plan, a Pacific Lamprey Management Plan, a White Sturgeon Management Plan, a Resident Fish Management Plan, and an Aquatic Nuisance Species Management Plan. 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 FPA, CWA and ESA 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 (DEIS Alternative No. 4) should also include all of the measures and costs of the Aquatic Settlement because Ecology has provided the FERC with ample written evidence of their intent to include the Aquatic Settlement in the CWA section 401 Water Quality Certification for the Wells Project. In this instance, ignoring Ecology's proposed mandatory conditions could result in a flawed NEPA analysis and ESA consultation on the proposed action of relicensing the Wells Project.

2.1.3 Inconsistent Treatment of Measures Between License Orders

Douglas PUD has noticed an inconsistent treatment of the Wells Aquatic Settlement when compared to FERC Staff's analysis of the Rocky Reach Settlement Agreement and the Boundary Settlement Agreement. We have also noticed that the DEIS recommends that several Wells Aquatic Settlement and HCP plans be subjected to FERC approval prior to implementation, which was not the case for the Rocky Reach license order (2009).

We recommend that the Wells FEIS be modified to avoid conflicting jurisdictional oversight, to remain consistent with other recently issued NEPA documents and to be consistent with the license order issued for the Rocky Reach Project. Below is a list of proposed modifications to remain consistent with other recently issued FERC documents:

1. Gas Abatement Plan (GAP):

In the FEIS for the Rocky Reach Project and the subsequent license order, Chelan PUD was not required to file annual GAPs for Commission approval prior to implementation. The authority to approve or deny Chelan's GAP was retained solely by Ecology. Conversely, the Wells DEIS includes a draft requirement for FERC to approve the Wells GAP. To remain consistent with the Rocky Reach license order, Douglas PUD recommends that the approval requirement associated with the implementation of the GAP be retained solely by Ecology and that the recommendation for FERC approval be eliminated from all three of the action alternatives found in the DEIS.

2. Sturgeon Broodstock Plan:

In the FEIS for the Rocky Reach Project and subsequent license order, Chelan PUD was not required to file any of its sturgeon plans for Commission approval prior to implementation. However, the Wells DEIS has taken a very different approach, recommending that the Wells sturgeon broodstock collection and breeding plan, which is nearly identical to the Rocky Reach plan, be developed and then approved by the FERC prior to implementation. Douglas PUD requests that this recommendation be eliminated from the FEIS for the relicensing of the Wells Project. Various parties to the Aquatic Settlement, including the USFWS, WDFW, CCT and YN have the requisite resource management jurisdiction over the sturgeon in the waters of the Wells Project and Columbia River in Washington State. Although FERC lacks such management authority, the DEIS recommends that the applicant develop a broodstock collection and breeding plan with the resources agencies and tribes and then submit the agreed upon plan to the FERC for approval. If the FERC does not approve the plan or approves a modified plan, it may not be possible to reconcile the differences between the resource agency and tribal sturgeon management requirements and the requirements unilaterally selected by FERC without resorting to litigation. The recommendation in the DEIS for FERC approval is inconsistent with the Rocky Reach license order and will significantly and unnecessarily complicate the development and implementation of the sturgeon plan for the Wells Project.

2.2 Specific Comments

2.2.1 Executive Summary

Page xxi, Proposed Environmental Measures

We have noted in several locations that the DEIS does not correctly reference Douglas PUD's proposed measures contained within the FLA. Douglas PUD, along with the USFWS, BLM, Ecology, WDFW, CCT and the YN, have all jointly proposed to implement the Aquatic Settlement to resolve all of the remaining aquatic resources issues associated with the Wells Project. Rather than analyzing the implementation of the Aquatic Settlement, the FERC Staff has selectively analyzed only individual measures found within each of the six aquatic resource management plans.

Suggested Corrective Action: Douglas PUD recommends that the FERC Staff modify the EIS to properly characterize Douglas PUD's environmental proposal. We suggest that bullet No. 2 on page xxi be modified to state: "*Implement the Aquatic Settlement Agreement which establishes an ASWG and adopts the following six aquatic resource management plans.*" Bullet No. 3-8 would then be made sub-bullets describing the six aquatic resource management plans.

Page xxii, Executive Summary, Alternatives Considered, second paragraph

Alternative Considered No. (1): Douglas PUD has concerns with the Staff Alternative because it recommends that specific measures within management plans be excluded because they rely upon an adaptive management construct to resolve existing uncertainty regarding the level of project impact on various aquatic resources. In particular, the following statements are of concern to Douglas PUD as well as the parties to the Aquatic SWG:

*"The staff alternative includes Douglas PUD's measures 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)."*

The statements referenced above appear to conflict with the recently issued NEPA document for the Boundary Hydroelectric Project, which is owned and operated by Seattle City Light (Seattle). The DEIS for Boundary was issued on April 8, 2011 (2 days after the issuance of the Wells DEIS). The Boundary DEIS accepted the need for adaptive management of certain measures proposed within the Boundary Fish and Aquatics Management Plan. In particular, the Staff accepted the lack of specificity of proposed implementation measures for the downstream entrainment reduction program and the need to adaptively manage the program based upon information as it became available (in license years 1-18), including in year 34, the need for wide-open adaptive management of the program through the end of the license term.

In an attempt to minimize uncertainty and provide the most relevant information, the parties to the Wells Aquatic Settlement jointly developed and filed a comprehensive agreement on all aquatic resources (other than HCP species). The Aquatic Settlement specifies (without pre-judging the content of the Section 401 certification) that the Wells HCP and Aquatic Settlement are intended to satisfy Ecology's requirements for the Project as it relates to the Water Quality Attainment Plan (WQAP). We recognize the FERC Staff's discretion to recommend against certain elements of the Aquatic Settlement's resource management plans. However, Douglas PUD does not have the luxury of picking and choosing which of the regulatory agencies has jurisdiction or which of the measures required by such agencies under the CWA and ESA it will implement. Instead, Douglas PUD worked closely with the Aquatic Settlement parties to craft an agreement that addresses not only the FPA requirements for the protection, mitigation and enhancement of aquatic resources but also the requirements of Ecology's 401 certification as they relate to the CWA and associated state water quality standards and the USFWS ESA requirements for bull trout. We request that FERC Staff consider the Offer of Settlement in this

context and allow the parties the latitude necessary to implement the measures contained within the Aquatic Settlement.

Douglas PUD Suggested Action: Please change the characterization of “*as-yet unspecified measures or studies*” throughout the DEIS. Instead, please state that, “*the Aquatic Settlement parties, through the use of clearly defined adaptive management policies and practices, will identify and implement various studies and measures to address project-related impacts. If there is a dispute over whether a measure has a nexus to the project, then FERC shall be consulted to make a final determination. Further, the licensee shall continue to seek FERC approval for any measure that has the potential to substantially alter either Project structures or operations.*”

Page xxii, Executive Summary, Alternative Considered No. (5)

The DEIS excludes the requirement that Douglas PUD collect, and fund the genetic analysis of, bull trout tissue samples.

Douglas PUD 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 material, it will be difficult to accurately determine which population of bull trout is interacting with Wells Dam and with the HCP hatchery facilities located in the Methow Basin.

Page xxiii, Executive Summary, Alternative Considered No. (11)

Conducting periodic assessments of resident fish populations in the reservoir.

We strongly encourage FERC Staff to evaluate the Aquatic Settlement in its entirety within the Wells FEIS. We further recommend that the FEIS include all six management plans, including the Resident Fish Management Plan, in the Staff Alternative.

Page xxiii, Executive Summary, Alternative Considered with Modifications No. (1)

The Staff Alternative requires Douglas PUD to file annual total dissolved gas (TDG) and spill reports along with the GAP and Quality Assurance Project Plans (QAPP) with the Commission.

Douglas PUD response: Douglas PUD understands the rationale for filing these annual reports and plans with the Commission. However, we have concerns with how this measure is later characterized in the DEIS. The later reference indicates that Douglas PUD will be required to file the Bypass Plan, Spill Operations Plan and GAP with the FERC for approval. Please consistently use the language within the Executive Summary as the recommended approach for providing the FERC with updates on the implementation of the spill and bypass related measures. Also, please see General Comment section 2.1.3 (above).

Page xxiii, Executive Summary, Alternative Considered with Modifications No. (2)

The Staff Alternative requires Douglas PUD to notify the Commission of any occurrences of non-compliance with water quality criteria and to obtain prior Commission approval if measures are proposed to address non-compliance with water quality criteria.

Douglas PUD response: We disagree with the recommendation to include this requirement in the Wells license. In the case of TDG exceedances, which can occur hourly for extended periods of time, it would be an overly burdensome notification condition for both Douglas PUD and the FERC Staff if each exceedance was reported to the FERC. Further, measures to improve TDG performance often include minor adjustments in spillway priority that vary with environmental conditions and do not materially affect project structures or operations. Additionally, these minor adjustments in spillway priority to manage TDG performance must be implemented in real-time to support the protection of aquatic life and other designated uses at the Project. Obtaining prior Commission approval for every minor operational adjustment to improve TDG performance is impractical and would increase the likelihood of non-compliance with the water quality criteria. Douglas PUD suggests the following modified language:

*“Notifying the Commission **annually** of any occurrences of non-compliance with water quality criteria and obtaining prior Commission approval if measures are proposed to address non-compliance with water quality criteria **that would substantially alter project structures or operations.**”*

Page xxiii, Executive Summary, Alternative Considered with Modifications No. (3)

The Staff Alternative requires Douglas PUD to include information about the Project and Project-specific measures for bull trout in informational and educational displays at the Wells Dam Visitors Center.

Douglas PUD response: Douglas PUD supports this recommendation but questions why similar education and outreach programs within the White Sturgeon Management Plan were excluded from the Staff preferred alternative.

Page xxiii, Executive Summary, Alternative Considered with Modifications No. (5)

The Staff Alternative requires Douglas PUD to file plans and schedules to implement the five specific fishway improvement measures under the “*Pacific Management Plan*” with the Commission for approval.

Douglas PUD response: We believe the Staff recommendation refers to the Pacific *Lamprey* Management Plan. FERC’s proposed requirement to implement all five of these fishway improvement measures is premature as four of the five plans are predicated first on an expert evaluation of the Wells Dam fishways with implementation only taking place if the Aquatic SWG agrees that a measure is expected to improve Pacific lamprey passage performance within Wells Project fishways. Because of the unique design of the Wells fishways, we do not expect to be required to develop and implement all five of the potential lamprey fishway passage improvement plans.

Page xxiii, Executive Summary, Alternative Considered with Modifications No. (6)

The Staff Alternative requires Douglas PUD to file a white sturgeon broodstock collection and breeding plan with the Commission for approval.

Douglas PUD response: The USFWS, WDFW, CCT and YN are the resource agencies with jurisdiction over the management of Columbia River sturgeon found within the Project, have a high level of technical expertise in this area and are all parties to the Aquatic Settlement. Should the proposed sturgeon plan require substantial alteration to project structures or operations, then Douglas PUD should be required to file a draft sturgeon plan with the Commission for approval. Otherwise, we recommend that Douglas PUD only be required to provide a copy of the final sturgeon plan to the Commission as evidence that the appropriate resource experts are being consulted on the implementation of the White Sturgeon Management Plan.

For consistency, it should be noted that the FEIS and new license for Rocky Reach did not require the licensee to provide a draft sturgeon plan to the Commission for approval. Ordering Paragraph (D) of the Rocky Reach license order requires Chelan PUD to implement the conditions included in Ecology's water quality certification. The certification requires creation of a Rocky Reach Fish Forum that would be responsible for implementation of the bull trout, white sturgeon, Pacific lamprey, and resident fish management plans, including any necessary coordination with implementation of the HCP. We recommend a similar treatment of the Wells Project management plans contained within the Aquatic Settlement.

Page xxiii, Executive Summary, Alternative Considered with Modifications No. (10)

The Staff Alternative would require Douglas PUD to cease land-disturbing activities and consult with appropriate federal agencies if paleontological resources are identified on federal lands.

Douglas PUD response: As explained in Douglas PUD's comments on DEIS page 186, there is no justification for this recommendation at the Wells Project, because the new law cited in the DEIS does not authorize the FERC to adopt such measures. The recently issued Boundary DEIS does not contain a similar paleontological resources requirement even though that project occupies over 900 acres of federal land subject to the new law cited by FERC Staff. We recommend this requirement be removed from the Wells EIS.

Page xxiii, Executive Summary, Public Involvement and Areas of Concern

The last paragraph of this section states "*improving passage for bull trout*" is a primary issue associated with relicensing the Project.

Douglas PUD response: The USFWS raised bull trout passage as an issue of concern during scoping. However, no data exists which indicates any deficiencies in bull trout passage at the Wells Project. To the contrary, during nine years of bull trout passage study, Douglas PUD has not observed a bull trout passage "*issue*" at Wells Dam. Douglas PUD recommends removing the word "*improving*" to read "*passage for bull trout*".

Page xxv, Executive Summary, No-Action Alternative

The description of the No-Action Alternative found on page xxvi is correct and should be consistently applied throughout the remainder of the EIS.

Page 14, 1.4.4 Aquatic Settlement Agreement

The Joint Offer of Settlement for the Aquatic Settlement was not filed by Douglas PUD but rather by the parties to the settlement agreement. The Joint Offer of Settlement for the Aquatic

Settlement was filed with the FERC on May 27, 2010. The Settlement was not only intended to satisfy anticipated relicensing requirements but was also intended to resolve all remaining aquatic resource issues associated with the Project, including compliance with the CWA and compliance with the incidental take permit for ESA-listed bull trout. Please update the second sentence of the first paragraph to correctly capture the proposed intent of the Aquatic Settlement. It is also necessary for the FERC to reference the Joint Offer of Settlement within this paragraph.

Page 28, 2.1.4 Existing Environmental Measures, Continued Implementation of the Wells HCP

This section includes the Wells HCP as an existing environmental measure under the No-Action Alternative. Other sections (e.g., Executive Summary and section 3.9), indicate the No-Action Alternative does not include the continued implementation of the Wells HCP. Our concerns with the inconsistent treatment of the Wells HCP are described in General Comment section 2.1.1 (above).

Page 32, 2.2 Applicant's Proposal, 2.2.3 Continued Implementation of the Wells HCP

This section of the DEIS correctly states Douglas PUD's proposal to continue to implement the Wells HCP during the term of the new license. However, the last sentence of that paragraph contains a factual error. The 2004 Order Amending License (107 FERC ¶ 61,283) and NMFS's ESA section 10 incidental take permits did not include authorization for Hatchery Genetic Management Plans (HGMPs). The two HGMPs proposed by Douglas PUD are new HGMPs that may require substantial modification of the existing hatchery programs. These new HGMPs are sufficiently different from the original HGMPs that National Oceanic and Atmospheric Administration (NOAA Fisheries) has initiated new formal ESA consultations for both the steelhead and spring Chinook HGMPs. The ESA consultation is expected to result in the issuance of new Incidental Take Permits for Douglas PUD's HCP hatchery mitigation actions. Please delete the last sentence in this paragraph as it is factually incorrect.

Page 32-35, 2.2 Applicant's Proposal, 2.2.3, Proposed Environmental Measures, Other Aquatic Resource Measures

The statement "*Douglas PUD also proposes to implement six aquatic resource management plans as described in the Aquatic Settlement*" is inaccurate. Douglas PUD's proposal is to implement an Aquatic Settlement in conjunction with the Aquatic SWG established therein. The Aquatic Settlement is supported by six aquatic resource management plans and a legal document that provides the structure necessary to implement the six management plans. Our concerns with the treatment of the Aquatic Settlement in this section, as well as throughout the entire DEIS, can be found in General Comments section 2.1.2 (above).

Page 32, 2.2 Applicant's Proposal, 2.2.3 Other Aquatic Resource Measures

The first paragraph indicates that Douglas PUD proposes to "*implement six aquatic resource management plans as described in the Aquatic Settlement*". Please correct the paragraph to accurately reflect the applicant's proposal, "*to implement an Aquatic Settlement Agreement, supported by six aquatic resource management plans*". Also see General Comment section 2.1.2 (above).

Page 34, 2.2 Applicant’s Proposal, Pacific Lamprey Management Plan, first line on page 34

Please delete the word “implementing” and replace with “evaluate the need for.” The new language on the top of page 34 should read, “*evaluate the need for five specific fish ladder improvement measures (i.e. fishway inspections, entrance efficiency, diffuser gratings, transition zones, and ladder traps and exit pools)...*”

Page 37-40, 2.3 Staff Alternative

Douglas PUD response: Our concerns with the treatment of the Aquatic Settlement are described in General Comment section 2.1.2 (above).

Page 37, 2.3 Staff Alternative, Water Quality Management Plan

Staff recommends modification of the Aquatic Settlement component Water Quality Management Plan to include four additional measures.

Douglas PUD response: Douglas PUD supports (1) filing of annual TDG and spill (outside the fish passage season) annual reports with the Commission. However, we recommend modifying (2) by removing “for approval, prior to implementation” from the recommendation, to read “Filing the GAP and QAPPs (and any subsequent changes to the plans) with the Commission”.

The GAP and QAPP are required pursuant to Ecology’s authority to implement state water standards, and must be approved by Ecology prior to implementation. Requiring that these plans also be submitted to the Commission for approval prior to implementation creates a potentially untenable situation of conflicting authorities. Specifically, who should approve the two plans first and how would inconsistent conditions of such approvals be resolved. We believe the FERC should defer to the exercise of Ecology’s regulatory authority on what is necessary to comply with Ecology’s water quality standards.

Page 38, 2.3 Staff Alternative, Water Quality Management Plan

Staff has also recommended the addition of measures (3) and (4) as they relate to the observations of non-compliance with Washington State water quality standards. In the case of TDG exceedances, which are recorded and reported hourly, and can extend for prolonged periods of time, it would be an overly burdensome notification condition for both Douglas PUD and FERC Staff if each exceedance event was reported to the FERC. We suggest that an annual water quality compliance report could be provided to the FERC toward ensuring that the standards are being monitored and measures to correct documented violations are being developed and implemented in a timely manner.

In the case of measures to improve water quality at the Project, we have a similar concern that FERC Staff appears to be unfamiliar with the current process for achieving compliance with water quality standards. Currently hourly data is collected and hourly adjustment in water flow, spill and generation are used to help ensure compliance with water quality standards. Rather than inserting FERC Staff into this dynamic and highly technical process, we recommend that the FERC instead focus on the content of the annual water quality compliance report and only require the Commission approval for proposed water quality improvement measures that would involve substantial alteration to project structures or operations. We suggest using the following modified language:

“(3) notifying the Commission **annually** of any occurrences of non-compliance with water quality criteria; and (4) obtaining prior Commission approval through the filing of an application to amend the license if any measures are proposed to address non-compliance with water quality criteria **that would substantially alter project structures or operations.**”

Page 38, 2.3 Staff Alternative, Water Quality Management Plan

The DEIS recommends modification of the Water Quality Management Plan to exclude three proposed Aquatic Settlement water quality measures.

Douglas PUD response: Douglas PUD is concerned about FERC Staff’s removal of adaptive management within the context of the Water Quality Management Plan through its recommendation that any future “*as-yet unidentified measures*” cannot be implemented without Douglas PUD first receiving approval from the FERC for a formal license amendment.

Consistent with established policy, we recommend that the FERC limit the need for approval to substantial alterations or additions to the Project or operations rather than minor in-season operational changes to increase compliance with TDG and other water quality parameters through the dynamic hourly changes in operations at the dam.

Page 38, 2.3 Staff Alternative, Pacific Lamprey Management Plan

FERC Staff recommends that Douglas PUD be required to file five specific fishway improvement plans with the Commission for approval.

Douglas PUD response: Requiring implementation of all five of the fishway improvement measures is premature. The first measure is an on-site expert evaluation of the Wells Dam fishways; implementation of the remaining four specific measures will only occur if the expert evaluation concludes that each individual measure has the potential to improve Pacific lamprey passage performance within Wells Project fishways. Please eliminate this requirement to implement and instead require the licensee to work with the Aquatic SWG to evaluate the need to implement the fishway improvement measures.

Page 39, 2.3 Staff Alternative, White Sturgeon Management Plan

Staff recommends modification of this plan to require that the broodstock collection and breeding plan be filed with the Commission for approval prior to implementation.

Douglas PUD response: See Douglas PUD’s General Comments section 2.1.3 Sturgeon Broodstock Plan (above).

Page 40, 2.3 Staff Alternative, Historic Properties Management Plan

Staff recommends modification of this plan to require Douglas PUD to cease all Project-related land-disturbing activities and consult with appropriate federal agencies if any paleontological resources are identified on federal lands within the project Area of Potential Effects (APE) over the license term.

Douglas PUD response: Douglas PUD disagrees with Staff's recommended modification because it is unauthorized by the new law cited in the DEIS. This recommendation is also inconsistent with the DEIS for the Boundary Project, issued two days after the Wells DEIS, which includes over 900 acres of federal lands and lacks any similar recommendation. We request that this recommendation be withdrawn from the Wells EIS.

Page 41, 2.5.2 Federal Government Takeover of the Project.

The DEIS concludes that federal takeover is not a reasonable alternative based upon a brief analysis of the evidence. Although Douglas PUD agrees with this conclusion, it should be recognized that federal takeover pursuant to section 14 of the FPA does not apply to this proceeding because Congress amended the FPA in 1953 to provide that section 14 "*shall not be applicable to any project owned by a State or municipality.*" See 16 USC § 828b. Since Douglas PUD is a "*municipality*" as defined in section 3 of the FPA, the Wells Project is not subject to federal takeover as a matter of law and there is no need to engage in a factual inquiry as to the reasonableness of that alternative in this proceeding. Please revise this section to indicate that federal takeover of the project is precluded by law.

Page 73, Pacific Lamprey

In 1994, USFWS designated Pacific lamprey as a Category 2 candidate species under the ESA.

Douglas PUD response: In 1996 the USFWS eliminated the Category 1, 2 and 3 candidate species status under the ESA. At that time, Pacific lamprey was not retained on the ESA candidate species list, and a 2003 petition to list the species was found not warranted by the USFWS.

Page 80, White Sturgeon, first paragraph

Native anadromous white sturgeon migrate downstream to feed in the rich estuary or marine areas before migrating back upstream to spawn. The construction of hydroelectric dams on the mainstem Columbia River has restricted this anadromous life history in the upper river because sturgeon do not readily pass through most fish ladders.

Douglas PUD response: This is an incorrect characterization of white sturgeon life history. Anadromous species have an obligatory oceanic life stage; if prevented from reaching the ocean, they will either perish, or persist as a landlocked form. White sturgeon are amphidromous, and have a facultative ability to move between salt and freshwater to take advantage of favorable foraging conditions. Dams prevent adult white sturgeon from moving upstream, and may deplete upstream adult populations as fish are more likely to travel downstream past dams. However, it is incorrect to characterize sturgeon as anadromous; tagging studies in the lower Columbia River and Fraser River, where white sturgeon have free access to the ocean, show that less than 10% of sturgeon in those systems ever enter saltwater (J. Powell, Freshwater Fisheries Society of British Columbia, January 2011, White Sturgeon Workshop, Boardman, OR).

Page 84, Footnote 25

Footnote 25 incorrectly indicates that the Wells HCP and Aquatic Resource Management Plans in the Aquatic Settlement are adequate for the purposes of the “GAP”. Please replace “GAP” with “401 Water Quality Attainment Plan”. The GAP is defined as the Gas Abatement Plan and has little to do with the Wells HCP and is only related to the Aquatic Settlement through the implementation of the Water Quality Management Plan.

Page 96, Fish Passage, first full paragraph on page 96

We note that the description of the HCP Phase Designations is slightly different than that adopted by the HCP Coordinating Committee. Please adopt the following language for the first full paragraph on page 96:

In February 2005, the Wells HCP Coordinating Committee determined that the Wells Project had achieved Phase III (Standard Achieved) for ~~yearling spring-run~~ Chinook salmon and steelhead, and Phase III (Additional Juvenile Studies) for ~~subyearling~~ summer/fall-run Chinook salmon and sockeye. In December 2007, the Wells HCP Coordinating Committee determined that the Wells Project had achieved Phase III (Additional Juvenile Studies) for coho salmon. Phase III (Standard Achieved) includes re-evaluation of passage survival every 10 years, and Phase III (Additional Juvenile Studies) include a provision for conducting additional studies to evaluate juvenile project survival if new survival methodologies to evaluate ~~reservoir~~ survival are approved by the Coordinating Committee.

Page 98, Hatchery Programs for Anadromous Salmonids

Please note that based upon the Survival Verification Studies conducted in 2010, that the No Net Impact (NNI) production levels for yearling spring migrating Chinook, coho and steelhead have been revised. Juvenile Project Survival estimated during this study was 96.4%. The new four-year average rate of hatchery production has subsequently been revised from historically requiring 3.8% mitigation to the requirement for only 3.7% hatchery mitigation. The number of NNI hatchery fish has subsequently been changed to 59,395 yearling spring Chinook, 47,572 steelhead and 105,712 yearling summer/fall Chinook.

Page 119, Water Quality

In the fall when the water in the Columbia River cools more slowly than it does in the tributaries, intrusion of Columbia River water causes an adverse cumulative effect by slowing the rate at which water temperatures are reduced within the backwatered reaches of the Methow and Okanogan rivers.

Douglas PUD response: There are no known adverse effects associated with slowing the rate at which water temperatures are reduced in the fall.

Page 147, last paragraph

Several diverse wetlands along the Okanogan River, especially where beaver activity has created levees to control water fluctuations, also provide important amphibian habitat.

Douglas PUD response: Beavers within the Wells Project, including the lower 15.5 miles of the Okanogan River, do not build dams or “levees”. We do not know the source of this information. The Project creates backwater wetlands that are connected to the main reservoir, and are unlikely to provide important amphibian habitat because of cold water temperatures associated with the mainstem Columbia River and because of the presence of predatory fish in the river.

Page 162, Wells HCP Effects on UCR Spring-Run Chinook Salmon and UCR Steelhead, last two paragraphs of that section

Please modify the second to the last paragraph of this section to reflect the fact that NOAA Fisheries is going to require ESA consultation for ESA-listed steelhead and spring Chinook.

Page 186, 3.3.4.2 Environmental Effects, Our Analysis, last paragraph

The DEIS states that implementation of the measures in the Historic Properties Management Plan (HPMP) would ensure that historic properties within the APE are protected from Project-related effects over any new license term. However, the DEIS goes on to note that a recent paleontological law enacted by Congress as part of the Omnibus Public Land Management Act of 2009 requires “*all federal land managers*” to manage and protect paleontological resources discovered on their lands. The DEIS also notes that Douglas PUD’s application for a new license does not address paleontological resources. Although the DEIS concedes that section 106 of the National Historic Preservation Act (NHPA) has no provisions for protecting paleontological resources, it concludes that such resources should be protected, and that it is appropriate to address them in any discussion of cultural resources because they are similar in nature to archeological resources. The DEIS proposes to add a stipulation to the Programmatic Agreement (PA) requiring Douglas PUD to cease all Project-related land disturbing activities and consult with appropriate federal agencies if any paleontological resources are identified on federal lands within the Project APE over the license term.

Douglas PUD response: Douglas PUD disagrees that paleontological resource protection measures should be included in the license for the Wells Project. This recommendation should be dropped because it is unauthorized and because it is unnecessary and unreasonable. Title VI, Subtitle D of the Omnibus Public Land Management Act of 2009 (Act), 16 USC §470aaa et seq., is intended to regulate the removal, transportation and sale of paleontological resources from federal lands subject to the jurisdiction of Interior (except Indian lands) and the Forest Service. The Act generally prohibits such activities except in accordance with a permit issued by the Secretary of the Interior or Agriculture. Nothing in the Act applies to the FERC or authorizes any requirements with respect to such resources in connection with the licensing of hydroelectric projects. Indeed, by its terms the Act would appear to preclude the proposal discussed in the DEIS. Section 470aaa-10 provides that nothing in the Act shall be construed to (1) impose any additional restrictions or permitting requirements on any activities permitted at any time under various statutes, including the Federal Land Policy and Management Act (FLPMA), which applies, among other things, to hydro projects on federal lands, or (2) impose any additional

restrictions or permitting requirements on any activities permitted at any time under existing laws and authorities relating to reclamation and multiple uses of federal land, which includes the FPA. These limitations indicate that Congress did not intend to authorize any additional restrictions in connection with federal licensing activities under existing law, such as the FPA or FLPMA, in adopting this Act. Since the proposal set forth in the DEIS would impose an additional restriction on Douglas PUD in connection with relicensing, it is unauthorized and contrary to the intent of Congress as expressed in section 470aaa-10.

The proposal is also in excess of the Commission's authority under the regulations implementing section 106 of the NHPA. As the DEIS concedes, nothing in section 106 of the NHPA applies to paleontological resources. The scope of a PA is defined in section 800.14(b) of the Advisory Council on Historic Preservation (ACHP) regulations, 36 CFR § 800.14(b) (2010), and is plainly limited to governing a program or complex project situations to assess effects on historic properties protected under the NHPA. Nothing in 18 CFR Part 800 authorizes the use of a PA as a means to extend the ACHP process to any resources other than historic properties.

Finally, there is no need for the proposed stipulation in connection with the Wells Project. Douglas PUD has no intent to engage in any of the activities covered by the Act. Moreover, there are only 15 acres of federal lands within the Project boundary, which are located in areas that are unlikely to require any land disturbing activities by Douglas PUD over the new license term. Douglas PUD notes that the recently issued DEIS for the relicensing of the Boundary Project does not contain a similar proposal regarding paleontological resources despite the fact that over 936 acres of federal lands are within the existing boundary, and the DEIS proposes to expand the boundary to include a total of 966 acres of federal lands under the new license. Surely, it would be arbitrary to include such a provision for 15 acres subject to the Wells license but not for 966 acres subject to the Boundary license.

Douglas PUD notes that by letter dated April 13, 2011, the Staff distributed a PA for comment, which did not include the proposed stipulation on paleontological resources. Thus, it is unclear whether the proposal set forth in the DEIS remains outstanding or has been withdrawn. Douglas PUD requests that the proposal be withdrawn because it has already filed comments on the PA based upon the absence of any stipulation therein supporting such a proposal.

Page 205, 3.3.7.2 Environmental Effects, Our Analysis

Douglas PUD's project-associated profits would continue to positively affect the regional and local public under any new license through taxes paid.

Douglas PUD response: Douglas PUD is a not for profit, municipal corporation. Douglas PUD uses any surplus revenues to pay down debt and provide the lowest possible rates to its customers. While Douglas PUD pays a variety of required taxes, the Wells Project does not create additional tax revenues based on profits.

Page 209, Table 29

The No-Action Alternative should not include Future Repair and Replacement Costs (referred to as Future R&R Costs in Exhibit D of the FLA). Instead the No-Action Alternative should be indicative of Projected Operating Cost from Section 4.0 of the FLA Exhibit D. The Projected

Operating Costs are developed by subtracting the existing cost of implementation of the HCP, as approved in 2004, from the Historic Power Cost. The Projected Operating Costs reported in Exhibit D were \$30.4 million per year (2012 dollars).

We believe it is not reasonable to assume that Douglas PUD would expend an annualized cost of approximately \$20 million for the repair and replacement of major structural assets without a new license being issued (we assume the No-Action Alternative would involve operating under a series of annual licenses). Douglas PUD would not be able to issue the necessary bonds required for this level of expenditure without the certainty provided by receiving a new license for the project.

Page 210-211, 4.3, Cost of Environmental Measures

This paragraph states:

“Measures that do not greatly affect the project economics (i.e., measures with minimal, unknown, or zero costs) and measures implemented under the Wells HCP, which was previously required by the Commission per order 107 FERC § 61,283 (2004), are not listed in the table and have not been evaluated in the economics of the Wells Project”.

Douglas PUD response: We strongly disagree with the exclusion of the costs of the Wells HCP in Table 30. Please see General Comment section 2.1.1 (above).

Page 216, Table 31, Anadromous Fish Row

Douglas PUD did not propose a No-Action Alternative in the FLA. Please indicate that the No-Action Alternative, consistent with statements in the Executive Summary and in Section 3.9, does not include the Wells HCP.

Page 223, Modifications, Additions, and Deletions Recommended by Staff

The first sentence in the last paragraph on page 223 includes a statement that conflicts with prior statements within the DEIS and that is a potential problem for Douglas PUD. In this paragraph, Staff recommends that the *“TDG reports, spill outside of the fish passage season reports, the GAP, the Wells HCP Fish Bypass Plan/Spill Operations Plan, and the QAPPs”* be filed with the Commission. We are not concerned with the need to file these reports with the Commission toward demonstrating compliance with the 401 Water Quality Certification and anticipated new license order. However, this same sentence goes on to state that, *“the two plans be filed for Commission approval, prior to implementation”*.

Our first concern is grammatical. It is not clear which plans are being referenced for approval. There are two reports and three plans listed in the sentence. In previous references on page 37 of the DEIS, FERC Staff has indicated that the two plans that FERC needs to approve annually are the GAP and QAPP; however, this conflicts with the proposed license article addressing the *Water Quality Management Plan* on page A-3 where the Staff appears to recommend that the licensee file not only the GAP and QAPP with the Commission for approval but also the Wells HCP Fish Bypass Plan, which is not a condition of the existing Wells license and was not a condition for the 2009 license order for the Rocky Reach Project.

Second, as stated in comments referencing page 37, Douglas PUD is concerned with the recommendation that the GAP and QAPP be submitted to the Commission for approval prior to implementation. The GAP and QAPP are required pursuant to Ecology's authority to assure compliance with state water quality standards, and must be approved by Ecology prior to implementation. Requiring that these plans also be submitted to the Commission for approval prior to implementation creates a potentially untenable situation of conflicting authorities. Specifically, who should approve the two plans first and how would inconsistent conditions of such approvals be resolved. We believe the FERC should defer to Ecology's views on what is necessary to comply with state water quality standards promulgated by Ecology.

We also note that the Commission did not require Chelan PUD to file the Rocky Reach annual GAP for approval prior to implementation. We believe the proposed requirement for the Wells license is arbitrary when compared to the license articles for the Rocky Reach Project, located immediately downstream of the Wells Project. To ensure consistency with adjacent licenses, and to avoid the potential for conflicting decisions, please remove the requirement for Douglas PUD to annually submit a GAP for Commission approval.

Third, similar to comments referencing page 38, we recommend that the FERC clarify its position on notification for any instances of non-compliance with Washington State water quality standards. We recommend that the DEIS clarify that the licensee shall provide the Commission with an annual report that documents any instances of non-compliance with state water quality criteria. This is in place of the existing recommendation that appears to require the licensee to notify FERC of "*instances of non-compliance with state water quality criteria*", which could be interpreted to mean hourly notification of any exceedances in TDG.

Page 226, Pacific Lamprey Management Plan, No. (3)

As indicated in previous comments, it is premature to require that all five lamprey passage improvement plans be implemented prior to an analysis by the regional lamprey passage experts including the experts already participating in the Aquatic SWG.

Page 228, White Sturgeon Management Plan

As indicated in previous comments, we disagree with the recommendation to submit the broodstock collection and breeding plan to the Commission for approval. The agencies with resource management authority and expertise on white sturgeon are all represented on the Aquatic SWG. We recommend that the FERC defer to the regional experts on the collection and mating of Columbia River white sturgeon.

Page 229, Resident Fish Management Plan

As indicated in prior comments, we disagree with the FERC's recommendation to eliminate the Resident Fish Management Plan, which is an important negotiated component within the Aquatic Settlement and consistent with the FERC's Hydro Settlement Policy. The elimination of this plan is a material modification of the settlement agreement and may be considered grounds for termination of the agreement by the parties.

Page 235, Fish and Wildlife Agency Recommendations, Table 32, Row No. 2

The description of the NMFS recommendation regarding license term is not accurate. NMFS recommended that the term of the license be synchronized with the term of the HCP unless the Commission decides to extend the term of the license beyond the term of the HCP. If FERC decided to extend the term of the license beyond the term of the HCP that expires in 2054, then NMFS would simply analyze the additional incidental take expected to take place in the years beyond 2054. Since the longest license term that can be issued for a FERC licensed project is 50 years, then the additional ESA consultation analysis would cover 8 additional years between 2054 and 2062. During those 8 years, Douglas PUD has committed to either continue the agreed upon measures in the Wells HCP or have a successor agreement in place prior to the expiration of the HCP in 2054. NMFS's letter specifically states:

“If the Commission were to opt for a license term beyond the term of the HCP, this would cause a lapse in ESA coverage and necessitate a new consultation prior to license issuance to assess the effects of incidental take for the Project for the remaining term of the license beyond the expiration of the HCP (2054). Such a consultation may result in modification of the measures to limit incidental take in the years after the expiration of the HCP”.

Further, the NMFS-issued Biological Opinion for the relicensing of the Rocky Reach Project included a 50-year analysis of the relicensing of that project. To remain consistent with adjacent HCP hydroelectric projects, we recommend that the FERC request a consultation with NMFS, that includes a range of 30 to 50 years of incidental take associated with the continued operation of the project.

Page 235, Fish and Wildlife Agency Recommendations, Table 32, Row No. 3

Table 32 indicates that there would be no cost to continuing to implement the Wells HCP during the term of the new license. The footnote to this row goes on to state, *“these costs are part of the continuation of the existing Wells HCP and are already included in the ongoing costs of the project, so we show no new or additional costs here”.*

Douglas PUD response: Please see General Comment section 2.1.1 (above). Douglas PUD reiterates our concerns regarding the inconsistent treatment of the Wells HCP and its costs. Any action alternative must include the cost of continued implementation of the Wells HCP, in contrast to the No-Action Alternative where the Wells HCP costs have not been included.

Per previous comments, for the fiscal years 2003 to 2007, the average annual Historic Power Cost for the Wells Project was \$34,129,800. This includes an average annual cost of \$9.6 million associated with implementing the existing Wells HCP measures, as approved in 2004. Projected Operating Costs are estimated to be \$30.4 million per year (\$34.1 million Historic Power Cost less \$9.6 million Wells HCP costs and escalated to 2012 dollars at 4.4 percent).

We recommend that the DEIS use the Projected Operating Cost of \$30.4 million for the No-Action Alternative. All three action alternatives need to include the projected \$11 million for the 2011 enhanced Wells HCP that includes continuing the Historic HCP costs of \$9.6 million and

additional costs being required by NMFS to modernize the Wells and Methow hatcheries and to implement the new HGMPs for spring Chinook and steelhead.

Page 235, Fish and Wildlife Agency Recommendations, Table 32, Row No. 5

The cost of transmitting TDG data is not negligible. The annual cost for a consultant to calibrate the TDG sensors is \$27,000. The internal cost of collecting, transmitting and data posting our TDG information on the regional water quality databases is estimated to be approximately \$15,000 per year.

Page 235, Fish and Wildlife Agency Recommendations, Table 32, Row No. 8

We have concerns with the statement in the last column of row No. 8. That column states, *“Adopted, with the exceptions that the annual GAP would have to be filed with the Commission for final approval”*.

Douglas PUD response: Please see General Comments section 2.1.3 (above). Requiring Douglas PUD to file the GAP with the Commission for approval creates the potential for conflicting regulatory authorities, which would raise difficult compliance issues for Douglas PUD. This requirement is also arbitrary in that the GAP for the Rocky Reach Project is not filed annually with the FERC for approval.

Please modify this requirement to state that Douglas PUD will file the GAP with the Commission for informational purposes. Douglas PUD recognizes that if the GAP proposes to make a substantial alteration or addition to project structures or operations, then prior Commission approval of such alterations will be required prior to implementation.

Page 235, Fish and Wildlife Agency Recommendations, Table 32, Row No. 16

Conduct a total of five bull trout stranding assessments during the first five years following license issuance, and one bull trout stranding assessment every five years thereafter, when reservoir elevation is below 773 feet mean sea level.

Douglas PUD response: The recommendation is not accurately characterized. The measure contained within the Bull Trout Management Plan is to conduct stranding surveys when uncommon conditions occur where the reservoir is operated below 773 feet mean sea level. Douglas PUD, USFWS and WDFW do not propose five deliberate low reservoir operations below 773 feet mean sea level in order to create potential stranding conditions; rather, those surveys would occur when low reservoir elevations occur for other project purposes.

Please modify the statement in row No. 16 to match the statement found in section 4.4 of the Bull Trout Management Plan,

“during the first five years of the new license, Douglas will implement up to five bull trout entrapment/stranding assessments during periods of low reservoir elevation (below 773’ MSL)”.

Page 241, Fish and Wildlife Agency Recommendations, Table 32, Row No. 22

The last column of row 16 states, “*Adopted. However, we also recommend that the proposed plan and schedule to address each of the five specific fishway improvement measures be filed with the Commission for approval, prior to implementation*”.

Douglas PUD response: The recommendation is not an accurate characterization of the Pacific Lamprey Management Plan and the agency recommendations filed by the USFWS and WDFW. Four of the five specific fishway improvement measures (plans) would only be implemented if the assessments by Pacific lamprey passage experts and representatives of the Aquatic SWG, determine that lamprey passage can be enhanced by the implementation of each measure.

Page 235, Fish and Wildlife Agency Recommendations, Table 32, Row No. 37

Implementation of Douglas PUD’s Land Use Policy does have an annualized cost. Exhibit D of the FLA indicates that the cost is already included in the Historic Power Cost but for clarification the footnote indicating that the Cost of the Land Use Policy is included in the cost of the Wells HCP is incorrect. The Douglas PUD Land Use Policy is not a cost that was included in either the historic Wells HCP cost of \$9.6 million or the 2011 enhanced Wells HCP cost of \$11 million.

Page A-1, Appendix A - License Conditions Recommended by Staff

Douglas PUD requests the license conditions recommended by Staff be revised, as appropriate, in light of the issues identified in our preceding comments. We also recommend reconsideration of the proposed aquatic resources license articles filed with the Joint Offer of Settlement for the Aquatic Settlement Agreement.

Page A-2, Article 401, Additional License Articles Recommended by Commission Staff,

Article 401. Commission Approval and Filing of Amendments

As stated previously, FERC Staff has prejudged the need for the various lamprey plans (Entrance Efficiency, Diffuser Granting, Ladder Transition Zone, Ladder Trap and Exit Pool). The Pacific Lamprey Management Plan and the recommendations submitted by the USFWS do not prejudice the need for these plans. These plans may be developed following a tour of the fishways at Wells Dam and the development of a literature review of successful modifications at other adjacent hydroelectric projects. If it is determined that lamprey will benefit from the type of improvements implemented at other projects, as well as any other improvements to the fishways, then the Aquatic SWG will develop and the licensee will implement the agreed upon plans. We recommend that the FERC change this requirement to state that if necessary and following approval from the Aquatic SWG, any lamprey plans that require a substantial alteration or addition to the fishways at Wells Dam will be subject to the FERC’s approval prior to implementation. Simply requiring implementation without a determination that the plans and measures are necessary is inconsistent with the proposed measures in the management plan and is unsupported by the evidence available in this proceeding.

Page A-3-4, Article 4XX, Water Quality Management Plan.

As stated earlier in our comments on DEIS (page xxiii, 37, 223 and 235) we disagree with requirement (e) that requires that the GAP be filed with the Commission for approval prior to implementation. This requirement is not consistent with the current Wells license, and is not

consistent with the new license requirements for Rocky Reach. Also see General Comment section 2.1.3 (above).

Page A-3-4, Article 4XX, Water Quality Management Plan.

As stated earlier in our comments on DEIS (page 223), we disagree with requirement (b) and (j) that the HCP Fish Bypass Operating Plan and QAPP be filed with the Commission for approval prior to implementation.

The Wells HCP Coordinating Committee is the technical body with the expertise to determine whether or not the HCP Fish Bypass Plan is adequate to protect Plan Species and in particular the ESA-listed stocks migrating through Wells Dam. Ecology, through their unique role on the Aquatic SWG, is the technical expert on the adequacy of the GAP and QAPP in meeting Washington State Water Quality Standards and in determining whether non-compliance events need to be addressed with either structural or operational changes at the Project.

Staff's recommendation that the Commission be given oversight over all of these plans, whether they require structure modifications or not, is redundant to existing regulatory oversight, redundant to the oversight provided per the HCP and Aquatic Settlement and places the licensee in a regulatory crossfire between NMFS, Ecology and the FERC.

Page A-4, Article 4XX, Water Quality Management Plan.

As stated earlier in comments on DEIS (page xxiii, 38 and 223), we disagree with requirements (f), (g), and (h) that the FERC be notified of "any" future events of non-compliance with various water quality standards and that "*any future proposals to address non-compliance with the water quality criteria shall only be implemented after obtaining prior Commission approval after the filing of an application to amend the license*".

We doubt that the FERC really wants to be in the role of reviewing hourly water quality compliance reports and in the role of approving hourly operational changes to ensure compliance with site specific TDG criteria. The FERC does not have the authority or expertise to regulate compliance with the site specific state water quality standards applicable to the Wells Project. This is likely why the FERC did not require Chelan PUD to annually submit its GAP for Rocky Reach to the FERC for approval prior to implementation, but instead required the Chelan PUD to provide the FERC with a copy of the GAP to demonstrate consultation with Ecology and compliance with relevant 401 water quality certification license article.

To be consistent with other contemporary license orders, Staff should recommend a requirement to provide the FERC with an annual report documenting compliance with the water quality standards. Any proposed measure to satisfy water quality standards that requires a substantial alteration or addition to project structures or operations would be provided to the FERC for approval following the approval of Ecology.

Page A-6, Article 4XX, Bull Trout Annual Report and Pacific Lamprey Annual Report

Please revise the proposed license articles to eliminate the need to develop individual annual reports for various species covered under the Aquatic Settlement. Specifically, we request that the FERC allow Douglas PUD to bundle the proposed lamprey and bull trout reporting

requirement into one annual report containing information pertinent to the implementation of measures for all of the Aquatic Settlement resources including lamprey, white sturgeon, bull trout, water quality, aquatic nuisance species and native resident fish. The Annual Aquatic Settlement Report is prepared in close coordination with the parties to the Settlement Agreement and includes all of the information that the FERC is requesting in the species specific annual reporting license articles.

The requirement that a separate report be prepared for lamprey and then for bull trout independent of the Aquatic Settlement Agreement Annual Report will increase costs without providing any new information to the FERC.

Page A-7, Article 4XX, White Sturgeon Management Plan, (a) Broodstock Collection and Breeding Plan

As stated earlier in this document under General Comment 2.1.3, we disagree with the proposed requirement for the Commission to approve the white sturgeon broodstock collection and breeding plan prior to implementation. This requirement is not consistent with the Rocky Reach license order or appropriate given the management authority and expertise of the resource agencies and tribes to direct how, when and where broodstock are collected and how they will be genetically matched for maximum genetic diversity. Should Douglas PUD need to add or modify project facilities in order to raise sturgeon, then Commission approval is appropriate but the referenced plan is not intended to address the infrastructure needed to raise sturgeon but rather the biological requirements necessary to ensure that a diverse and genetically appropriate broodstock of adult sturgeon is collected and used to enhance the population in the Wells Reservoir.

Page A-7, Article 4XX, White Sturgeon Management Plan, (e) Broodstock Collection and Breeding Plan

As suggested earlier in this document, we propose using the annual report of activities implemented under the Aquatic Settlement as a means of covering and consolidating the Staff's proposed separate reporting requirements for lamprey, bull trout and sturgeon. Using one comprehensive report to describe all of the non-HCP aquatic resource activities will save money and provide the FERC with a more comprehensive understanding of the interactions between species, resources and the stakeholders involved in managing the aquatic resources found in the Wells Project.

Page A-10, Article 4XX. Recreation Management Plan

We request that the FEIS provide Douglas PUD with one year, rather than six months, to complete and file the map depicting the exact location where the proposed non-motorized campsite would be constructed. This request is intended to provide sufficient time for the licensee to meet with all 17 parties listed in the proposed license article and to actually allow time to address any concerns raised by this very diverse list of stakeholders. Six months is insufficient time to meaningfully gather concerns and come to consensus on a preferred location for this recreation site.

Page A-10, Article 4XX. Douglas PUD Land Use Policy

“...If changes to the Douglas PUD Land Use Policy are proposed in the future, the licensee shall develop a revised Douglas PUD Land Use Policy or addendum in consultation with the Aquatic Settlement Work Group; Terrestrial Resources Work Group; Recreation Resources Work Group and Wells Habitat Conservation Plan Coordinating Committee; National Park Service; Washington State Parks and Recreation Commission; Washington State Recreation and Conservation Office; Washington Department of Transportation; Cities of Brewster, Bridgeport, and Pateros; Port of Chelan County; Friends of Fort Okanogan; Okanogan Historical Society; U.S. Department of the Interior, Bureau of Land Management; Okanogan and Douglas counties; and Confederated Tribes of the Colville Reservation, and file the revised Douglas PUD Land Use Policy or addendum for Commission approval”.

Douglas PUD notifies the public and the PUD commission holds public hearings prior to making substantive changes to the Land Use Policy. This process has proven to be effective in developing land management practices that are supported by local, state, and federal agencies and tribes. The Land Use Policy complements the proposed license article for *Use and Occupancy* (page A-11), and we believe that further FERC approval is unnecessary.

We believe that the list of consulting parties is too specific and does not allow flexibility needed during a long-term license. Many of these organizations will likely change over time, and some may change even before the new license is issued. As an example, the State of Washington is currently considering consolidation of several state agencies, including Washington State Parks, the Washington State Recreation and Conservation Office and other state agencies. As an additional example, the Fort Okanogan State Park has been shut down due to budgetary constraints and it is unclear whether it will be reopened in the future. Similarly, the Staff did not include the Port of Douglas County, the Cultural Resources Work Group, or other parties who may potentially have interest.

Douglas PUD suggests changing the consultation requirement to “...*in consultation with the Recreation, Aquatic, Terrestrial and Cultural Work Groups and Habitat Conservation Coordinating Committee, and other state and federal agencies, tribes and non-government organizations as appropriate.*” This would allow flexibility over time and also mirror language found in the proposed license articles for the Boundary Project DEIS as well as other recently issued license orders.