140 FERC ¶ 62,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1 of Chelan County Project No. 943-117

ORDER MODIFYING AND APPROVING
NON-PROJECT USE OF PROJECT LANDS AND WATERS:
WATER WITHDRAWAL UNDER ARTICLE 412(C)

(Issued September 21,2012)

1. On July 31, 2012, Public Utility District No. 1 of Chelan County (licensee), licensee for the Rock Island Hydroelectric Project, filed an application for non-project use of project lands and waters. On behalf of the Pioneer Water Users Association (Pioneer Water) the licensee is requesting authorization to allow Pioneer Water to construct a new water withdrawal facility within the Rock Island project boundary. The Rock Island Project is located on the Columbia River, near Wenatchee, Washington, in Chelan and Douglas Counties.

Licensee's Proposal

2. The licensee requests Commission approval, pursuant to Article 412(c) of the project license,[1] to grant authorization to Pioneer Water to construct a new water withdrawal facility. The facility would include a pump intake, a cone-shaped fish screen and a 24-inch diameter pipeline. It would be located near the confluence of the Wenatchee and Columbia Rivers, within the Rock Island project boundary, on the north bank of the Wenatchee River, west of the State Road 285 bridge. The pipeline would extend approximately 50 feet offshore into the Wenatchee River and connect to a pump house located on Pioneer Water-owned lands, outside of the project boundary. The diversion would pump a maximum of 4.9 million gallons per day, from May to September, to upstream agricultural lands. Flow would range between 3.2 to 7.7 cubic feet per second (cfs).

3. The new withdrawal facility would be part of an overall new water conveyance system, consisting of 4 miles of pressurized pipe, and would replace an existing 54-mile ditch gravity flow irrigation conveyance system. As part of the overall replacement project, Pioneer Water proposes to remove an existing in-river diversion structure (dam

[1] 46 FERC ¶ 61,033. Issued January 18, 1989.

and associated diversion intake) located north of the town of Monitor, outside of the project boundary. The current system contains a fish ladder that limits fish passage due to sediment accumulation and low flows downstream of the diversion. The intent of the proposed improved conveyance system would be to enhance and improve habitat conditions and increase instream flows in the Wenatchee River from river mile 6.5 to the confluence with the Columbia River.

4. To install the new withdrawal facility, a temporary gravel-bag coffer dam would be built surrounding and enclosing the in-water work area. No dewatering is proposed. Following installation of the cofferdam, a qualified fish biologist, with experience in identifying and handling endangered and threatened species, would conduct any needed fish salvage. Biologists would drag a beach seine through the area confined by the cofferdam to capture any fish in the area. Data would be collected on the number of fish, species, approximate size range, condition, and mortality. Fish would then be immediately returned to the river. A biologist would remain on site during all in-water work to regularly inspect the confined area for fish. If fish are identified, all work would immediately cease and the fish would be removed as described. Following construction of the fish screen, intake and pipe, turbidity would be allowed to settle, and then the gravel bags would be removed.

5. A walking backhoe would excavate a 50-foot-long trench within the river bed. The excavated material would be placed on the riverbed within the cofferdam. A 50-foot by 24-inch pipe, with a 90 degree elbow at the end, would be placed in the trench. Each joint of the pipe would be connected to a concrete ecology block. The backhoe would also transport and connect the cone-shaped fish screen, with a steel base, to the 90-degree elbow. All excavated material would then be placed back into the excavated trench. To connect the water intake to the pump house, an 18-inch pipe would continue landward about 25 feet (outside of the project boundary), turn west (upstream) about 175 feet, and end beneath the pump building foundation pad.

6. The installation of the pipe would disturb a 12-foot long riparian area where it enters the river. This area would be stabilized with bioengineered revetment. The toe of the bank would be excavated approximately 2 feet deep to allow for installation of geotextile fabric, which would be secured over the shoreline and embedded in the excavated toe of the slope. A toe log would be secured parallel to the shoreline and native cobble, boulders and soil would be backfilled over the geotextile. Rip rap would be placed over the disturbed area and up the eroding bank to the ordinary high water mark. The entire disturbed river bank would be planted with native trees, shrubs and grasses.

7. Water quality would be protected by implementation of Best Management Practices (BMPs) as outlined in the Stormwater Management Manual for Eastern Washington. A construction stormwater permit would be obtained from the Washington Department of Ecology.

Pre-Filing Consultation

8. The licensee's July 31, 2012, filing includes documentation of consultation with the Washington Department of Fish and Wildlife (Washington DFW), Coleville Confederated Tribes, Yakama Nation, U.S. Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS). All of theses agencies, by emails dated in July of 2012, support the project.

Public Notice

9. On August 31, 2012, the Commission issued a pubic notice of the application for non-project use of project lands and waters, soliciting comments, motions to intervene and protests. In a letter filed September 12, 2012, the Department of the Interior stated that they do not have any comments. On September 17, 2012, the Washington DFW timely filed a motion to intervene. As mentioned above, the Washington DFW supports the application.

Threatened and Endangered Species

10. Section 7(a)(2) of the Endangered Species Act (ESA) of 1973[2] requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat. The following threatened or endangered species are known to occur in the vicinity of the project: Upper Columbia River (UCR) spring-run Chinook salmon (*Oncorhynchus tshawytscha*); UCR steelhead (*Oncorhynchus mykiss*); and bull trout (*Salvelinus confluentus*).

11. Pioneer Water is required to obtain approval from the U.S. Army Corps of Engineers (Corps) for the proposed new diversion. In 2008, the Corps requested formal consultation with the FWS and NMFS (jointly referred to as the Services) on nine categories of fish passage restoration activities throughout the state of Washington, including irrigation screen installation and replacement. The Services initiated ESA section 7 formal programmatic consultation, and prepared a joint Biological Opinion[3] on the proposed nine restoration actions. In the Biological Opinion, the Services conclude that the proposed action is not likely to jeopardize the continued existence of UCR

[2] 16 U.S.C. § 1536(a) (2006).

[3] The Corps' Programmatic Biological Assessment dated June 6, 2008, revised July 29, 2008, and the Services' Biological Opinion, dated July 8, 2008, was filed by the licensee on September 13, 2012.

spring-run Chinook, UCR steelhead or bull trout, nor would it result in the destruction or adverse modification of designated critical habitat.

12. Given that the Services have already conducted formal consultation with the Corps on the proposed action (irrigation screen installation), the Commission, in agreement with the Services, adopt the Corps section 7 consultation as our own.

13. The FWS, by email dated September 4, 2012, stated that the Pioneer Water's proposal is consistent with the 2008 Biological Opinion. The FWS stated that they agree that bull trout would be adversely affected by elevated sediment levels and fish salvage. However, relative densities of bull trout are low in the mainstem Wenatchee River. The FWS also stated that effects to designated critical habitat for bull trout are anticipated to be insignificant and are therefore not likely to be adversely affected. The FWS also stated in its September 4, 2012 email, that the section 7 responsibilities of the Corps and the Commission have been fulfilled.

14. The NMFS, by email dated September 4, 2012, stated that the project is likely to adversely affect UCR spring-run Chinook salmon and UCR steelhead due to associated take of juveniles of both species from crushing, electrofishing-related injury, increased turbidity and stress-related injury caused by stranding or salvage. The NMFS' email also stated that the Corps and the Commission have met their obligation under section 7 of the ESA, and no further consultation on the action is required.

15. In their Biological Opinion, the Services issued an Incidental Take Statement and included reasonable and prudent measures and terms and conditions to minimize incidental take of the listed species. Ordering paragraph (B) requires the licensee to include as a condition of any authorization it issues, the Services' terms and conditions. These terms and conditions require the licensee to: (1) ensure that all applicable conservation measures described in the Corps' Biological Assessment are implemented; and (2) ensure that the applicant (Pioneer Water) reports the extent of downstream [turbidity] plume and any minor changes that may be made during project implementation, to the FWS and NMFS.

Magnuson-Stevens Fishery Conservation and Management Act

16. Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act[4] requires federal agencies to consult with the Secretary of Commerce regarding any action or proposed action authorized, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH) identified under the Act.

[4] 16 U.S.C. § 1855(b)(2) (2006).

17. By email dated September 4, 2012, NMFS stated that EFH for Chinook and coho salmon has been designated in the action area, however, the project would not adversely affect EFH for these species.

National Historic Preservation Act

18. Under section 106 of the National Historic Preservation Act,[5] and its implementing regulations,[6] federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the Washington State Historic Preservation Officer to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects. By letter dated March 28, 2012, the Washington Department of Archaeology and Historic Preservation stated that the project would have no adverse effect on National Register eligible or listed historic and cultural resources.

Environmental Review

19. In this section we discuss the effect of the proposal on relevant environmental resources. Only those resources that would be affected, or for which comments were received, are addressed. In general, resources of the project area that could be affected by the licensee's proposal include water quality and quantity, aquatic resources and terrestrial resources. Since we have not identified any substantive issues related to cultural or recreational resources, these resources have been omitted from the analysis.

20. Impacts to water quality as a result of construction and potential erosion are anticipated to be short-term and minimal. Pioneer Water's use of a temporary coffer dam would reduce construction-related turbidity downstream. Turbidity would be allowed to settle before the cofferdam is removed. Construction and erosion BMPs would be used, as outlined in the Stormwater Management Manual for Eastern Washington and a construction stormwater permit would be obtained from the Washington Department of Ecology. Erosion BMPs would include silt fences at the toe of the existing slope adjacent to the river.

21. Water quantity in the Wenatchee River would be slightly increased as a result of the new diversion. The current diversion averages 11-15 cfs from May to September.

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[5] 16 U.S.C. § 470 (2006).

[6] 36 CFR Part 800 (2011).

The proposed new diversion system would have a lower withdrawal rate of 3.2 to 7.7 cfs from May to September. This reduced rate is expected to increase instream flow in the Wenatchee River from mile 6.5 to its confluence with the Columbia River by an amount of 14 cfs. Average monthly flows from May to September range between 797 cfs to 7,990 cfs, as measured at the U.S. Geologic Survey gage at Monitor, Washington.[7]

22. There would be some minor short-term disturbance to the riparian area during construction where the pipe runs from the intake to the pumphouse. This disturbance is not expected to significantly adversely affect terrestrial resources or habitat due to its limited size. The disturbed area would be mitigated with the installation of geotextile fabric and native cobble, boulders and soil. New angular rip rap would be placed over the disturbed area and up the eroding bank to the ordinary high water mark. The entire restored riverbank would be planted with native trees, shrubs and grasses.

23. Aquatic resources, including federally listed threatened and endangered species, in the vicinity of the intake may be adversely impacted by the construction of the intake pipe. Fish may become captured within the cofferdam, and would be subject to turbidity, construction equipment impact, and stress. Pioneer Water is proposing to capture and relocate fish to the river, which would reduce the likelihood of construction related impacts, however, the capturing and handling of fish would still cause some amount of stress to individuals. Although fish species may be adversely affected by the proposal, it is not expected to significantly affect aquatic resources, as in-water work is short in duration (approximately three weeks), and is limited to one side of the river channel. Most fish would be able to avoid the area. In order to protect fish and aquatic organisms during operation of the intake, Pioneer Water is proposing to install a cone-shaped fish screen at the point of diversion. The intake velocity at the screen would be 0.4 feet per second, perpendicular to the screen, which meets NMFS and Washington DFW standards. This velocity is sufficient to protect fish and aquatic organisms in the vicinity of the intake. Overall, the project would benefit aquatic resources by increasing instream flows, thereby improving aquatic habitat.

Conclusion

24. Approving the licensee's request to grant Pioneer Water an authorization to construct and operate a new water withdrawal facility within the project boundary would allow Pioneer Water to replace its existing water conveyance system, and would improve habitat conditions and increase instream flows in the Wenatchee River. Constructing and operating the proposed water intake facilities would not affect the licensee's ability to satisfy the requirements of the project license, nor would it adversely impact the

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[7] USGS gage number 12462500. Data accessed at http://waterdata.usgs.gov on September 14, 2012.

environmental and cultural resources of the area. Based on information provided in the licensee's July 31, 2012 filing, comments received from the resource agencies, and staff analysis, the relocation, construction and operation of the proposed water intake would not constitute a major federal action significantly affecting the quality of the human environment.

25. As mentioned above, the licensee should be required to implement the terms and conditions of the Services' Incidental Take Statement. Installation of the proposed water intake would adversely affect listed species. Under the terms of section 7(b)(4) and section 7(o)(2) of the ESA, take that is incidental to and not intended as part of the agency action is not considered to be prohibited take under the ESA provided that such take is in compliance with the terms and conditions of the Incidental Take Statement. Based on the terms and conditions, the licensee should be required to include as a condition of any authorization it issues a provision that PWUA: (1) implement all applicable conservation measures described in the Corps' Biological Assessment; and (2) report the extent of any downstream turbidity plume and any minor changes that may be made during project implementation to the FWS and NMFS. Ordering paragraph (B) requires the licensee to implement this provision.

26. In order to keep the Commission's records up to date of all approved non-project use of project lands and waters, the licensee should file location point data representative of the facilities approved by this order. The location point should be filed within 45 days of the date of this order, and be positionally accurate to ±40 feet, to comply, at a minimum, with National Map Accuracy Standards for maps at a 1:24,000 scale. The location point should include latitude/longitude in decimal degrees, based on the horizontal reference datum of the North American Datum of 1983 (NAD 1983). Ordering paragraph (C) requires the licensee to file this information.

27. Although no historical or cultural resources are expected to be adversely affected by installation of the proposed water intake, the potential does exist for the discovery of cultural resources during construction, operation, and/or maintenance of the water intake. The licensee should ensure that cultural resources are addressed in the event they are discovered during construction, operation or maintenance of the water intake. Therefore, the licensee should include in the intended authorization, conditions to protect previously undiscovered historic properties. The conditions should require that, if a previously undiscovered cultural resource site is discovered during construction, operation, and/or maintenance of the facilities, the holder of the authorization (Pioneer Water) should immediately cease all work at the site and contact the licensee. The licensee should immediately contact the State Historic Preservation Officer (SHPO) and any tribes that might attach religious or cultural significance to the discovered cultural resources to determine what steps need to be taken to evaluate the discovery. Ordering paragraph (D) requires the licensee to implement this measure.

The Director orders:

(A) Public Utility District No. 1 of Chelan County's (licensee) application for non-project use of project lands and waters, filed July 31, 2012, as modified by paragraphs (B),(C) and (D), is approved.

(B) The licensee shall include as a condition of any authorization it issues under this approval, a provision that Pioneer Water Users Association: (1) implement all applicable conservation measures described in the U.S. Army Corp of Engineers' 2008 Biological Assessment; and (2) report the extent of any downstream turbidity plume and any minor changes that may be made during project implementation to the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

(C) Within 45 days of the issuance date of this order, the licensee shall file location point data representative of the approved facilities. The location point must be positionally accurate to ±40 feet, at a minimum, to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The location point must include latitude/longitude in decimal degrees, based on the horizontal reference datum of the North American Datum of 1983 (NAD 1983).

(D) The licensee shall include as a condition of any authorization it issues under this approval, a provision that, if any cultural resources are discovered during construction, operation, and/or maintenance of the facilities, the holder of the authorization shall immediately cease all work at the site and immediately contact the licensee. The licensee shall consult with the Washington State Historic Preservation Officer (SHPO) and any tribes that might attach religious or cultural significance to the cultural resources to determine what steps need to be taken to evaluate the discovered cultural resources. If the resource is found to be eligible for the National Register of Historic Places, the licensee, in consultation with the SHPO and tribes, if applicable, shall develop measures to mitigate or to avoid any adverse effects. The licensee shall file with the Commission, for approval, a report on the historic property and the effects of the undertaking. If the property would be adversely affected, the report shall contain the proposed mitigation measures along with any comments received from the SHPO and tribes on the report. The licensee shall allow 30 days for an agency to comment. If there are no comments, the licensee shall include its request for comments in the filing to the Commission. The licensee shall not allow work to resume in the vicinity of the discovered site until instructed by the Commission.

(E) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2012). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this

order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Steve Hocking
Chief, Environmental Review Branch
Division of Hydropower Administration
and Compliance