

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 10536-005

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Before Commissioners: James J. Hoecker, Chairman;  
Vicky A. Bailey, William L. Massey,  
and Donald F. Santa, Jr.

Public Utility District No. 1 of ) Project No. 10536-005  
Okanogan County, Washington )

## ORDER ISSUING STAY

(Issued June 30, 1997)

By order issued September 13, 1996, we issued an original license to Public Utility District No. 1 of Okanogan County, Washington (District) for the proposed 4.1-megawatt Enloe Dam Project No. 10536, to be located at the site of an existing dam on the Similkameen River in Okanogan County, Washington. 1/ Several requests for rehearing were timely filed. 2/ In an order issued on February 3, 1997, we addressed only the District's rehearing request, in order to give the District the opportunity to decide, based on our findings in that order, whether or not to accept the license. 3/ We directed that, unless the District notified us, within 30 days, that it would not accept the license, Commission staff was to hold a conference with the National Marine Fisheries Service (NMFS) under the Endangered Species Act, regarding the project's effect on Upper Columbia River steelhead, which NMFS proposed to list as endangered. We stated that we would address the remaining rehearing requests after the conference was held.

On March 5, 1997, the District notified us that it was further deferring the decision whether to accept the license and requested that we stay the license until such time as the Commission acts on all outstanding rehearing requests. Responses in opposition to the stay request were filed by American Rivers, Friends of the Earth, and Rivers Council of Washington (American

Rivers) and by Confederated Tribes of the Colville Reservation. 4/

In support of its request for a stay, the District argues that, because the license contains numerous requirements with deadlines relating to the date of its issuance, the District would either have to comply with these license terms, even though it might later decide not to accept the license, or let the license conditions lapse. The District acknowledges that it has the option of requesting extensions of time for each of the license conditions, but it contends that this relief is administratively burdensome and does not provide adequate protection in the context of this proceeding, since such extensions do not toll the deadline for commencement of project construction. The District argues that a stay of the license will have no impact on the Similkameen River and will not adversely affect any party's interest; since there are no present plans for introducing anadromous fish into the river, a stay will not interfere with any fish introduction plans but will simply maintain the status quo.

In opposing the stay, American Rivers argues that a continuation of the status quo is not in the public interest, since, in its present state, the project has a dam that produces no power and lacks fish passage facilities. American Rivers argues that the fish passage situation in the Similkameen River has become even more critical than in the past, and, in this regard, it refers to NMFS's proposal to list the upper Columbia River steelhead as endangered. American Rivers contends that the Commission retains the option of rescinding the license if, after a conference with NMFS regarding the proposed listing, it determines that the license ought not to have been issued. Colville Reservation joins American Rivers in opposing a stay for these reasons.

In a November 14, 1996 order in this proceeding, in response to the District's earlier request for a stay, we stated that the

1/ 76 FERCT ¶ 61,271.

2/ Requests for rehearing were filed by the District; the National Marine Fisheries Service; American Rivers, Friends of the Earth, and Rivers Council of Washington; Columbia River Inter-Tribal Fish Commission and Confederated Tribes of the Yakima Indian Nation; and Washington Department of Fish and Wildlife.

3/ 78 FERCT ¶ 61,097.

4/ The U.S. Department of Commerce, on behalf of NMFS, filed a letter indicating that it had not received the request for stay, and requesting that we order proof of service of the request for stay on the official service list and establish an appropriate deadline for response by intervenors. Subsequently, the District filed a letter stating that, because a number of parties had informed it that they had not received the stay request, it mailed copies of the pleading to all parties on March 20, 1997. The District included a certification of service. In light of this action, we find it unnecessary to take the measures requested by NMFS. NMFS filed no other response to the request for stay.

District could seek extensions of time for the individual license conditions, rather than having to choose whether to comply with the conditions even though it had not accepted the license. 5/ In our February 3 order, in lifting a previous stay of the license, we noted that we do not favor staying licenses except to preserve the status quo in narrowly prescribed situations. 6/ However, we now think that a stay of the license should be issued. On June 12, 1997, Commission staff conferred with NMFS, pursuant to the Endangered Species Act, regarding the project's possible effects on the Upper Columbia River steelhead. Until we determine how to proceed in light of the conference, and until we act on the outstanding rehearing requests, a stay of the license is appropriate. Disposition of these matters, which relate in particular to the scope and adequacy of the Commission's environmental analysis of the project's effects, could affect the District's decision whether to accept the license. Under these circumstances, requiring compliance with deadlines in license articles or the filing of numerous extension requests would serve no purpose.

We do not agree that a stay would harm the public interest for reasons relating to fish passage. The license did not provide for construction of upstream fish passage facilities at the project at the present time but rather reserved the right to require such facilities in the future, pursuant to a prescription by either the Secretary of the Interior or the Secretary of Commerce under Section 18 of the Federal Power Act. This will remain the situation at least until we have determined how to proceed in light of the conference and have addressed the remaining rehearing requests. Declining to issue a stay does not advance resolution of the fish passage issue.

Accordingly, we will stay the license for this project until we have considered the results of the Endangered Species Act conference and the remaining requests for rehearing.

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5/ 77 FERC ¶ 61,157.

6/ We had issued that stay, in our November 14 order, pending our consideration of the nature of our obligation to confer with NMFS under the Endangered Species Act.

The Commission orders:

The license for Project No. 10536 is stayed, effective on the date of issuance of this order, until further order of the Commission.

By the Commission.

( S E A L )

*Lois D. Cashell*  
Lois D. Cashell,  
Secretary.