



United States Department of Agriculture

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July 18, 2001

Secretary David P. Boergers
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**RE: Condit Hydroelectric Project
Project No. 2342-012**

Dear Mr. Boergers:

Enclosed for filing in the above-referenced proceeding are the original and eight (8) copies of the U.S. Department of Agriculture's MOTION TO INTERVENE IN SUPPORT OF PETITION FOR DECLARATORY ORDER AND FOR EXPEDITED CONSIDERATION. Also enclosed is an extra copy of the motion. Please date stamp and return the copy to the undersigned.

Copies of this document have been served on all parties of record to these proceedings.

Sincerely,

ARNO REIFENBERG
Regional Attorney

Jocelyn B. Somers
Attorney

Enclosures

cc: Service List
Dan Harkenrider
Walt Dortch
Rod Mace

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

MOTION TO INTERVENE IN SUPPORT)	Project Number 2342-012
OF PETITION FOR DECLARATORY)	
ORDER, AND FOR EXPEDITED)	(Condit Hydroelectric Project)
CONSIDERATION)	
_____)	

DEPARTMENT OF AGRICULTURE

I. MOTION TO INTERVENE

On June 14, 2001, the Commission issued a Notice of Petition for Declaratory Order regarding the Condit Hydroelectric Project on the White Salmon River, a tributary of the Columbia River. The United States Department of Agriculture (Department) hereby moves the Federal Energy Regulatory Commission (Commission), pursuant to 18 C.F.R. §§ 385.210, 385.214 for leave to intervene in the above proceeding in support of the position taken by PacifiCorp in the Petition for Declaratory Order filed with the Commission on June 1, 2001.

The Department represents national public interests which may be affected directly by the project and which otherwise would not be represented before the Commission. The interests and responsibilities of the Department and the resulting grounds for its intervention are set out below as a basis for an order by the Commission granting the Department's motion to intervene.

All correspondence and communications concerning this proceeding should be mailed to:

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II. INTERESTS OF THE DEPARTMENT

PacifiCorp filed a Notice of an Application to Relicense the Condit Hydroelectric Project located in the White Salmon River, a tributary to the Columbia River, in Skamania and Klickitat Counties, Washington, in December, 1991. In December, 1992, the Department filed a motion to intervene in the relicensing which was granted. On February 2, 2000, the Commission issued a Notice of Offer of Settlement and Application for Amendment of License for the Condit Hydroelectric Project. In March, 2000, the Department filed a motion to intervene in the settlement and amendment proceeding which was granted. Before, during, and since that time the Department has been an active participant in these proceedings and in the settlement negotiations that resulted in the filing of an Offer of Settlement with the Commission on October 21, 1999. The Department is a party to the Settlement Agreement and continues to strongly support its terms and conditions.

The project obstructs anadromous fish passage to upriver habitat within the White Salmon National Wild and Scenic River and the Gifford Pinchot National Forest and also obstructs downstream whitewater recreational use. The project affects the free-flowing

nature of waters within the designated segment of the National Wild and Scenic River which the Department is charged with managing. In addition, the project is located within the boundaries of the federally designated Columbia River Gorge National Scenic Area. However, it is not located on National Forest System lands.

The Secretary of Agriculture is entrusted with federal jurisdiction over the management of the Columbia River Gorge National Scenic Area and the White Salmon National Wild and Scenic River under various laws, including the Columbia River Gorge National Scenic Area Act of 1986 (16 U.S.C. § 544) and the Wild and Scenic Rivers Act (16 U.S.C. § 1274, as amended).

Native American cultural sites, fisheries, and whitewater recreation have all been determined to be "outstandingly remarkable" resource values for the White Salmon River (Final Environmental Impact Statement for the Lower White Salmon, Nov. 1991). These river resources are either directly or indirectly affected by the Condit project. In addition, the project has potential to affect the free-flow conditions and quality of waters within this designated segment. The take-out for the majority of whitewater users on the federally designated section of river is located within the project area. The Secretary of Agriculture has the responsibility to protect and enhance these resources through the Wild and Scenic Rivers Act.

The Condit project is located within the boundaries of the Columbia River Gorge National Scenic Area. The area was established by Congress, in part, to "protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge". The project has the potential to adversely affect any or all of these resources. Project modifications will need to be analyzed and determined to be consistent with the Scenic Area Act. The Secretary is entrusted with the federal jurisdiction over the management of this area.

Given the outstanding national public resources at risk, as well as the unique opportunities for enhancing these resources, and potential conflicts with ongoing programs and resource plans, the Department must continue to be a full and active party to this proceeding.

III. GROUNDS FOR GRANTING THE PETITION FOR DECLARATORY ORDER

The Department is a signatory of the Condit Hydroelectric Project Settlement Agreement submitted to the Commission as an Offer of Settlement in October 1999. As such, the Department fully supports PacifiCorp's petition for declaratory order. The Department requests prompt action by the Commission on the petition. In order for the Settlement to be implemented, the Offer of Settlement and the Amendment to the project's existing license need to be approved expeditiously so that the parties may proceed with the necessary steps to implement the Settlement Agreement.

The Settlement is in the public interest and provides a balance of the many interests in this matter. As recognized by PacificCorp, the parties, and Commission staff, removal of Condit Dam is the best option for restoring anadromous fish runs and the ecosystem. See Settlement Agreement at 3, 1996 FEIS at 4-89 and 5-25. The principal stumbling block perceived by Commission staff in the FEIS was the high cost of dam removal, a matter which was subsequently resolved when PacifiCorp and the parties found an economical method of dam removal. Dam removal would be less costly than accepting the new license with terms and conditions. See Settlement Agreement at 3.

This matter has been pending before the Commission since October 1999. There is no reason for further delay in this matter given that: Dam removal is the best alternative for the fish resources; the proposed dam removal is feasible; dam removal is more economical for the applicant than licensing; the applicant and the parties are in agreement

to remove the dam; and the applicant has agreed to remove the dam at its own expense. See, e.g., *Edwards Dam Manufacturing Company, Inc. & City of Augusta, Maine*, Project No. 2389, 81 FERC ¶ 61,255 (1997)(Commission ordered removal where it was the best alternative for the resources, even though applicant opposed removal). The Department is concerned that further delay in implementation of the Settlement Agreement may prejudice the implementation.

The Department fully supports PacifiCorp's Petition and hereby adopts and incorporates herein PacifiCorp's grounds for the Petition. Further, the Department fully agrees with and incorporates herein Sections B. and C. of the Motion to Intervene in Support of the Petition for Declaratory Order, and for Expedited Consideration filed with the Commission by American Rivers and dated June 29, 2001.

IV. GROUNDS FOR INTERVENTION

Commission Rule 214 provides for intervention by a federal agency representing public interests which may be directly affected. 18 C.F.R. § 385.214(b)(2)(i), (ii). The following statutes, the Federal Power Act, 16 U.S.C. § 803(a), the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544 et seq., the Wild and Scenic Rivers Act, 16 U.S.C. §1271 et seq., the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., among others, constitute Congressional statements of the national public interest in protection of fish and wildlife resources and Indian treaty rights. They also indicate Congressional intent that the Department represent those interests which may be affected directly by this proceeding. No other party or intervenor has such authority to represent these particular national public interests.

Moreover, intervention by the Department would help the Commission fulfill its consultation, coordination, environmental assessment, and related responsibilities as set out in the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C).

V. REQUEST

For the reasons stated above, the Department of Agriculture moves the Federal Energy Regulatory Commission to issue an order granting the Department's motion to intervene in this proceeding, expediting its consideration of the PacifiCorp's Petition for Declaratory Order, and granting PacifiCorp's Petition for Declaratory Order.

Respectfully submitted this 18th day of July, 2001

For the United States
Department of Agriculture

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Condit Hydroelectric Project) Project No. 2342-012
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I hereby certify that on this date of July 18, 2001, I mailed by overnight or regular mail, postage prepaid, the **UNITED STATES DEPARTMENT OF AGRICULTURE'S MOTION TO INTERVENE** to the following parties:

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