

Mr. Dan Boettger
Director of Regulatory and Environmental Affairs
Public Utility District No. 1 of Okanogan County
P.O. Box 912
Okanogan, WA 98840-0912

By Electronic Submission

RE: Conservation Group Comments on Aesthetics and Recreation Management Plans Submitted for the Enloe Hydroelectric Project, FERC Project No. 12569.

August 19, 2014

Dear Dan,

American Whitewater, Center for Environmental Law & Policy, Columbia River BioRegional Education Project, and the North Cascades Conservation Council (Conservation Groups and members of the Hydropower Reform Coalition) submit comments on the Public Utility District No. 1 of Okanogan County's (District) Article 410 Recreation Management Plan submitted to the Federal Energy Regulatory Commission (Commission) on June 25, 2014,¹ and the Article 414 Aesthetics Management Plan,² submitted on June 30, 2014. Both reports were filed to comply with the July 9, 2013 license issued for this project.

While both Plans follow the reporting requirements set forth by the Commission in its issuance of a new license, they are for the most part re-submittals of the same Plans filed with the Commission in February 2009. These recent Plans provide only limited updates on select information and once again ignore the critical issues that will be impacted by re-powering the Enloe Project. Most of these issues; aesthetic and recreational instream flows, water rights, the value of the Similkameen River and Pacific Northwest (PNT) trails, and project generation and economic values have seen significant discussion and change over the past twelve months, and are issues that the Conservation Groups have been arguing through the Commission process since 2008. Without providing comprehensive updates and addressing these critical issues, the 2014 reports give the impression that very little has changed and that the project is ready to proceed.

This is an inaccurate impression. While the District has its 401 Certificate³ and water right,⁴ the water right is under appeal and both the water right as well as the 401 Certificate are subject to modifications. These future modifications and changes raise significant questions and uncertainty regarding the Project's viability. The fact that the amount of instream flows that will be required by the project is currently unknown raises even more uncertainty for a project with few power or economic paybacks. Contrary to information provided in both Plans, over the past year significant changes have been made at the state level regarding both water rights and the 401 Certificate and both reports should acknowledge these important changes and outstanding questions.

¹ Public Utility District No. 1 of Okanogan County submits the Recreation Management Plan to comply with Article 410 of the July 9, 2013 license for the Enloe Hydroelectric Project under P-12569. Filed June 27, 2014, Accession No. 201400630-0008. <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13583144>

² Public Utility District No. 1 of Okanogan County, Washington AMP Final draft plan w/comments under P-12569. Filed July 1, 2014, Accession No. 20140701-5012. <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13583386>

³ Ecology granted a 401 Certification for the Project on July 13, 2012 (Order No. 9007).

⁴ Washington State Pollution Control Hearings Board decision, June 24, 2014.

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At this time, no instream flows have been set for the project, and thus there exists significant uncertainty in regards to aesthetic and recreational impacts and how much power this project will actually be able to generate. From an aesthetic and recreational standpoint, there remains a question of what the waterfalls (Similkameen Falls and Enloe Dam) will look like, or even if there will be a waterfall over Enloe Dam at all. This uncertainty must be acknowledged and should be addressed in both reporting documents. Otherwise, the purported mitigation measures are essentially meaningless because they attempt to mitigate unknown effects.

401 Water Quality Certificate

On July 23, 2013, the Washington State Pollution Control Hearing Board (PCHB) concluded that “Appellants met their burden that the aesthetic flow analysis was not sufficiently completed [by the District or the Washington State Department of Ecology (Ecology)] to make a final determination of the flows that will be protective of the aesthetic values.” Board’s Order at 32. The Board revised the 401 Certificate for the Enloe Project to require that the minimum instream flows over the Dam and Falls be further monitored and evaluated during operation of the dam.⁵ The Board made it clear that only *after* the monitoring program is complete will Ecology make a final finding regarding the aesthetic flows that comply with water quality standards and the Board’s order. Board’s Order at 34. On June 3, 2014 Ecology sent a letter to the District outlining changes and recommending that “each of the plans that need to be submitted to FERC under the current License timeline (for instance, the recreation, aesthetics and operations management plans) include a statement in its opening pages noting that the plan is subject to modification (Emphasis Added) after consultation with and approval by Ecology concerning the PCHB requirements and that this new consultation and approval shall be done prior to initiation of construction.”⁶

In its final order, the Board noted that neither the Aesthetics nor the Recreation Management Plans addressed the issue of aesthetic flows in the bypass reach. See Order at 11 (“In 2006, the PUD conducted recreational studies, but did not study the aesthetics of the water flowing over the Dam or Falls and the impact of the operation of the Project with no flows over the Dam and Falls for most of the year.”); at 14 (“the Aesthetic Management Plan did not address the aesthetics of the flow of the River over the Dam or the Falls.”); at 29 (“The aesthetic studies that were completed on behalf of the PUD were not focused on the aesthetic values of flows over the Dam and the Falls, but rather on the views of the Project infrastructure.”) The revised and recently filed versions of both plans similarly fail to address the aesthetic and recreation flow issue and make no mention that these plans are subject to future modification. The Aesthetics Plan never mentions the recommendation from Ecology, and while the Recreation Plan does reference that recommendation (Comments and Responses, no page number), the District completely misses the point on referencing and alerting the Commission and other stakeholders that the plan is subject to modification and that the District recognizes this fact. The District’s response is limited to saying that it “... confirms its commitment to continued consultation with Ecology... particularly with respect to compliance with the PCHB’s requirement that minimum instream flows over the Enloe Dam be monitored and evaluated during project operation.” Again, missing the salient points of Ecology’s letter, the District continues “With these commitments, the District believes it is neither necessary nor appropriate to specifically state in each plan that the plan is subject to modification based on future discussions with Ecology.” It continues to confound Conservation Groups that the PUD declines to address the primary aesthetic and recreational impacts in its Aesthetic and Recreation Management Plans.

⁵ Findings of Fact, Conclusions of Law and Final Order (As Amended Upon Reconsideration), PCHB No. 12-082 (Aug. 30, 2013).

⁶ State of Washington, Department of Ecology, PCHB Hearing Results and Recreation, Aesthetics, and Operations Management Plans, Enlow Hydroelectric Project FERC No. 12569. June 3, 2014. Accession No. 20140701-5138.

Water Right

The water right is one of the permits needed for the Enloe Hydroelectric Project. On June 8, 2010, the District filed four water rights applications with Ecology for the Enloe Hydroelectric Project. One of those, Application S4-35342 was for a new surface right of 600 cfs to divert water from the reservoir behind the dam, route it through the intake canal and penstocks, run it through the powerhouse to generate hydropower, and then return it to the river below Similkameen Falls. In May 2011, Center for Environmental Law & Policy protested the District's four water right applications in writing. On August 6, 2013, Ecology issued a final Record of Examination granting a permanent water right to the District but failed to include the conditions imposed by the Board as part of the 401 Certification appeal. On June 24, 2014, the Board issued its Order on Motions Summary Judgment. The Board upheld the ROE, but ordered that the ROE be amended and directed Ecology "to place in the permit when issued the same protocol for the study that is in the § 401 Certification, and upon completion of the aesthetic flow study, the permit shall be amended to incorporate any changes to the 10/30 flow regime prescribed by the study." Water Right Order at 20-21. On July 24, 2014 the Conservation Groups appealed the PCHB decision affirming the new 600 cfs water right for the Enloe Project to Thurston County Superior Court, where the case is now pending.

Again, because there is no definite instream flow established for the bypass reach for this Project, uncertainty remains regarding the Project's viability. Contrary to the reports filed by the District, much has changed regarding these issues and the Enloe Project remains far from being ready to proceed.

Aesthetic Management Plan

Since November of 2007, when the District issued its original draft license application, the most contentious issue has been the impact of dewatering Similkameen Falls and the proposed elimination of the waterfall over Enloe Dam that has existed for more than 50 years. The Aesthetics Management Plan, recently filed with the Commission, ignores this point and thus the most significant aesthetic impact associated with this project.

The District's decision to do this is undercut by the ruling of the PCHB and the District's decision to claim to mitigate dewatering of the waterfalls in the first iteration of the Aesthetic Management Plan. The PCHB has made it clear that both Similkameen Falls and the existing waterfall over Enloe Dam are aesthetic features that must be addressed. "While Enloe Dam is not a natural feature, it has created an aesthetic feature on the Similkameen River for many decades, and minimum flows over Enloe Dam as well as Similkameen Falls should be considered in determining whether the § 401 Certification properly provides reasonable assurance that operation of the Project will not violate the state water quality standards regarding aesthetics." *CELP et al. v. Ecology et al.*, PCHB No. 12-082 (Findings of Fact, Conclusions of Law and Final Order (As Amended Upon Reconsideration) (Aug. 30, 2013) at 3; 11 ("The waterfall over Enloe Dam can be considered an aesthetic feature."); 26 n. 5 ("As this Board found in its Order on Motions for Summary Judgment, the river has been flowing naturally over the Dam at the current rate since 1958, creating an aesthetic feature on the River for many decades while there was no diversion and power generation, and the aesthetic values of these flows should be considered as a designated and beneficial use under the 401 Certification."). Similarly, the District's own expert witness testified that water flowing over Similkameen Falls is an aesthetic feature. *Id.* at 16. Therefore, the District has no basis to eliminate consideration of impacts on these significant aesthetic features in its Aesthetic Resources Management Plan.

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The District defines the universe of aesthetic impacts associated with the project far too narrowly for purposes of any meaningful analysis. If the purpose of this document is to manage impacts to aesthetic resources, it must identify all aesthetic resources impacted by the project in the first place. Both the waterfall over Enloe Dam and Similkameen Falls are within the Commission's Project boundary, thus there is no legitimate reason to exclude them from consideration in the Aesthetic Management Plan. Even though the District claims that the aesthetic flow issue will be addressed in Article 411, this does not create a justification for not treating the waterfalls as aesthetic features for purposes of the Aesthetic Management Plan.

The District's decision to exclude consideration of the instream flow issue in the Aesthetic Management Plan is belied by its own claims that one of its mitigation measures required by the aesthetic management plan is designed to address the dewatering of the waterfalls. Aesthetic Management Plan § 2.1 (responding to Ecology, Bureau of Land Management and National Park Service's comments on the aesthetic impacts of dewatering the dam "by installing interpretive panels that describe historic images of water over the dam to enhance recreational experiences of visitors."). Again, if the District relies upon this as a mitigation measure, how can they simultaneously claim that dewatering of the waterfalls is not an aesthetic impact?

The photographs used in the plan do not accurately depict what the waterfalls will look like once the project is operational and thus are not accurately described as "representative site photos." Each photograph shows considerable and unspecified flows over both waterfalls, even though these flows would not be present 8.5 months of the year under the District's proposed flow regime of 10/30 cfs. Moreover, the amount of flow that will be required over both waterfalls is currently unknown. The PCHB has ordered Ecology and the District to undertake an aesthetic flow monitoring condition as part of the 401 Certification. Therefore, the final flows required for the project will not be established until up to three years after project construction. The uncertainty associated with the waterfall flows should be recognized by the District in the Aesthetic Management Plan and accurately depicted in the photographs used in the document.

The District has failed to identify Key Observation Points (KOPs) on the river right side, where the new Similkameen River Trail and the planned extension provide viewpoints of both waterfalls that are important to visitors. The PCHB concluded "the non-contact water recreational activities such as hiking, camping and other activities are relevant to the issue of aesthetics." So there is no basis for the District to ignore the aesthetic impacts associated with dewatering the waterfalls from the perspective of hikers using the Similkameen River Trail. Furthermore, "the Dam Falls and Similkameen Falls are the dominant landscape features in the Similkameen River corridor between Nighthawk and Oroville, and are obvious attractions for visitors to the area (e.g., both falls are featured in the county brochure for the Similkameen River Trail)." Whittaker & Shelby, "Aesthetics and Recreation Issues at the Enloe Hydroelectric Project Expert Witness Report (February 4, 2013).

Finally, the District failed to consult with all interested stakeholders on this draft Aesthetic Management Plan. The updated Aesthetics Management Plan "was provided to the agencies for 30 day review and comment on May 2, 2014," however the plan was not provided to all stakeholders who have expressed an interest in, and litigated, the aesthetic resources that will be affected by the project. Once again, this puts the Conservation Groups in the regrettable position of having to critique the District's proposal after-the-

fact. This has been one of the significant issues that began back in 2008 and the Commission should not sanction this continued disregard of stakeholder input.

Recreation Management Plan

The recently submitted Recreation Management Plan is less a plan and more a simple listing of infrastructure improvements. Like the Aesthetics Plan, by failing to acknowledge the most obvious recreational impacts associated with this project, this plan also misses the point of what a recreation plan is supposed to do – describe actions that will improve recreation opportunities for high quality experiences.

In the Plan, the District claims that “presently, there are no formal recreation facilities located within the Project Area or at any other locations along the Similkameen River in the vicinity of the Project.” Once again, the District continues to ignore the 2011 opening of the Similkameen River Trail, a brochure for which features both the waterfall over Enloe Dam and Similkameen Falls. Whittaker & Shelby Expert Report at 13. The Similkameen River Trail is only mentioned once in the recreation plan, and only as it relates to public access to the project area: “While the western terminus of the Similkameen Trail ends near the eastern end of the Project boundary, access to the Project Area from the west bank is limited by an abandoned railroad bed (currently gated) that crosses private land and also by steep terrain.” The District fails to recognize that the Similkameen River Trail significantly affects the recreation value of the Enloe Project area: “On river right, the opening of the [Similkameen River Trail] in 2011 has created considerably more use than in 2006 when the Danison recreation survey was conducted.” Whittaker & Shelby Expert Report at 14. Furthermore, “planned extension of the Similkameen River Trail allowing longer-distance hiking to Nighthawk and through-hiking on the Pacific Northwest Trail (PNT) would further increase this use (the PNT is a 1,200 mile Congressionally-designated National Scenic Trail (2009) connecting the Continental Divide in Glacier National Park to the Olympic Peninsula coast).”

The Recreation Management Plan does little to address hiking-based access to the falls via the Similkameen River Trail (or any recognition that the trail could one day go to the brink of the falls and through the railroad tunnel – and should have viewing areas on that side). The Similkameen River Trail continues to attract higher use and attention via its website and the Okanogan Country Trails page,⁷ Facebook page,⁸ and regional historical interest, and as part of a longer distance trail (Pacific Northwest Trail or PNT).⁹

The District continues to exclusively rely upon a visitor intercept survey that was conducted between June 1 and October 15, 2006. Not only is this study outdated (it is over eight years old and predates the opening of the Similkameen River Trail), but it also significantly underestimates the potential for increased use from tourism. Whittaker & Shelby Expert Report at 13-14; 28 (listing a full panoply of problems with the 2006 recreation survey). The PCHB even recognized that “[i]n 2006, the PUD conducted recreational studies, but did not study the aesthetics of the water flowing over the Dam or Falls

⁷ <http://www.wta.org/go-hiking/hikes/similkameen-trail>, <http://www.okanogancountry.com/recreation-and-adventure/summer/urban-walking-trails/>

⁸ <https://www.facebook.com/pages/Similkameen-Trail/125033350876813>

⁹ <http://www.pnt.org/>

and the impact of the operation of the Project with no flows over the Dam and Falls for most of the year.” Board’s 401 Certification Order at 11.

The plan calls for zero Protection, Mitigation and Enhancement Measures (PME’s) relating to how recreation will be impacted by the dewatering of both waterfalls. Again, the PCHB stated that “aesthetic enjoyment can be through sight, smell, touch, and taste and is also a form of recreation.” PCHB Decision at 25. However, the District omitted any reference to the aesthetic enjoyment of viewing the waterfalls as part of its Recreation Management Plan.

The PCHB recognized that “in 2006 the District conducted recreational studies, but did not study the aesthetics of the water flowing over the Dam or Falls and the impact of the operation of the Project with no flows over the Dam and Falls for most of the year.” PCHB Decision at 11. The District has not corrected this omission in this update to the Recreation Management Plan.

Conclusion

Thank you for this opportunity to comment on the District’s Aesthetic and Recreational Management Plans, and for improved and increased discussion on each of these points over the past few months. While we greatly appreciate the recent improvement in communications and nongovernmental organization involvement with the Enloe Project, our comments are being presented to the District to correct the record regarding the report implication that little has changed, and to reaffirm our position that reports must be both accurate, comprehensive, and clear and transparent on actual changes, modifications and orders determined at the state level. We look forward to working with the District as this Project moves forward.

Sincerely,

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Attachments: PCHB No. 12-082, Findings of Fact, Conclusions of Law and Final Oder (As Amended Upon Reconsideration)
CRC Expert Report