



Public Utility District No. 1 of Douglas County

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September 22, 2011

Mr. Charles McKinney
Water Quality Section Manager
Washington State Department of Ecology
15 W. Yakima Ave., Suite 200
Yakima, WA 98902-3452

**Subject: Wells Hydroelectric Project No. 2149-152
Douglas PUD Comments on Ecology's Draft 401 Water Quality
Certification**

Dear Mr. McKinney:

Thank you for the timely issuance of the draft Clean Water Act Section 401 Water Quality Certification (401 Certification) for the Wells Hydroelectric Project (Wells Project). In particular, we appreciate your adoption of most of the proposed license articles necessary to implement the Anadromous Fish Agreement and Habitat Conservation Plan (HCP) and Aquatic Settlement Agreement (ASA) as conditions of the draft 401 Certification. As you are aware, inclusion of the specific terms and conditions found within these two important settlement agreements is critical to the future protection, mitigation and enhancement of aquatic resources found within the Columbia, Methow and Okanogan rivers within and adjacent to the Wells Project.

We have identified five areas in the draft document that are inconsistent with the terms of the ASA, and request that the 401 Certification be modified as described below in order to restore consistency between the ASA and final 401 Certification.

1. Include the ASA and HCP in the 401 Certification

We strongly recommend that Ecology include the entire ASA and HCP as appendices to the 401 Certification. Section 4.0 of the ASA states:

“The six Aquatic Resource Management Plans contained within Attachment B through G, together with the HCP will function as the Water Quality Attainment Plan (WQAP) in support of the Clean Water Act Section 401 Water Quality Certification for the Wells Project.”

Further, Section 6.2 of the 401 Certification should also be updated to include a reference to the applicable appendix that contains the ASA and section 6.3 should be updated to include a reference to the applicable appendix containing the HCP. Inclusion of this material is essential for implementation of the new license. The ASA, together with the HCP, were designed to be comprehensive and complementary toward the protection and enhancement of the aquatic resources found within the Wells Project. The interrelated functionality of these two settlement agreements and their respective management plans can only be understood when both of these documents, in their entirety, are contained within the conditions section of the 401 Certification. We also recommend that the first paragraph within Section 6.2 be replaced with the following two paragraphs:

“The Aquatic Settlement Agreement was executed October 2008 and jointly filed with the Federal Energy Regulatory Commission by Douglas PUD, Ecology and the other Aquatic Settlement signatories as an Offer of Settlement on May 27, 2010. The ASA is incorporated in this Certification as Appendix A. Ecology will administer and enforce this Certification consistent with the Settlement Agreement, unless the Settlement Agreement is terminated or Ecology ceases to be a party to it. If a conflict or inconsistency exists or arises between this Certification and the Aquatic Settlement Agreement or any part thereof that is incorporated in this Certification, the terms of this Certification shall govern.”

“Douglas PUD shall establish the Aquatic Settlement Work Group pursuant to the Aquatic Settlement Agreement and shall implement the measures in the Aquatic Settlement Agreement including the Resource Management Plans found in Attachment B [White Sturgeon Management Plan], Attachment C [Bull Trout Management Plan], Attachment D [Pacific Lamprey Management Plan], Attachment E [Resident Fish Management Plan], Attachment F [Aquatic Nuisance Species Management Plan], and Attachment G [Water Quality Management Plan] of the Settlement Agreement, except as may be subsequently modified in accordance with the Aquatic Settlement Agreement or Ecology’s Reservation of Authority within this Certification.”

2. Support a 50-Year License

The draft 401 Certification does not contain a condition supporting a 50-year license for the Wells Project. This is not consistent with Ecology’s obligation under the ASA to support a 50-year term for the new operating license. The term of the new license is a critical component of the ASA. Section 5.0 of the ASA states:

“Douglas will seek a term of 50 years for the New Operating License. The Parties agree to support a 50-year term for the New Operating License.”

Ecology's explicit support of a 50-year license term for the Wells Project within the 401 Certification is an important aspect of the ASA for Douglas PUD. Stakeholders entered into the ASA and HCP agreements in order to secure the long-term benefits of the Wells Project and the long-term commitment of Douglas PUD to environmental protection and responsible stewardship of aquatic resources. Douglas PUD has entered into these agreements in order to secure the support of a broad group of stakeholders, including Ecology, for a 50-year license term. We strongly encourage Ecology to include a condition within Section 6.0 of the 401 Certification that requires a 50-year license for the Wells Project. Specifically a condition that states:

“Ecology includes a fifty (50) year license term as a condition of this Certification to support implementation of the measures in the Aquatic Resource Management Plans in accordance with the provisions of the Aquatic Settlement Agreement and the terms of this Certification.”

3. Adaptive Management

Section 6.2 of the draft 401 Certification appears to contain several significant changes when compared to the agreed upon defined Adaptive Management steps found on page 4, Section 3.1 of the ASA. Specifically, Ecology has materially altered the definition of Adaptive Management through substantial modification to steps a), d), f) and h). We strongly recommend Ecology utilize the definition of adaptive management that was agreed to by the parties to the ASA.

4. Aquatic Nuisance Species

All of Section 6.6 of the draft 401 Certification appears to have been mistakenly carried over from the Priest Rapids 401 Certification, including a significantly more onerous set of measures related to aquatic nuisance species that go far beyond those contained within the Wells ASA. This section should be fixed by deleting the Priest Rapids 401 Certification language and updating this entire section to include only those conditions contained within the ASA's Aquatic Nuisance Species Management Plan.

5. Water Quality Management Plan

Section 6.7 of the draft 401 Certification contains several changes to the agreed upon measures within the ASA's Water Quality Management Plan. Specifically, the draft 401 Certification contains several substantive enhancements related to the year-round measurement of total dissolved gas and temperature. There is also a new requirement that a Total Dissolved Gas (TDG) Attainment Plan be developed within the first year of the new license and that Douglas PUD must demonstrate compliance with the applicable standards for total dissolved gas within 10 years of issuance of the final 401 Certification. Douglas PUD has discussed these enhancements to the Water Quality Management Plan with Ecology and concurs with Ecology's changes to the Water Quality Management Plan.

Based upon our conversations with you and your staff on August 30th in Wenatchee, we believe these issues can be easily addressed in the final 401 Certification for the Wells Project.

We appreciate Ecology's willingness to work with Douglas PUD to address these issues in a timely manner. We are fully committed to assisting your staff in addressing these revisions prior to FERC's issuance of a Final Environmental Impact Statement (expected to be released on or before October 27, 2011). If you have any questions about the comments in this letter, or wish to further discuss these issues, please contact either Beau Patterson (509) 881-2338, beaup@dcpud.org or Shane Bickford (509) 881-2208, sbickford@dcpud.org.

Sincerely,



William Dobbins, General Manager
Public Utility District No. 1 of Douglas County

Enclosure: (1) Technical edits to draft 401 Certification for the Wells Project

Cc: Tom Tebb – Ecology
Pat Irle – Ecology
Shane Bickford – Douglas PUD
Garfield Jeffers – Douglas PUD
Jim Vasile – Douglas PUD
Beau Patterson – Douglas PUD

Specific Technical Comments on the Clean Water Act Section 401 Water Quality Certification for the Wells Project issued by Ecology 8-29-2011

Specific Editorial Comments

1. Pg. 1, paragraph 1

The first paragraph of the document appears to provide a summary of recent regulatory steps toward the issuance of a draft 401 Certification. We suggest that this paragraph be enhanced to include language describing the filing of a Joint Offer of Settlement requesting FERC's approval of the Aquatic Settlement Agreement (ASA). The Joint Offer of Settlement is a notable event in the development and final approval of the ASA that supports the 401 Certification for the Wells Project.

2. Section 4.0, FINDINGS ON AQUATIC LIFE USES, Pg. 4

The second sentence in the first paragraph of this section should be modified to delete the word "*plans*" and replace it with "*agreements*". The revised paragraph should read: "*This Certification requires Douglas PUD to continue to meet the requirements in these two agreements ~~plans~~.*"

3. Section 4.0, FINDINGS ON AQUATIC LIFE USES, subsection (1) Listed Anadromous Salmonids, Pg. 5

The first sentence in this paragraph contains several factual errors. The Wells HCP was approved by FERC in 2004; hence the HCP will be in place from 2004 to 2054 and not 2052 as inferred by including the 2002 date in this paragraph.

Also, the HCP provides ESA incidental take coverage for all five species of anadromous salmonids at the project and not just spring Chinook and steelhead as indicated in the statement (ESA-listed anadromous salmonids).

The first sentence in this paragraph should be modified to read: "*In 2004, FERC approved Douglas PUD's 50-year Anadromous Fish Agreement and Habitat Conservation Plan (Wells HCP) to resolve all Project-related impacts to five species of anadromous salmonids.*"

4. Section 4.0, FINDINGS ON AQUATIC LIFE USES, Pg. 5, (2) Aquatic Settlement Agreement, subsection (c) Pacific Lamprey, first paragraph

The first paragraph under subsection (c) contains background on the life history of Pacific Lamprey and is an incomplete characterization of the life history of the species. Specifically we recommend that the adult oceanic feeding stage and importance as a prey item to various species be included in the section dealing with life history of the species.

The last sentence in the first paragraph of the Pacific Lamprey section should be modified to read: *“Ecologically, lamprey serve as filter feeders in their juvenile phase, are parasitic on marine fish and mammals during their adult phase, adults bring back marine-derived nutrients to the Columbia River’s freshwater tributaries, and in all life stages are important prey items to fishes, birds and marine mammals.”*

5. Section 4.0, FINDINGS ON AQUATIC LIFE USES, Pg. 5, (2) Aquatic Settlement Agreement, subsection (c) Pacific Lamprey, third paragraph

The third paragraph of this section contains a reference to observation “through Traditional Ecological Knowledge sources.” We believe that this is a reference to the oral histories of contemporary Native American tribes. We suggest removing this non-specific reference to undocumented history, or alternatively renaming it Native American oral history, or referencing one or more peer-reviewed anthropological or biological scientific publications if the capitalized phrase is retained.

Note that the ASA was developed to function as an adaptive management plan utilizing the rigors of science and hypothesis testing to make effective and informed resource management decisions. Unfortunately, the inclusion of “Traditional Ecological Knowledge”, without rigorous and unbiased documentation, does not provide a solid foundation for adaptive management and hypothesis testing.

6. Section 5.0, FINDINGS ON WATER QUALITY CRITERIA, Pg. 7, (2) Water Temperature, subsection (a) Reservoir and tributaries, fourth paragraph

The fourth paragraph of this section includes a sentence that states the following:

“Hydraulic and temperature influences from upstream dams may currently mask project related impacts.”

Please delete this sentence as it is speculative.

7. Section 6.0, WATER QUALITY CERTIFICATION CONDITIONS, Pg. 8, first paragraph

The first half of the first paragraph of this section states the following:

“..., Ecology finds reasonable assurance that the proposed license will comply with state and federal water quality standards and other appropriate requirements of state law provided the following conditions are met. Implementation of the compliance schedule and adaptive management strategies contained in the proposed license will result in attainment and compliance with state and

federal water quality standards and other appropriate requirements of state law provided the following conditions are met.”

We recommend that these statements be modified to read:

“..., Ecology finds reasonable assurance that the *continued operation of the Wells Project pursuant to a proposed new license* will comply with state and federal water quality standards and other appropriate requirements of state law provided the following conditions are met. Implementation of the compliance schedule and adaptive management strategies contained in the ~~proposed license~~ *HCP and ASA* will result in attainment and compliance with state and federal water quality standards and other appropriate requirements of state law provided the following conditions are met.”

8. Section 6.1, General Conditions, Pg. 9, fourth paragraph

The last sentence of this paragraph is not reflective of the language agreed upon within the ASA, is not reflective of what Ecology agreed to include in the 401 Certification for the relicensing of the Wells Project and is different than the language utilized within the 401 Certification for the Rocky Reach Project. Please modify the last sentence in this section to read:

“Ecology will ~~respect~~ *operate in accordance with* the dispute resolution process contained in the Aquatic Settlement Agreement.”

9. Section 6.1, General Conditions, Pg. 9-11

The General Conditions section should be used to inform FERC of the framework for administration and enforcement of the requirements of the 401 Certification pursuant to the ASA. Please insert a new general condition that states the following:

“As a signatory party to the ASA, Ecology will administer and enforce this Certification in compliance with the ASA.”

10. Section 6.1, General Conditions, Pg. 11

The General Conditions section is missing a reference to RCW 90.48.422(3) as found in the Rocky Reach 401 Certification and that is also applicable to the Wells 401 Certification. This statement should be added to the end as a new general condition in the 401 Certification for the Wells Project as follows:

“Douglas PUD shall be required to mitigate or remedy a water quality violation or problem only to the extent that there is substantial evidence the project has caused such violation or problem.”

11. Section 6.2, Aquatic Settlement Agreement, Pg. 11

See General Comment No. 1 in the cover letter regarding the inclusion of the Aquatic Settlement Agreement in the 401 Certification. Specifically a reference should be added in the first paragraph under section 6.2 and a condition should be added to the General Conditions section that incorporates the ASA as a condition of the 401 Certification.

12. Section 6.2, Aquatic Settlement Agreement, Pg. 11, second paragraph

The last sentence in the second paragraph should be modified to read:

*“In the event that the Aquatic Settlement Agreement, or any Aquatic Resource Management Plan fails or begins to fail, as determined by Ecology, to adequately protect, in a timely manner, existing or designated uses of water quality, Ecology reserves the right *in compliance with the dispute resolution process under the Aquatic Settlement Agreement* to require such changes including, but not limited to, Goals and Objectives, PMEs, or any operation or physical structures, as it determines necessary to protect these uses or water quality.”*

13. Section 6.2, Aquatic Settlement Agreement, Pg. 11, third paragraph

The third paragraph in section 6.2 does not adhere to the terms of the ASA. The modification of Goals and Objectives within the management plans is delegated initially to the Aquatic Settlement Work Group under the terms of the ASA. Ecology does reserve the authority to modify the Goals and Objectives, but only after attempting to work through the Aquatic Settlement Work Group and after working the issue through the dispute resolution process. The ASA does not provide Ecology with a unilateral right to modify the terms of the management plans.

14. Section 6.2, Aquatic Settlement Agreement, 1) Adaptive Management, Pg. 12

See General Comment No. 3 in the cover letter regarding Ecology's changes to the Adaptive Management steps defined with the ASA.

15. Section 6.5, bull trout, white sturgeon, Pacific lamprey and resident fish, Pg. 14

Please see our General Comment No. 1 in the cover letter regarding the incorporation of the entire ASA as an Appendix of the 401 Certification. The insertion of only Sections 3 and 4 of the management plans does not provide the full background and rationale for the measures included in each management plan. Inclusion of the entire ASA and HCP provides the full context necessary for implementation of these agreements.

16. Section 6.6, Aquatic Nuisance Species (ANS), Pg. 14-15

Please see General Comment No. 1 in the cover letter regarding the inclusion of the entire ASA, including the ANS plan into the Appendix of the 401 Certification. We also note that the plan included in the Wells 401 Certification is not the Wells ANS plan but rather the exact language found within the Priest Rapids 401 Certification. We request Ecology use the Wells ANS plan consistent with its obligations under the ASA rather than the language from the Priest Rapids 401 Certification.

17. Section 6.7, Water Quality Management Plan, Pg. 15, first paragraph

The first paragraph in this section is not complete and does not provide the proper interrelated context for the two settlement agreements contained in the 401 Certification. We recommend adding a new ending sentence for the first paragraph that states the following:

“The WQMP, together with the other five ASA management plans and the HCP will function as the Water Quality Attainment Plan.”

18. Section 6.7, Water Quality Management Plan, Compliance Schedule, Pg. 17, subsection i)

The statement in subsection i) under the **Compliance Schedule** section appears to contain a circular and unnecessary statement given the language contained in subsection ix) under **Additional Requirements TDG**. Please delete, “*including requirements of the TMDL*” from subsection i).

19. Section 6.7, Water Quality Management Plan, Additional Requirements - TDG, Pg. 18, subsection ix)

We request that this section be revised to provide that the Wells Gas Abatement Plans and the WQMP are intended to serve as the Wells portion of the Detailed Implementation Plan for the Mid-Columbia River TMDL, consistent with section 5.4(7) of the Rocky Reach 401 Certification.

20. Section 6.7, Water Quality Management Plan, Temperature TMDL Development and Implementation, Pg. 19, third paragraph, first sentence

On what basis would Ecology establish a load allocation absent an EPA TMDL process and associated models?

Please delete the following first sentence in the third paragraph:

~~“If a TMDL is not timely approved by EPA, Ecology may establish an allocation.”~~

21. Section 6.7, Water Quality Management Plan, Additional Requirements – Spill Prevention and Control, subsection f) Study Plans and Reports, ii) Additional Requirements - Reports, Pg. 22, second paragraph: Duration

We suggest modifying the first sentence in this paragraph to remove all references to any subsequent license and only focus on the next New License. Specifically we suggest deleting:

~~“Duration. The monitoring required under this Certification shall continue throughout the life of the New License and any subsequent renewals of that license, unless modified by Ecology.”~~

22. Section 6.8, Construction Activities, Pg. 22, first paragraph (a)

We suggest deleting the last sentence of the first paragraph under subsection a). We believe these conditions were mistakenly copied from the Priest Rapids 401 where major turbine modification and replacement was taking place. Specifically we suggest deleting:

~~“These conditions do not supersede separate conditions required for turbine replacement.”~~