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# **The Relationship between the Rocky Reach Relicensing Process and Chelan County PUD's Habitat Conservation Plan**

**Revised**

**ROCKY REACH HYDROELECTRIC PROJECT  
FERC Project No. 2145**

**June 7, 2000**



**Public Utility District No. 1 of Chelan County  
Wenatchee, Washington**

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Public Utility District No. 1 of Chelan County (the “District”) owns and operates the Rocky Reach Hydroelectric Project (the “Project”) under a long-term license from the Federal Energy Regulatory Commission (“FERC”). The license for the Project expires in 2006. The District is preparing an application for a new 50-year license to operate the Project. The application for a new license is scheduled to be filed with FERC in 2004.

The Habitat Conservation Plan (HCP) refers to the proposed Anadromous Fish Agreement and Habitat Conservation Plan for the Project that the District negotiated with federal, state, tribal<sup>1</sup>, and environmental representatives. The HCP identifies the actions necessary to protect the salmon and steelhead that migrate through the Project under the Endangered Species Act (the “ESA”), the Federal Power Act, and other state and federal laws.

The HCP is described as “proposed” because it is not yet signed and effective. The HCP is currently undergoing a lengthy regulatory review process. This process must be completed before the HCP can be signed and become effective. Until this happens, and to the extent permitted by law, the District is operating the Project in a manner consistent with the HCP. The District anticipates that the HCP review process will be completed in 2002.

For those entities that are parties to the HCP, the HCP will guide their recommendations to FERC for salmon and steelhead mitigation measures at the Project, both during the remainder of the Project’s current license and throughout the relicensing process. The HCP will bind only its signatories.

## ***SECTION 1: THE HCP’S HISTORY***

*The Mid-Columbia Proceeding.* The HCP is the culmination of a number of processes that date back to 1979. In 1979, FERC initiated an administrative proceeding, known as the Mid-Columbia Proceeding, concerning the five mid-Columbia River dams owned and operated by Chelan, Douglas, and Grant PUDs. The Mid-Columbia Proceeding was to develop a systemwide approach to protect the downstream migration of salmon and steelhead in the mid-Columbia River (the area stretching from the tailrace of the Chief Joseph Dam downstream to the Hanford Reach). The proceeding was initiated pursuant to requests by the Washington Department of Fish and Wildlife (“WDFW”), the Oregon Department of Fish and Wildlife, the National Marine Fisheries Service (“NMFS”), the Confederated Tribes of the Colville Reservation (“Colville”), the Confederated Tribes and Bands of the Yakama Indian Nation (“Yakama”) and the Confederated Tribes and Bands of the Umatilla Indian Nation (“Umatilla”).

Over the years FERC’s administrative law judge has approved several interim stipulations related solely to the Rocky Reach portion of the Mid-Columbia Proceeding. The most recent stipulation is the Fourth Interim Stipulation. In the Fourth Interim Stipulation, the District agreed that it would: (1) Develop fish protection measures (which can include guidance and bypass systems) to facilitate downstream fish migration; (2) Evaluate the effectiveness of the fish protection

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<sup>1</sup> The tribes do not support the HCP due to an ongoing dispute with the National Marine Fisheries Service over the amount of fish the HCP’s hatchery program will be able to release.

measures; (3) Provide hatchery fish production; and (4) Work with interested parties concerning long-term compensation options. Knowledge gained from studies conducted to develop and evaluate fish protection measures, and from future monitoring and evaluation, will also be used to assess compliance with the fish passage provisions of the HCP.

Although the Fourth Interim Stipulation expired on December 31, 1998, it, along with the HCP and the Interim Protection Plan for the Protection of Steelhead and Spring Chinook described below, guides decisions at the Project for the protection of salmon and steelhead. The HCP will act as the basis for its signatories to file an offer of settlement with FERC to settle the Rocky Reach portion of the Mid-Columbia Proceeding. Resolving the Rocky Reach portion of the Mid-Columbia proceeding will preclude the need for a fifth interim stipulation.

Development of the HCP. Prior to focusing on the HCP, the District was involved in two processes that appeared to provide the long-term program necessary to settle the Rocky Reach portion of the Mid-Columbia proceeding. In late 1993, the District, along with Douglas and Grant PUDs (collectively the “Mid-Columbia PUDs”), initiated new discussions with NMFS, United States Fish and Wildlife Service (“USFWS”), and WDFW to develop a Mid-Columbia Conservation Program (the “MCCP”). Not only would the MCCP create an ecosystem-based plan to manage fish and wildlife, it would also address existing license requirements and respond to any additional requirements from eventual ESA listings. Shortly thereafter, the Colville, 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 (the “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, the parties concluded that an aquatic MCHCP was too ambitious, given the lack of information regarding many species and the likelihood that certain species of salmon and steelhead would be listed in the near future under the ESA. The negotiations were then focused on the anadromous salmonids, specifically spring and summer/fall chinook salmon, sockeye salmon, coho salmon, and steelhead (collectively the “Plan Species”). Also at this time, American Rivers and the Umatilla began active participation in the negotiations, the mid-Columbia power purchasers began to monitor the negotiations closely, and a representative of FERC’s staff joined in an advisory capacity. These negotiations culminated in the proposed Anadromous Fish Agreement and Habitat Conservation Plan for the Rocky Reach, Rock Island, and Wells Projects.

The Commemorative Declaration. On June 27, 1998, the parties to the HCP executed a Commemorative Declaration regarding the Anadromous Fish Agreements and Habitat Conservation Plans (the “Declaration”). The Declaration formally recognizes the approximately five-year effort to develop the proposed agreements for each of the projects and that the proposed agreements establish a No Net Impact standard of survival for the protection of anadromous fish migrating through the projects.

*The HCP Approval Process.* On July 31, 1998, the District submitted the proposed Anadromous Fish Agreement and Habitat Conservation Plan for the Rocky Reach Project (“HCP”) to NMFS with a request for an “incidental take permit” under the ESA. As explained in Section 3, the District anticipates filing the HCP with FERC near the end of NMFS’ review process.

*The Interim Protection Plan.* Due to the lengthy process associated with development and review of the HCP, the District decided to develop a plan for the interim protection of listed steelhead and spring chinook that migrate past the Project. With the full support of the National Marine Fisheries Service, the United States Fish and Wildlife Service and others, on October 6, 1997, the District filed an “Interim Protection Plan for the Protection of Steelhead and Spring Chinook” (“IPP”) with FERC. In the IPP, the District agreed to implement immediately measures contained in the HCP to provide protection until the long-term HCP becomes effective. The District anticipates that NMFS will issue a draft biological opinion on the IPP in the near future.

## ***SECTION 2: DESCRIPTION OF THE HCP***

The HCP provides that “No Net Impact” will be achieved on a specific schedule and be maintained for the duration of the agreement for each Plan Species affected by the Project. Plan Species include spring and summer/fall chinook, sockeye, and coho salmon and steelhead.

No Net Impact has two components:

1. 91-percent project survival achieved within the geographic area of the project by project improvement measures, including an independent standard of 95-percent juvenile dam passage survival; and
2. 9-percent compensation for unavoidable project mortality provided through hatchery and tributary programs, with 7-percent compensation provided through hatchery programs and 2-percent compensation provided through tributary programs.

The District agrees to be responsible for achieving 91-percent project survival and 95-percent juvenile dam passage survival. The District will also be responsible for: (1) Funding the 2-percent tributary conservation plan; (2) Providing capacity and funding for the 7-percent hatchery compensation plan; and (3) Making capacity and funding adjustments to the hatchery compensation plan to reflect and compensate for future increases in run size for each Plan Species. If the District is unable to achieve 91-percent project survival or 95-percent juvenile dam passage survival, then the District must consult with the parties through a Coordinating Committee to seek a solution jointly.

The joint fisheries parties agree to accept responsibility for developing plans and programs necessary to implement the tributary conservation plan and the hatchery compensation plan. If 9-percent unavoidable project mortality is not compensated for through the hatchery and tributary

compensation plans, the joint fishery parties will examine additional hatchery or habitat improvements to meet the 9-percent obligation and may consult with the District.

During the term of the proposed HCP, its signatories agree not to invoke nor rely on any reopener clause set forth in the Project's license for the purpose of obtaining additional measures for Plan Species, except under circumstances detailed in the proposed agreement. With respect to Plan Species under the ESA, the Federal Power Act, the Fish and Wildlife Coordination Act, and the Pacific Northwest Electric Power Planning and Conservation Act, each party agrees that it will not advocate nor support additional measures for fish protection other than those set forth in the HCP. Moreover, the HCP does not include as measures: (1) Partial or complete drawdown; (2) Partial or complete dam removal; and (3) Operating without producing power. However, the HCP does not limit the right of a party to take action under any law or regulation not covered by the HCP. Nor does the HCP purport to bind FERC with respect to any of the foregoing matters.

The HCP provides methods for automatic termination and elective withdrawal by parties. The HCP will terminate automatically: (1) At the end of the 50-year term; (2) If FERC issues a non-power license for the project; (3) If FERC orders removal of the project; or (4) If FERC orders a drawdown of the project. A party has the right to withdraw from the HCP if one of the following has occurred: (a) 15 years have elapsed and No Net Impact has not been achieved, or the project has achieved No Net Impact but the Plan Species are not rebuilding and the project is a significant factor in the failure to rebuild; (b) Noncompliance with the provisions of the HCP is shown, if certain conditions are satisfied; (c) Government action has been taken that is detrimental to the achievement of the obligations in the HCP and that materially alters or is contrary to the terms of the HCP; (d) The parties agree that the obligations imposed by the HCP are impossible to achieve; (e) NMFS' revocation of the Section 10 permit; or (f) The withdrawal of another party, provided proper notice is given.

The District is committed to the principles of the HCP. Accordingly, the District is moving forward with the development of the juvenile bypass system and maintaining the interim spill program. The 1999 testing results indicate that the prototype juvenile bypass system has achieved, or is very close to achieving, the effectiveness necessary to meet the survival standards in the HCP for steelhead, spring chinook, summer chinook and coho. Further development of the prototype, possibly in combination with other measures, is currently envisioned as the means to meet the HCP standards for sockeye.

### ***SECTION 3: THE HCP'S REGULATORY REVIEW PROCESS***

The HCP will not be signed until necessary regulatory reviews are completed. Currently, NMFS is reviewing the HCP in the context of the incidental take permit application filed by the District on July 31, 1998. The District intends to file the HCP with the FERC near the end of NMFS' review process. In addition, the District and the WDFW will review the HCP under the State Environmental Policy Act.

To facilitate the necessary public and regulatory reviews, FERC and the governmental parties to the HCP are cooperating with NMFS under the National Environmental Policy Act (“NEPA”) so that they may be able to adopt NMFS’ environmental impact statement (“EIS”). NMFS proposes to comply with NEPA by preparing an EIS for the HCP. NMFS held two public scoping meetings. The first was on January 20, 1999, in Wenatchee, WA, and the other was on January 21, 1999, in Brewster, WA. Based on the comments received during the scoping meetings and discussions with the HCP stakeholders, NMFS began the preparation of its draft environmental impact statement (“DEIS”). The DEIS is scheduled for release to the public in 2000. After release, the public will have an opportunity to comment to NMFS on the DEIS. At this time, NMFS will also release the HCP to the public for comment pursuant to the ESA.

Upon receipt of the comments to the DEIS, NMFS will then begin preparing the final environmental impact statement (“FEIS”), and be in a position to take action on the District’s incidental take permit application. At this point, the signatories to the HCP will likely submit the HCP to FERC as an offer of settlement to settle the Rocky Reach portion of the Mid-Columbia proceeding, and request FERC to incorporate the HCP into the Project’s license. Due to FERC’s involvement in NMFS’ NEPA process, FERC should be able to adopt NMFS’ FEIS and expedite its review process. Chelan should also be able to adopt NMFS’ FEIS and expedite its SEPA review of the HCP. These regulatory processes will probably not conclude before 2002.

#### ***SECTION 4: RELATIONSHIP TO RELICENSING***

On October 25, 1999, the Federal Energy Regulatory Commission (“FERC”) authorized the District to employ an Alternative Relicensing Process (“ARP”) for the relicensing of the Rocky Reach Project. Through the ARP, the District is collaboratively working to develop a consensus-based proposal for the relicensing of the Project. This decision-making process is explained in a document titled “Consultation Guidelines and Procedures” dated July 7, 1999. In summary, the District has established various working groups around specific resource areas. Salmon and steelhead issues are addressed in the Anadromous Fish Subcommittee of the Natural Sciences Working Group, and all other fisheries issues are addressed in the Natural Sciences Working Group. Each working group is charged with the task of developing resource-specific protection, mitigation and enhancement measures. The full relicensing team will use the working groups’ measures to develop the Project’s relicensing proposal.

As explained in section 1, the HCP was made possible as a result of the efforts of many individuals. Although the HCP was prepared prior to initiation of the relicensing process, it is intended to constitute a comprehensive and long-term adaptive management plan for salmon and steelhead and their habitat as affected by the Project. Accordingly, the District intends to include the HCP in its relicensing application as an offer of settlement for salmon and steelhead resources and to request that FERC incorporate the HCP into the new license for the Project. In addition, the District anticipates that the administrative review process for the HCP, which will include a quantitative analytical review, an environmental impact statement and a biological opinion, will be completed prior to preparation of the draft environmental assessment for the relicensing application. Thus, the HCP review process will provide timely environmental

analyses that are highly relevant to the consideration of anadromous fish resource issues in the relicensing process. In this context, the District believes that the record developed in the HCP process should be relied upon to the maximum extent possible to satisfy the requirements applicable to anadromous fish resources in connection with relicensing.

Although the HCP constitutes a proposed settlement agreement among several parties, it does not preclude non-parties from proposing an alternative to the HCP during a meeting of the Anadromous Fish Subcommittee or for analysis in the environmental assessment. However, such alternatives will not be viewed in isolation. A substantial effort has been devoted to the development and ongoing review of the HCP. Drafts of the various documents reviewing the HCP are scheduled to be available for public comment in 2000 and finalized in 2001, well in advance of the draft environmental assessment for relicensing which is scheduled to be completed in 2003. Therefore, the District contemplates that the task of the Anadromous Fish Subcommittee will be to disseminate and discuss the results of these analyses as they are released and to provide a forum to consider whether additional analysis of anadromous fish issues is warranted for purposes of relicensing. The relicensing environmental assessment would therefore rely heavily on these prior analyses and include new evaluations only as necessary to satisfy applicable regulatory criteria. The District anticipates that issues related to long term protection of anadromous fish resources be raised and evaluated in the HCP process to the maximum extent possible.

Those entities that intend to sign the HCP will be supportive of the HCP during the relicensing process. Specifically, the HCP will constitute these entities' terms, conditions, and recommendations for salmon and steelhead under Sections 10(a), 10(j) and 18 of the Federal Power Act, and under the Fish and Wildlife Coordination Act. However, NMFS and USFWS have reserved their authority under Section 18 of the Federal Power Act in the event the HCP is terminated and the incidental take permit issued pursuant to the HCP is revoked.

## ***SECTION 5: SUMMARY***

The Habitat Conservation Plan (HCP) addresses the Endangered Species Act and also addresses issues associated with existing Rocky Reach license requirements for anadromous salmon and steelhead. Chelan PUD and the parties participating in the Rocky Reach relicensing process agree that the HCP should also be included as part of any settlement agreement for acquisition of a new license. This will protect fish resources for the next 50 years.

Plan Species covered under provisions of the HCP are spring and summer/fall chinook, sockeye, and coho salmon and steelhead. Existing license requirements include development of fish protection measures to improve downstream fish passage. Also incorporated into the HCP are passage standards that include provisions for upstream migrating adults.

Specific resource standards are spelled out in the HCP, along with steps that can be taken if standards are not being met. Fish other than those "Plan Species" in the HCP that are affected by

the Rocky Reach Hydro Project will be addressed via the alternative relicensing process. They will be integrated into a separate component of the relicensing settlement agreement.

### ***SECTION 6: HOW TO OBTAIN COPIES OF THE HCP***

If you have any questions, or would like to receive a copy of any materials referenced in this document, please contact Steve Lachowicz, or visit the Rocky Reach Relicensing portion of the District's Web site, [www.chelanpud.org/rr\\_relicense](http://www.chelanpud.org/rr_relicense). You may contact Mr. Lachowicz at (509)663-8121, Ext. 6339, or by e-mail at [stevel@chelanpud.org](mailto:stevel@chelanpud.org). This document highlights important provisions of the Anadromous Fish Agreement and Habitat Conservation Plan for the Rocky Reach Project. It is not an interpretation of the HCP.