

UNITED STATES OF AMERICA 110 FERC ¶62,056
FEDERAL ENERGY REGULATORY COMMISSION

Tacoma Power

Project No. 2016 - 084

ORDER MODIFYING AND APPROVING FISH HABITAT FUND
ALLOCATION PLAN UNDER ARTICLE 11

(Issued January 24, 2005)

On July 6, 2004, Tacoma Power (licensee) filed its Fish Habitat Fund Allocation Plan pursuant to Settlement Agreement Article 11 of the March 13, 2002 Order Approving Settlement and Issuing New License¹ for the Cowlitz River Project. By letter issued September 26, 2003, the Commission established the effective and issuance date of the new license for compliance purposes as July 18, 2003, the date of the Order Denying Rehearing and Lifting Stay.² The project consists of the Mayfield and Mossyrock developments and is located on the Cowlitz River in Lewis County, in southwestern Washington.

BACKGROUND AND LICENSE REQUIREMENTS

Settlement Agreement (SA) Article 11 requires the licensee to establish a habitat fund in the amount of \$3 million for the purpose of fisheries habitat protection, restoration, and enhancement through acquisition, easements or restoration projects. Further, the article requires the licensee to file, for Commission approval, within one year of license issuance a plan for the uses of the habitat fund, including: a) a statement of the priority uses and criteria for disbursement of the funds, identifying acquisition by Tacoma in fee title or by conservation easements of riparian habitat along side channels below Barrier Dam as first priority; b) a description of efforts the licensee will make in concert with the other entities to leverage the habitat fund as matching funds for other salmon recovery funding opportunities; c) plans to coordinate with Lewis County on purchases of land or easements, including any plans to fund Lewis County personnel to conduct the acquisition of land rights; d) procedures for conservation groups and others to request the licensee's participation in restoration projects along with criteria for such participation; e) a statement of what, if any, additional lands acquired through the habitat fund will be included within the project boundary. Finally, the article requires the licensee prepare the

¹ 98 FERC ¶ 61,274 (2002)

² 104 FERC ¶ 61,092 (2003)

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plan in consultation with the Habitat Advisory Group (HAG). The HAG consists of representatives from Tacoma Power, U.S. Fish and Wildlife Service (FWS), Washington Department of Fish and Wildlife (WDFW), Trout Unlimited (TU), NOAA Fisheries (NOAAF), and Lewis County.

LICENSEE'S PLAN

The licensee states that the \$3 million Fish Habitat Fund was established before January 18, 2004. The licensee states that the SA called for the formation of the HAG to oversee fish habitat protection, restoration, and enhancement on the Cowlitz River. The role of the HAG is to provide guidance in the use of the habitat fund and will be responsible for reviewing and approving which projects are eligible and their relative priority within the basin.

Proposals brought before the HAG would need to meet certain eligibility criteria. The projects would be defined as acquisitions, easements, and restoration. Other project types would not be considered consistent with the intent of the habitat fund. All appropriate projects would need to demonstrate their value in addressing one or more salmonid life history stages, and enhance, protect or restore the aquatic system on which they depend.

Acquisition in fee-title conservation easements of mainstem and tributary habitats in the Cowlitz River between the Barrier Dam and the confluence with the Toutle River would be given the highest priority. Properties containing off-channel habitats such as side channels, oxbows and wetlands would be of the highest priority. The licensee states that a comprehensive evaluation of important lower Cowlitz River side channels and habitat sites was completed during relicensing. Fee-title acquisition of these sites would be considered top priority. Conservation easements may be used as a tool to protect priority lands where fee-title acquisition is not desirable, is cost prohibitive, or where protection of priority lands may be better accomplished through a conservation easement or purchase of development rights. Habitat restoration and enhancement projects may be considered for funding by the HAG. Restoration projects in tandem with acquisition or conservation easements would be considered a higher priority than construction projects alone.

The licensee states that ranking criteria have been developed by the HAG as a means to compare the relative benefits of proposed projects. These criteria would be used to assign a point value to each proposal as it relates to: 1) applicability to the Cowlitz project objectives; 2) its relationship to existing basin recovery planning processes or

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identified priority projects; 3) biological and technical merit; 4) imminent threat if action should be delayed; and 5) the ratio of relative costs to the anticipated benefits. Once the priority sites identified during relicensing have been pursued, or at the direction of the HAG, the remaining funds in the account would be made available for other acquisitions or habitat restoration projects.

When applicable, and as grant procedures allow, additional funds from outside sources would be investigated and/or pursued. The licensee would encourage conservation groups and others to initiate project proposals with Lewis County and the HAG. Cowlitz habitat funds may also be used as a source of matching funds for proposed project grants requiring multiple funding sources. The percentage of the habitat fund contribution to the proposed project would be determined by the HAG, and weighted by applying the established ranking criteria and priorities.

The licensee states that they have entered into a Memorandum of Understanding (MOU) with Lewis County for services related to the allocation of the habitat fund. Lewis County will act as an agent within the limits of the MOU for Tacoma Power in the acquisition of properties for the purpose of fish habitat protection. Lewis County and/or Tacoma Power would identify and approach landowners of the properties recognized as a priority in the lower Cowlitz River.

Fee-title purchases and easements made with the habitat fund would be held in Tacoma Power's ownership. Tacoma would establish which properties would be included within the Cowlitz project boundary on an individual basis. The licensee would notify the Commission if and when any acquired properties are to be included in the project boundary.

Upon Commission approval of the plan, the licensee would issue a public notice announcing the availability of the funds. Notifications, including a statement of project eligibility and contact information, would be made to fish habitat grant funding sources and to local newspapers. The information would also be placed on the Tacoma Power website and in the Cowlitz Currents newspaper. The licensee would annually review progress made towards habitat protection and report its finding to the HAG. If over this period, acceptable progress has not been made toward fund expenditure through land acquisitions and easements, the HAG would evaluate and consider modifications to the eligibility criteria and prioritization of potential projects.

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AGENCY CONSULTATION

The SA Article 11 requires the licensee to prepare the plan in consultation with the HAG. The licensee distributed the plan on April 30, 2004 to the FWS, WDFW, TU, NOAAF, Lewis County, and U.S. Forest Service for a 30-day review and comment period as required by the article. The licensee states that the proposal criteria was developed at HAG meetings and was extensively edited by the FWS. No additional comments were received on the plan.

DISCUSSION AND CONCLUSIONS

The licensee proposes to implement the plan and issue a public notice announcing the availability of the funds once approved by the Commission. Notifications, including a statement of project eligibility and contact information, would be made to fish habitat grant funding sources and to local newspapers. The licensee should file with the Commission, within 45 days from the date of this order, a copy of the public notice.

The licensee plans to annually review progress made towards habitat protection and report its finding to the HAG. However, the licensee does not indicate that an annual progress report would be filed with the Commission. Therefore, the licensee should file with the Commission, by December 31 of each year, an annual progress report describing any acquisitions, easements, or restoration projects that were funded for that calendar year, including expenditures. The progress report should be prepared after consultation with the HAG. The licensee should allow the HAG 30 days to comment on the report prior to filing the report with the Commission. The progress report should include any comments from the HAG and the licensee's response to any such comments. The report should also identify what projects are to be included in the project boundary. For those projects to be included in the project boundary, the licensee should include in the annual report a schedule for filing revised Exhibit G drawings for Commission approval.

The licensee's Fish Habitat Fund Allocation Plan should provide additional mainstem Cowlitz River and tributary fisheries habitat protection, restoration, and enhancement. Additionally, the HAG should provide necessary guidance in the use of the habitat fund and appropriate review and approval for determining which projects are eligible and their relative priority within the basin.

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The licensee's plan satisfies the requirements of SA Article 11 of the March 13, 2002 Order Approving Settlement and Issuing New License for the Cowlitz River Project. Therefore, the licensee's plan, as modified, should be approved.

The Director orders:

(A) The Fish Habitat Fund Allocation Plan, filed July 6, 2004, under Settlement Agreement Article 11 of the March 13, 2002 Order Approving Settlement and Issuing New License for the Cowlitz River Project, as modified by paragraphs (B) and (C), is approved.

(B) The licensee shall file with the Commission, within 45 days from the date of this order, a copy of the public notice announcing the availability of the funds.

(C) The licensee shall file with the Commission, by December 31 of each year, a progress report describing any riparian habitat acquisitions, easements, or restoration projects that were funded for that calendar year, including expenditures. The progress report shall be prepared after consultation with the HAG. The licensee shall allow the HAG 30 days to comment on the report prior to filing the report with the Commission. The progress report shall include any comments from the HAG and the licensee's response to any such comments. The report shall also identify what projects are to be included in the project boundary. For those projects to be included in the project boundary, the licensee shall include in the annual report a schedule for filing revised Exhibit G drawings for Commission approval.

(D) The licensee shall file an original and seven copies of any filing required by this order with:

The Secretary
Federal Energy Regulatory Commission
Mail Code: DHAC, PJ-12.3
888 First Street, NE
Washington, DC 20426

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(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 CFR § 385.713.

George H. Taylor
Chief, Biological Resources Branch
Division of Hydropower Administration
and Compliance