



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

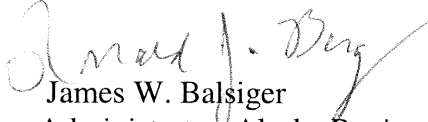
September 29, 2004

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, D.C. 20426

Dear Secretary Salas,

The National Marine Fisheries Service (NOAA Fisheries) requests filing of the attached motion of comments, recommendations, terms and conditions for the relicensing of the Chignik Hydroelectric Project on Indian Creek. NOAA Fisheries has been an active participant in the relicensing process and desires to remain actively involved for the remainder of the licensing process.

Sincerely,


James W. Balsiger
Administrator, Alaska Region

For



**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

NorQuest Seafoods Inc.)	
)	
Chignik Hydroelectric Project)	Project No. 620-009
)	
Request for Relicensing)	

NATIONAL MARINE FISHERIES SERVICE

MOTION TO FILE

COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS

Introduction

NorQuest Seafoods, Inc., has submitted an application for a new minor license for its power facility at Chignik, Alaska. The National Marine Fisheries Service hereby moves to file comments, recommendations, terms and conditions in the above matter, in accordance with the Federal Power Act, 16 U.S.C. 791a et seq. Service of process and other communications regarding this motion and the proceedings for relicensing should be made to:

**Thomas Meyer, Attorney Advisor
Office of General Counsel, Alaska Region
National Oceanic and Atmospheric Administration
P.O. Box 21109
Juneau, AK 99802
Telephone 907/586-7414x234**

**Jeanne Hanson, Field Office Supervisor
National Marine Fisheries Service
222 West 7th Avenue, #43
Anchorage, Alaska 99513
Telephone 907/271-3029**

Interest of the Petitioner:

Petitioner, the National Marine Fisheries service (NOAA Fisheries), an agency of the Department of Commerce, is the Federal agency with primary responsibility for management of the Nation's living marine resources. NOAA Fisheries conserves, protects, and manages living marine resources to support sustainable fisheries and healthy ecosystems on behalf of the American public. The Federal Power Act, 16 U.S.C. 791a et seq, authorizes NOAA Fisheries to recommend license conditions necessary to protect, mitigate damage to, and enhance fish and wildlife (including spawning habitat) affected by the development, operation and management of a non-federal hydropower project. NOAA Fisheries' general interest in the protection of marine, estuarine and anadromous fishery resources also derives from the Anadromous Fish Conservation Act, 16 U.S.C. 757(a), the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., the National Environmental Policy Act, 42 U.S.C. 4321 et seq, and the Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631-3644.

NOAA Fisheries is responsible for oversight and evaluation of activities that may affect marine, estuarine, and anadromous fishery resources. In order to assure "equal consideration of fish and wildlife with other purposes," the Fish and Wildlife Coordination Act, 16 U.S.C. 661-666(c), requires that NOAA Fisheries be consulted "whenever the waters of any stream or other body of water are proposed or authorized to be impounded...for any purpose whatsoever...by any public or private agency under Federal permit or license... .

Such consultation is intended to prevent loss and damage to fish and wildlife resources and to develop and improve these resources.”

Grounds for the Motion:

Norquest Seafoods is requesting relicensing of an existing project which consists of a timber dam at the outlet of Indian Lake and a 7700-foot long wood stave and steel pipeline, which transports up to 2.7 cfs of water to a 60 kW turbine for power generation.

Additionally, the pipeline transports water for both seafood processing and domestic water supply. No new facilities or changes in operation are proposed.

Indian Creek has been specified by the State of Alaska as being important for the spawning, rearing, or migration of anadromous fishes, including pink salmon, coho salmon and Dolly Varden char. NOAA Fisheries has been working collaboratively with the applicant and other State and Federal resource agencies for several years to develop information for the draft license application and environmental assessment, and to establish minimum in-stream flows to maintain fish habitat.

Comments

NOAA Fisheries has reviewed the Application for License for the Chignik Hydroelectric Project. Comments are similar to those made previously for the Draft License Application. This project is small in size, but complex in design. The complexity arises from multiple uses of the project components. The project is used to generate electricity, provide water to the Norquest Cannery, and provide water to the City of Chignik. Historic data for Indian Creek stream flows and water use for individual project

components are extremely limited. Determining project impacts to the anadromous fish populations of Indian Creek is difficult with the limited amount of available data. NOAA Fisheries suspects that the primary impact to anadromous fish occurs during periodic dewatering of the stream during low flow periods and dam maintenance. Dewatering during dam maintenance in the fall could kill spawning fish and any eggs deposited in the stream. Dewatering during low flow periods in late winter and spring could kill any eggs or alevins in the stream.

Terms and Conditions

Recommending appropriate terms and conditions for the Chignik Hydropower Project is complicated by the lack of stream flow and water use data. Nevertheless, NOAA Fisheries requests, pursuant to Section 10(s) of the Federal Power Act, that the Federal Energy Regulatory Commission (FERC) apply the following terms if a license is issued for the project:

1. Norquest Seafoods must collect stream flow and water use data for 5 years to build a database for more detailed project analysis.
2. Norquest Seafoods must file an annual report with FERC containing all the stream flow and water use data collected during the year. The report should be distributed to NOAA Fisheries, U.S. Fish and Wildlife Service, Alaska Department of Fish and Game, and any other interested agencies.
3. Norquest Seafoods must notify NOAA Fisheries, U.S. Fish and Wildlife Service, Alaska Department of Fish and Game, and any other interested agencies of any potential project modifications resulting from use of project water to improve the domestic water supply in the City of Chignik.
4. Norquest must maintain a minimum instream flow of 10 cfs in Indian Creek at all times to protect anadromous fish resources in the stream. This instream flow will be readjusted after 5 years based on analysis of the stream flow and water use data to be collected by Norquest Seafoods.

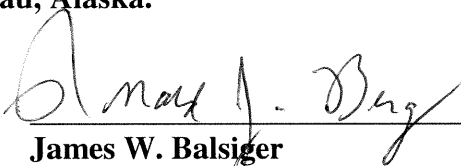
Recommendations

NOAA Fisheries recommends that FERC issue a temporary license to Norquest Seafoods for a period not to exceed 5 years. This will allow Norquest Seafoods time to collect the requested data so the interested agencies can make final recommendations based on empirical information. Once the final recommendations have been made, FERC can make an informed final decision on disposition of the Chignik Hydroelectric Project Relicensing.

Position of the Petitioner:

Due to the statutory responsibilities of NOAA Fisheries to conserve, protect, and manage living marine resources, and the effects of the Chignik Hydroelectric Project on those resources, NOAA Fisheries on behalf of the Department of Commerce hereby submits these Comments, Recommendations, Terms, and Conditions. We request that the Commission consider this submission , as authorized by the Federal Power Act, to recommend or prescribe license terms and conditions necessary for the protection of anadromous fish.

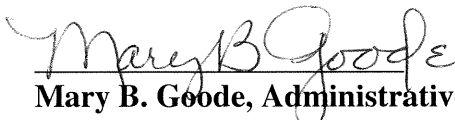
Respectfully submitted for NOAA Fisheries this 29 day of September, 2004, in Juneau, Alaska.



James W. Balsiger
For Administrator, Alaska Region

CERTIFICATE OF SERVICE

I hereby certify that I have this day served upon the Federal Energy Regulatory Commission, by Federal Express, a Motion to File Comments, Recommendations, Terms and Conditions in this matter plus fourteen copies to its place of business located at 888 First Street, N.E., Washington D.C., 20426. I have also served upon each member of the official service list one copy of this motion by first class mail.



**Mary B. Goode, Administrative Office Assistant
NOAA Fisheries, Alaska Region, Habitat Conservation Division**