

UNITED STATES OF AMERICA 109 FERC ¶62,151
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp

Project No. 20 - 034

ORDER MODIFYING AND APPROVING BONNEVILLE CUTTHROAT
TROUT RESTORATION STUDY PLAN UNDER ARTICLE 403

(Issued December 2, 2004)

On August 2, 2004, PacifiCorp (licensee) filed its Bonneville Cutthroat Trout Restoration Study Plan pursuant to Article 403 of the Order Approving Settlement Agreement and Issuing New License,¹ issued December 22, 2003, for the Bear River Hydroelectric Project. The project consists of three developments and is located on the Bear River in Caribou and Franklin Counties, in southeastern Idaho.

BACKGROUND AND LICENSE REQUIREMENTS

License Article 403 requires the licensee to file, for Commission approval, a Bonneville Cutthroat Trout (BCT) Restoration Plan prepared in consultation with the Environmental Coordination Committee (ECC).² The article requires that, unless otherwise indicated, funding that is not completely expended by one element of the plan may be available for use in completion of other element plans, but all funding by the licensee shall be completed by the seventh anniversary of the issuance of the license, or on an alternative schedule as determined by the Project Implementation Plan required under Article 401. Additionally, the article requires that annual updates on progress of the plans elements and all resulting reports, including analysis and conclusions, be filed with the Commission as provided for in Article 401. The plan is required to include the following elements:

- (a) A provision to collect and analyze genetic samples of BCT in the mainstem or tributaries of the Bear River, including details as to how the data will be collected and identification of reports that will be generated, and expected to cost no more than \$40,000;

¹ 105 FERC ¶ 62,207 (2003)

² The ECC is comprised of various state and federal resource agencies, non-governmental organizations, and tribes who were signatories to the Settlement Agreement

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- (b) A provision to conduct aerial photography to assist in understanding habitat feature and restoration opportunities on the Bear River and its tributaries, including details as to how the data will be collected and identification of reports to be generated, and expected to cost no more than \$125,000;
- (c) A provision to prepare a Geographic Information System (GIS) layer depicting active diversions and other passage impediments in the Bear River drainage, including details as to how the data will be collected and identification of reports that would be generated, and expected to cost no more than \$13,000;
- (d) A provision to conduct a BCT telemetry study on the Bear River and its tributaries, including details as to how the data will be collected and identification of reports to be generated, and expected to cost no more than \$150,000 over 3 years;
- (e) A provision for developing localized broodstocks of BCT for stocking in the Action Area linked to BCT protection and restoration efforts, expected to cost no more than \$300,000 over 3 years, including the allowance for the reallocation of broodstock development funding for purposes described under articles 405 and 406; and
- (f) A study plan that evaluates the feasibility of fish passage at the Cove development through modifications of the project, addition of fish passage facilities, and decommissioning of the project.

LICENSEE'S PLAN

The licensee's plan consists of four research elements to provide information in support of measures to improve habitat for BCT and other aquatic species and restore healthy populations of BCT near the project (Action Area). The four areas of research include: 1) genetic sample analysis; 2) irrigation diversion/barrier map and aerial photography (including GIS layer preparation); 3) telemetry studies; and 4) broodstock development. The licensee states that the study plan (element (f) above) to evaluate the feasibility of fish passage at the Cove development would be filed under separate cover with the Commission.

GENETIC SAMPLE ANALYSIS

The licensee states that the Idaho Department of Fish and Game (IDFG) would direct the genetic studies, which would contribute to existing data. The IDFG would arrange for collection and analysis of BCT genetic samples from fish sampling of the mainstem and/or tributaries of the Bear River in Idaho. Methodology would be chosen based upon experts' advice and the already ongoing work of IDFG. Researchers would

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look for differences between Bear River and Bear Lake BCT stock, similarities and differences between BCT populations in the Bear River drainage in Idaho, and the overall genetic health of BCT. The results of the study would help prioritize habitat restoration projects and determine the best stock(s) to use in the Conservation Hatchery Program. The licensee plans to provide support for the ongoing research during the summer of 2004 and would continue through year 8 or as provided by funding. The licensee plans to provide \$40,000 in funding for this element.

IRRIGATION DIVERSION/BARRIER MAP AND AERIAL PHOTOGRAPHY

An aerial photography flight would be conducted along the Bear River and its wetted tributaries in Idaho and the photographs provided to the ECC for their use in project planning. The aerial photography would be used to identify potential barriers to fish migration, existing diversions, and instream and riparian habitat features. A contractor would be hired to survey the Bear River and its tributaries in Idaho for diversions and their diversion structures. GIS layers would be assembled to depict diversion locations, migration barriers, and habitat conditions. All data would be prepared for review and maintained by the ECC. The aerial photographs, report, and the irrigation diversion GIS map with digitally attached photos and datasheets would be provided to the ECC by January 1, 2006. Aerial photography and mapping would begin in the late spring or early summer of 2005 and may continue through year 8 or as provided by funding. The licensee plans to provide \$125,000 for aerial photography and \$13,000 for the diversion survey/report.

TELEMETRY STUDIES

Under the lead of the IDFG, a BCT telemetry study would be conducted in three different reaches of the Bear River and its tributaries over a 3-year period to analyze spatial and temporal fish movement. A GIS map reflecting Geographic Positioning Station locations of tagged fish, including the path of each tracking event would also be developed. Basic methodology would include sampling and estimation of population density of fluvial BCT in the mainstem and lower reaches of tributaries in the winter and end of summer. All fish species sampled would be identified and enumerated, and all captured BCT would be weighed and measured. The data would then be used to target tributaries for trapping of fluvial outmigrants. At a minimum, tracking would provide monthly locations throughout the year to address the question of habitat connectivity. Tracking for the period from April 1 through June 30 may be conducted on a weekly

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basis. Telemetry studies are expected to begin in 2005. The licensee plans to provide \$50,000 per year for three years for this element.

BROODSTOCK DEVELOPMENT

The IDFG would use data from the genetic analysis of BCT to estimate the genetic relationships between populations in the Action Area and elsewhere in the Bear River and Bear Lake systems. Based upon existing data and restoration opportunities, localized BCT broodstock(s) would be raised if determined necessary by ECC and agreed to by the IDFG. Coordination would also occur with the Wyoming Game and Fish Department in conjunction with previous work that developed fluvial BCT broodstock from the upper Thomas Fork. If genetic analysis determines all existing pure BCT populations in the analysis area are apparently similar, one broodstock would be developed for use in the Action Area. If genetic analysis determines obvious differences in pure populations within the project area, there may be more than one broodstock developed. The licensee states that fish stocking could be used to re-establish native BCT populations, however, broodstock development would only occur if the genetic analysis determined it to be a necessary action for BCT restoration. If identified as appropriate by the ECC, as determined by the genetic sample analysis, broodstock development would begin after year 5, and will be completed by year 8. The licensee plans to provide \$100,000 per year for three years for this element. If the appropriated funds are not used for broodstock development, they may be reallocated for use under articles 405 and 406 at the discretion of the ECC.

AGENCY CONSULTATION

Article 403 requires the licensee to prepare the plan in consultation with the ECC. The licensee states that their plan was developed by the ECC and drafts of the plan were submitted to the ECC for review on April 20 and May 4, 2004. Comments resulting from the review were addressed during the July 14, 2004 ECC meeting. The licensee's filing also included the meeting minutes from five ECC meetings. The comments on the draft plan and included in the July 14 meeting minutes were incorporated into the licensee's final plan.

DISCUSSION AND CONCLUSIONS

The licensee's plan was developed by the ECC and is consistent with the requirements of Article 403 and the Settlement Agreement. The licensee states that the results of the studies in their BCT study plan would be included in the annual reports

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submitted by March 1 each year in compliance with Article 401. The licensee should file, for Commission approval, a revised study plan if modifications to the filed plan are proposed by the licensee or ECC.

The licensee's Bonneville Cutthroat Trout Restoration Study Plan should help protect BCT in the Bear River and its tributaries and provide the information necessary to determine if a broodstock program is necessary for the restoration of BCT in the Action Area. Additionally, the licensee's participation in the ECC should provide the flexibility necessary to determine appropriate future study needs and funding allocations.

The licensee's plan satisfies the requirements of Article 403 of the December 22, 2003 Order Approving Settlement and Issuing New License for the Bear River Hydroelectric Project. Therefore, the licensee's plan, as modified, should be approved.

The Director orders:

(A) The Bonneville Cutthroat Trout Restoration Study Plan, filed on August 2, 2004, pursuant to Article 403 of the December 22, 2003 Order Approving Settlement and Issuing New License for the Bear River Hydroelectric Project, as modified by paragraph (B), is approved.

(B) The licensee shall file, for Commission approval, a revised study plan if modifications to the filed plan are proposed by the licensee or the ECC. The plan shall be prepared after consultation with the ECC. The licensee shall allow the ECC 30 days to comment on the plan before filing with the Commission. The plan shall include documentation of ECC consultation and the licensee's response to any ECC comments and recommendations. The Commission reserves the right to require changes to any revised plan.

(C) 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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(D) 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