

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Western Hydro Electric, Inc.

Project No. 8800-021

ORDER LIFTING STAY AND ISSUING
NOTICE OF PROBABLE TERMINATION OF LICENSE

(Issued July 20, 2006)

1. In this order, we lift a stay issued in 1994 of the license for the Goose-Brundage Project No. 8800¹ and give notice of probable termination of the license. The license was stayed to afford the licensee time to address issues regarding authorization to construct the project on lands of the United States Forest Service. There has evidently been no activity in this regard for several years.

Background

2. On July 25, 1990, the Commission issued an original license to Western Hydro Electric, Inc. (Western) for the 3.8-megawatt Goose-Brundage Project No. 8800.² The project would occupy lands administered by the United States Forest Service (Forest Service) in the Payette National Forest in Idaho. The original deadline for the commencement of project construction was July 24, 1992. That date was extended by the Commission³ to July 24, 1994, the maximum statutory deadline for the commencement of construction pursuant to Federal Power Act (FPA) section 13.⁴

¹ *Western Hydro Electric, Inc.*, 67 FERC ¶ 61,201.

² *Western Hydro Electric, Inc.*, 52 FERC ¶ 62,052.

³ See unpublished order issued by Commission staff on April 16, 1992.

⁴ 16 U.S.C. § 806 (2000).

3. The licensee must obtain a special use authorization (SUA) from the Forest Service before any land-disturbing activity may occur. The Forest Service declined to issue an SUA until it completed, and the National Marine Fisheries Service (NOAA Fisheries) reviewed, the Forest Service's biological assessment (BA) regarding the impact of various activities, including construction and operation of the project, on the federally-threatened Snake River salmon.⁵ The BA was transmitted to NOAA Fisheries in April 1994. It found that the project was likely to adversely affect the threatened salmon. The BA also initiated formal consultation between the Forest Service and NOAA Fisheries concerning the activities in question. On May 18, 1994, the Commission stayed the project license, pending further order, to afford time for completion of the ESA consultation. That order also directed the licensee to file a progress report every three months.⁶

4. ESA consultation continued. Western's last progress report was filed on July 25, 2000. In December 2001, in response to a letter from the Commission staff, Western informed the Commission that the Forest Service was considering a land swap with a ski resort developer that might involve lands within the project boundary. It stated that the Forest Service had submitted to NOAA Fisheries an environmental assessment (EA) for proposed activities in the area, including the ski resort, but that NOAA Fisheries required a project-specific EA for the Goose-Brundage Project, and that Forest Service funding for the EA was uncertain.⁷

5. In March 2002, the Forest Service contacted the Department of the Interior's Bureau of Land Management regarding a discrepancy between the federal lands withdrawn from disposal pursuant to FPA section 24⁸ as a result of the 1984 license

⁵ Snake River spring/summer Chinook salmon were placed on the list of threatened species on April 22, 1992. 56 Fed. Reg. 29,547; 57 Fed. Reg. 14,653. The listing was reaffirmed on June 28, 2005. 70 Fed. Reg. 37,180.

⁶ *Western Hydro Electric, Inc.*, 67 FERC ¶ 61,201.

⁷ Letter to Commission Secretary from E. Farley Eskelson, Dominion Engineering Associates, L.C., filed December 12, 2001.

⁸ 16 U.S.C. § 818 (2000). Section 24 prohibits another federal agency from selling or otherwise disposing of federal lands within a proposed project boundary (power site withdrawal) unless the Commission or Congress finds that the disposition would not injure or destroy the value of the site for hydroelectric development, or vacates the power site withdrawal.

application, and the land enclosed with the boundary of the project as licensed in 1990. The Forest Service stated the land exchange could not go forward until the discrepancy was resolved.⁹

6. Our last communication from Western was on August 2002. It stated that the Forest Service was still working on the land swap and that no progress was being made in its efforts to get NOAA Fisheries to accept the Forest Service's area-wide EA. Western stated that it would keep the Commission informed of any developments.¹⁰

Discussion

7. While we are willing to make reasonable accommodations to afford licensees the time needed to resolve issues with other agencies, we will not hold licenses in abeyance indefinitely. The absence of any indication from Western for nearly four years of any progress in obtaining an SUA, completion of ESA consultation by the Forest Service, or resolution of any land swap issues affecting the project, indicates to us that the project is not likely to be constructed. In light of these circumstances, the fact that the license was issued nearly 17 years ago, and that the purpose of FPA section 13¹¹ is to require prompt development of licensed projects, we will lift the stay of license and give notice of probable termination of the license for Project No. 8800.¹²

The Commission orders:

(A) The stay issued on May 18, 1994 of the license for the Goose-Brundage Project No. 8800 is lifted, effective upon issuance of this order.

⁹ Letter to Jackie Simmons, Realty Specialist, Bureau of Land Management, from Robert S. Giles, Acting Forest Supervisor, dated March 25, 2002, and filed with the Commission on April 5, 2002.

¹⁰ Letter to the Commission Secretary from Mr. Eskelson, filed August 26, 2002.

¹¹ 16 U.S.C. § 806 (2000).

¹² Our regulations permit the license to be terminated after 90 days from the date of the notice of probable termination. *See* 18 C.F.R. § 6.3 (2005). The stay order, however, affords Western 111 days from the lifting of that order to commence construction. To preserve Western's expectations in this regard, we will defer termination of the license until after 111 days from the issuance of this order.

(B) This order constitutes notice of the probable termination of the license for the Goose-Brundage Project No. 8800 after 111 days from the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.