

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL MARINE FISHERIES SERVICE

Public Utility District No. 1 of)
Chelan County, Washington) Docket No. _____

APPLICATION FOR INDIVIDUAL INCIDENTAL TAKE PERMIT FOR THE
ROCK ISLAND HYDROELECTRIC PROJECT, FERC NO. 943

I. Introduction

Public Utility District No. 1 of Chelan County, Washington (“Chelan”), a Washington municipal corporation and the Federal Energy Regulatory Commission (“FERC”) licensee for the Rock Island Hydroelectric Project No. 943 (“Project”), hereby applies to the National Marine Fisheries Service (“NMFS”) for the issuance of an individual incidental take permit for the Project pursuant to 16 USC 1539(1)(B) and 50 CFR 222.22(b).

II. Communications

For purposes of this application, communications should be addressed to and service should be made upon:

Roger A. Braden, General Manager
Public Utility District No. 1 of Chelan County, Washington
Post Office Box 1231
Wenatchee, Washington 98807-1231
(509) 663-8121

and

Malcolm C. McLellan
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617 Washington Street
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III. Background

Negotiation of the Rock Island Anadromous Fish Agreement and Habitat Conservation Plan

In late 1993, Chelan along with the Public Utility District No. 1 of Douglas County ("Douglas") and the Public Utility District No. 2 of Grant County ("Grant") (collectively the "Mid-Columbia PUDs") initiated discussions, with NMFS, the United States Fish and Wildlife Service ("USFWS") and WDFW to develop a Mid-Columbia Conservation Program ("MCCP"). The purpose of the MCCP was to create an eco-system based plan to manage the fish and wildlife that inhabit the Mid-Columbia River Basin and its tributaries (from the tailrace of Chief Joseph Dam to the confluence of the Yakima and Columbia Rivers). Shortly thereafter, the Confederated Tribes of the Colville Reservation ("Colville"), the Confederated Tribes and Bands of the Yakama and the Bonneville Power Administration ("BPA") were added to the discussions.

By late 1994, the MCCP was abandoned as overly broad in scope in favor of developing a Mid-Columbia Habitat Conservation Plan ("MCHCP") which focused on aquatic species (fish, plants and animals) that inhabit the Mid-Columbia River Basin. By this time BPA had withdrawn from the discussions. The Mid-Columbia PUDs sponsored extensive studies and submitted the first draft of the MCHCP to the parties in May 1996.

After further review, it was concluded that an aquatic MCHCP was too ambitious, given the lack of information about many of the species and the likelihood that certain species of salmon and steelhead would be listed in the near future under the Endangered Species Act ("ESA"). The negotiations were then focused upon the anadromous salmonids; specifically, spring, summer and fall chinook salmon (*Oncorhynchus tshawytscha*); sockeye salmon (*O. nerka*); coho salmon (*O. kisutch*); and steelhead (*O. mykiss*).¹ Also at this

¹ The Anadromous Fish Agreement and Habitat Conservation Plan ("Agreement") submitted with this application applies to the "Plan Species". Plan Species are the anadromous salmonids identified in the text. This incidental take permit application addresses a subset of

time, the Confederated Tribes and Bands of the Umatilla Indian Nation (“Umatilla”) and American Rivers, Inc. began actively participating in the negotiations, the Mid-Columbia power purchasers began to closely monitor the negotiations, and a representative of FERC staff began participating in an advisory capacity. These negotiations culminated in the proposed Anadromous Fish Agreement and Habitat Conservation Plan for the Rock Island Project, as well as virtually identical agreements for the Wells and Rocky Reach projects.²

The Listings Under the ESA

On August 18, 1997, NMFS published notice in the Federal Register listing the Upper Columbia River Evolutionarily Significant Unit (“ESU”) of steelhead as an endangered species under the ESA. In response to the listing and to provide short term compliance with the ESA until the Anadromous Fish Agreements and Habitat Conservation Plans could be negotiated, Chelan and Douglas filed Interim Protection Plans (“IPPs”) for steelhead with FERC for the Wells, Rocky Reach and Rock Island projects and requested FERC to consult with NMFS under section 7 of the ESA on approval of those plans.

On March 9, 1998, NMFS published notice in the Federal Register proposing the listing of the spring chinook Upper Columbia River ESU. On March 26, 1998, FERC requested consultation with NMFS under section 7 of the ESA on Upper Columbia River steelhead and a conference on Upper Columbia River spring chinook in connection with implementing the steelhead IPPs.

The Proposed Rock Island Anadromous Fish Agreement and Habitat Conservation Plan

the Plan Species, the “Permit Species”, and a subset of the legal obligations covered by the Agreement, the ESA. As defined in the Agreement, the “Permit Species” are the Plan Species less coho salmon. Coho salmon are extirpated from the geographic area covered by the Agreement, and therefore not protected by the ESA in this geographic area.

² There is a separate Agreement for each project (Wells, Rocky Reach and Rock Island), as each project is separately licensed by FERC and has a slightly different biological plan. Each Agreement bears the title “Anadromous Fish Agreement and Habitat Conservation Plan” with a reference to the applicable project.

The negotiations on Chelan's and Douglas' Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach and Rock Island projects have reached the point where formal regulatory review of the proposed Agreements should commence. Accordingly, Chelan is making this filing with NMFS in connection with the Rock Island Project.

IV. Rock Island Permit Application

In accordance with 16 USC 1539(1)(B) and 50 CFR 222.22(b), Chelan submits for the Rock Island Project this application along with the following exhibits:

- Exhibit A Anadromous Fish Agreement and Habitat Conservation Plan, Rock Island Project No. 943
- Exhibit B Phase One Flowchart (Rock Island)
- Exhibit C Tributary Compensation Plan Species Account Project Selection, Implementation, and Evaluation Plan
- Exhibit D Aquatic Species and Habitat Assessment:
Wenatchee, Entiat, Methow, and Okanogan Rivers
- Exhibit E Biological Assessment and Management Plan:
Mid-Columbia Hatchery Program
- Exhibit F Rock Island Background Biology
- Exhibit G Detailed Fishway Operating Plan (Rock Island)
- Exhibit H Forebay and Tailrace Diagram (Rock Island)

Also, in accordance with 50 CFR 222.22(b), Chelan states the following:

1. Type of Application. Individual Incidental Take Permit under the ESA
2. Applicant. Public Utility District No. 1 of Chelan County, a
Washington municipal corporation
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3. Species. The species covered by this application are the “Permit Species”³ as set forth in Exhibit A, Section X.2. Permit Species are defined in Exhibit A, Section XIII.10.

4. Description of the Species. A description of the status, distribution, seasonal distribution, habitat needs, feeding habitats and other biological requirements of the Permit Species are described in Exhibits A through H.

5. Description of Proposed Activities. The activity covered by the application is the operation and maintenance of the Rock Island Hydroelectric Project, FERC No. 943, in accordance with its FERC license.

6. Conservation Plan. The conservation plan, the anticipated impact of the proposed activity on the Permit Species, and the proposed monitoring and funding are set forth in Exhibit A. The alternative actions considered but not selected for the conservation plan are set forth in Exhibit A, Section IX.10, and in Exhibit F, Section 7.

7. References. The exhibits to this application were prepared in cooperation with: Chelan, Douglas, NMFS, USFWS, WDFW, Colville, Yakama, Umatilla, and American Rivers. References are included at the end of Exhibits C through F.

V. Request to Coordinate NEPA Compliance

Several of the parties to the Agreement are unable to execute them until they conduct a public review and analysis under the National Environmental Policy Act (“NEPA”) or the State Environmental Protection Act (“SEPA”). NMFS must complete a NEPA analysis prior to signing the Agreement and issuing the section 10 permit under the ESA. FERC must also conduct a NEPA review prior to approving the Agreement and amending the Project’s license. Finally, the execution of the Agreement by Chelan and the WDFW is subject SEPA compliance, which requires a similar environmental review. The parties anticipate that NMFS’s decision to issue the incidental take permit contemplated by the Agreement will be major federal action under NEPA and thus may not be issued without preparation of an EIS.

³ See footnote 1 for clarification of terms “Plan Species” and “Permit Species”.

Although the parties recognize the need to comply with applicable legal requirements, it is also essential to move forward with the execution and implementation of the Agreement as soon as possible to protect and restore Permit Species, including steelhead, which are listed as endangered, and spring chinook, which are proposed for listing as endangered.

In this context, the parties request NMFS staff to enter into a memorandum of understanding or other protocol to coordinate and consolidate preparation of the required EIS. Such action would minimize delay and cost, avoid duplication of effort and hopefully lead to a consensus analysis in support of approval of the Agreement and various actions contemplated by the Agreement.

To facilitate a coordinated approach to NEPA compliance, Chelan offers to enter into a contract with a contractor acceptable to NMFS and FERC to prepare a preliminary draft EIS. The contract would be funded by Chelan, but the scope and content of the analysis would be determined by an oversight committee representing all agencies with NEPA and SEPA responsibilities. The preliminary draft EIS would be filed by Chelan with each agency for review and issuance as a draft EIS for public comment. Following review of the public comments by the oversight committee, each agency would be in a position to adopt the final EIS and proceed with its decision making process related to the Agreement.

The parties request NMFS staff to schedule a meeting with interested parties to reach an understanding on procedures and protocols for coordinated NEPA compliance in accordance with the foregoing objectives.

VI. Public Notice

In view of the significance of the proposed Agreement, Chelan requests that notice of this Application be published in the Federal Register as soon as possible as provided for in 50 CFR 222.24(a).

VII. Conclusion

WHEREFORE, Chelan respectfully requests NMFS to issue an individual incidental take permit for the Rock Island Project according to the terms and conditions of the

Anadromous Fish Agreement and Habitat Conservation Plan that has been negotiated by the parties for the Rock Island Project. Chelan reserves the right to withdraw or modify this filing in the event that NMFS proposes to issue an incidental take permit on terms other than those set forth in the enclosed Anadromous Fish Agreement and Habitat Conservation Plan.

Respectively submitted this ___ day of July, 1998.

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Attorney for
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County, Washington