

127 FERC ¶ 62, 088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1 of
Chelan County, Washington

Project No. 2145-087

ORDER APPROVING CHANGE IN PROJECT LAND RIGHTS

(Issued April 30, 2009)

On June 6, 2008, and supplemented on July 16, 2008, Public Utility District No. 1 of Chelan County, Washington (Chelan PUD), licensee for the Rocky Reach Hydroelectric Project (FERC No. 2145), filed an application for change in project land rights. The project is located on the Columbia River, in the City of Entiat, in Chelan County, Washington.

BACKGROUND AND DESCRIPTION OF PROPOSAL

Entiat Park, located 11 miles upstream of the project dam, is one of the project's existing public recreation areas.¹ The park is comprised of three parcels of land within the project boundary. Two of the parcels, one on each end of the park, are owned by Chelan PUD. The center parcel (Parcel A) is owned by the City of Entiat (City). Currently, Chelan PUD has a lease agreement with the City under which the City operates and maintains the park.

In its application, Chelan PUD requests the Commission to approve an exchange of land rights whereby the licensee would convey to the City fee title to 0.5 acre of project land in exchange for Parcel A, which is 8.53 acres in size. The 0.5 acre that would be conveyed to the City consists of the project portions of two parcels of licensee-owned, waterfront land (Parcels B and C) located

¹ Under article 406 of the new project license, issued February 19, 2009, the licensee is required to file with the Commission, for approval, a revised recreation resources management plan for the project (126 FERC ¶ 61,138). Among other items, the revised plan is to include descriptions of the project's existing recreation areas, including Intiat Park. The plan also is to include day-use, campground, and trail improvements proposed for this park.

approximately 1,500 feet northeasterly of Entiat Park.² These parcels have a total of approximately 1,710 linear feet of shoreline; Parcel A has 1,280 linear feet of shoreline. According to the licensee, Parcels B and C are bare land with no specific value for project purposes. Chelan PUD would retain the rights necessary for operation and maintenance of the project by reserving flowage easements to the 712.5-foot flood elevation on both parcels.³

CONSULTATION

Chelan PUD consulted with the Rocky Reach Recreation Forum and Rocky Reach Wildlife Forum (established in the Rocky Reach Project Comprehensive Settlement Agreement for relicensing) to ensure their concurrence with the proposed land exchange. Chelan PUD states that these entities agree with the land exchange.

On May 7, 2008, Chelan PUD requested comments from the Confederated Tribes and Bands of the Yakama Indian Nation and the Colville Confederated Tribes. No comments were received from these tribes.

In a June 6, 2008 email to Chelan PUD, the Washington Department of Fish and Wildlife (WDFW) indicated that it had inspected the land to be conveyed to the City, and considered the potential for adverse effects on fish and wildlife habitat, especially riparian habitat, including shrubsteppe (a WDFW-priority habitat type). The WDFW recommended an onsite inspection of Entiat Park, with the licensee, to consider areas for planting wildlife-beneficial varieties of trees and shrubs to offset the potential loss of habitat the land exchange would pose. By letter dated July 11, 2008, Chelan PUD agreed to the onsite visit and affirmatively expressed the wildlife and aesthetic enhancements such plantings would provide.

² As part of a larger transaction, Chelan PUD intends to also convey the non-project portions of these parcels to the City. The total land area of Parcels B and C (project and non-project) is the same as Parcel A (8.53 acres).

³ Other rights that Chelan PUD will maintain via its easement instrument are: (1) the right to ingress and egress the subject property across adjacent lands of the grantor, for any purpose related to Chelan PUD's operation and maintenance of the project; (2) the right to remove from the subject property all trees, debris, brush and structures then remaining on the subject property below the 712.5 foot flood elevation which may interfere with or be incompatible with operation and maintenance of the project and; (3) the right to prohibit the construction and/or maintenance of any building, structures or improvements upon the subject property below the 712.5 foot flood elevation which may interfere with or be incompatible with Chelan PUD's operation and maintenance the project.

The proposal was public noticed on August 29, 2008, with an October 2, 2008 deadline for filing comments and motions. The WDFW filed a motion to intervene on September 29, 2008, stating the proposal, if approved, could adversely affect fish and wildlife under its jurisdiction. By letter dated October 2, 2008, the United States Department of the Interior states it has reviewed the proposal and has no comments to offer. No other comments or motions were received.

DISCUSSION AND CONCLUSION

The proposed land exchange would give Chelan PUD ownership of the entire area comprising Entiat Park. Chelan PUD indicates that having full ownership of the park would assist its management of the park. While the licensee does not indicate whether it would continue its formal agreement with the City for the operation and maintenance of the park, the licensee is ultimately responsible for the public recreational facilities provided at the park.

Regarding the WDFW's recommended plantings, Chelan PUD states, in its July 11 letter that vegetation enhancements that are beneficial to wildlife are already included in its Entiat Park revitalization plan as well as a commitment to collaborate with the WDFW and other stakeholders as to where and what vegetation is planted.⁴ Chelan PUD emphasizes that it believes these vegetation enhancements address WDFW's concerns. We find that such plantings would adequately compensate for any habitat lost as a result of the proposed land exchange. The licensee should, however, describe these plantings in its revised recreation management plan for the project, along with other proposed improvements to the park. The 0.5 acre of project land to be conveyed to the City would remain in the project boundary, and be subject to the protections afforded by the project license and the licensee's reserved interest in the lands.

The proposed land-rights exchange would be beneficial to Chelan PUD in terms of its overall management of lands within the project boundary, for project purposes. The licensee's application should be approved.

The Director orders:

⁴ The plan is required under license article 406 (see footnote 1 of this order).

(A) The application for change in project land rights at the Rocky Reach Hydroelectric Project (FERC No. 2145), filed on June 6, 2008, and supplemented on July 16, 2008, is approved.

(B) The licensee shall describe, in the revised recreation management plan required under license article 406, proposed plantings of trees and shrubs at Intiat Park that would be beneficial to wildlife and that the 0.5 acre of project land to be conveyed to the City would remain in the project boundary. The licensee shall include in its filing of the plan documentation of further consultation with the Washington Department of Fish and Wildlife specifically addressing the plan's provisions for these plantings. The Commission reserves the right to make changes to these provisions to adequately compensate for the potential loss of habitat resulting from the change in land rights approved in ordering paragraph (A), above.

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

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Division of Hydropower
Administration and Compliance