



February 15, 2008

Dan Boettger, Okanogan PUD
Enloe Hydroelectric Project
Draft License Application Comments
1331 Second Avenue North
P.O. Box 912
Okanogan, WA 98840

SUBJECT: Review and Response for Draft Application for a new License for the Enloe Hydroelectric Project, FERC Docket No. 12569.

Dear Mr. Boettger:

Thank you for providing the Washington State Department of Natural Resources with a copy of the Enloe Draft License Application (FERC #12569), dated November 7, 2007, submitted pursuant to 18 C.F.R. Section 16.8(b)(4).

The Enloe dam structure and associated reservoir are located on state-owned aquatic lands. To date, DNR has never developed a use authorization for this hydroelectric project.

Authority

Washington Department of Natural Resources (DNR) management authority derives from the state's constitution, law, and regulations.¹ As proprietary manager of state-owned aquatic lands, the DNR has been directed to manage these lands "...for the benefit of the public..." in a manner that provides "...a balance of public benefits² for all citizens of the state..." that includes: "(1) Encouraging direct public use and access; (2) Fostering water-dependent uses³; (3) Ensuring environmental protection; and (4) Utilizing renewable resources." (Revised Code of Washington, 79.105.030).

¹ Articles of the constitution (XV, XVII, XXVII), Revised Code of Washington (RCW) 79.02, 79.10, 79.14 and, 79.105 to 79.145, Washington Administrative Code (WAC) 332-30.

² WAC 332-30-106 defines public benefit as "...that all of the citizens of the state may derive a direct benefit from departmental actions..."

³ Water dependent uses are those uses that "...cannot logically exist in any location but on the water." (RCW 79.90.465).



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“The District has filed an application with the Federal Energy Regulatory Commission for a Preliminary Permit under Section 4(f) of the Federal Power Act (FPA). If the State’s appraisal study of the Shanker’s Bend site is positive the District would consider whether to proceed with seeking a license for the hydroelectric capability of the project from FERC.”

DNR encourages Okanogan PUD to include as much detail as possible, as early as possible, about the relationship between these two projects, particularly the amount of state-aquatic lands affected. This will improve the timeliness by which DNR can respond to both Enloe and Shanker’s Bend.

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“The District did not receive ICD Comments from DNR....DNR staff attended one of the informational meetings, on February 1, 2007. DNR Staff have not finalized a request to the District regarding use of the State’s lands.”

DNR encourages Okanogan PUD to complete its application to use state-owned aquatic lands, and work with District Staff to resolve any questions.

“DNR Staff have not finalized a request to the District regarding use of the State’s lands.”

The DNR’s interest in the project pertains to areas where State Owned Aquatic Lands may be or currently are impacted and. Okanogan Public Utility District will need to contact the District Office where the project is located (address below) and complete the required forms to request use of state-owned aquatic lands. The services of a registered land surveyor is then required for platting the location. The application must be accompanied by a plat, technical data sheet, and State Environmental Policy Act (SEPA) checklist. To date, DNR has not received an application to use state-owned aquatic lands.

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“The District proposes that the WDNR treat the Project as a renovation with the accompanying restoration of wetlands and shoreline habitat.”

The DNR has no basis to conclude that the proposed project is anything other than a hydroelectric project. DNR has not discussed this project with the applicant as being anything other than a hydroelectric activity.

“The cost implementation of the agreement will be determined in consultation with WDNR after the licensing decision.”

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The DNR encourages Okanogan PUD to apply for use of state-owned aquatic lands as early as possible.

Other - Public Use –

The DNR would like to support comments made on Feb. 4, 2008 by the National Park Service and on Feb. 5, 2008, by American Whitewater Association. Both letters clearly state concerns surrounding potential impacts to public access and recreational opportunities. As manager of state-owned aquatic land, DNR adheres to the Public Trust Doctrine, which holds that navigable waters and the beds beneath are owned by the state, but held in trust for public use. The DNR asks the following questions with respect to public use and access:

- (1) What would the impact be to recreational and aesthetic opportunities provided by the planned Greater Columbia Water Trail be if the flow regime is modified?
- (2) Is the public access going to be modified in such a way so that recreational opportunities – planned or current – are significantly impacted?
- (3) Will further state-aquatic lands need to be inundated, thus restricting even more state-owned aquatic land available for public access?
- (4) In order to evaluate the full impacts on public use and access, DNR will also need information on the cumulative impacts of hydroelectric and other activities on the Similkameen River.

I hope this information will be of assistance to you. If you need further assistance, please feel free to contact me at (360) 740-6819.

Sincerely,


Nancy Lopez, District Manager
Aquatics Region/Rivers District

cc: Region File
Environmental Review, Division File