



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

September 27, 2002

The Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Project No. 12235-000 (Moose Creek Dam Project)

Dear Secretary Salas:

Enclosed for filing in the referenced proceeding is the National Marine Fisheries Service's Motion to Intervene. Copies have been served on the Applicant.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Balsiger".

James W. Balsiger
Administrator, Alaska Region

Enclosures.: Original + 8 copies

cc:

Director, Office of Energy Projects, Federal Energy Regulatory
Commission

Moose Creek Hydro, LLC - Rigby, Idaho

Clayton Hawkes, ADF&G - Juneau



James W. Balsiger
Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802

Larry Peltz
National Marine Fisheries Service
Western Alaska Field Office
222 West 7th Avenue, #43
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I. INTEREST OF THE PETITIONER

Petitioner NMFS is entrusted with Federal jurisdiction over marine, estuarine, and anadromous fishery resources.

On October 3, 1970, the President established within the United States Department of Commerce "an agency which shall be known as the National Oceanic and Atmospheric Administration (NOAA) ... " Reorg. Plan No. 4 of 1970, 3 C.F.R. 203 (1970 compilation), reprinted in 5 U.S.C. Appendix R at 64 (1970). Under the Reorganization Plan, nearly all the functions vested by law within the Bureau of Commercial Fisheries of the Department of the Interior, including those pertinent to these proceedings, were transferred to the Secretary of Commerce to be exercised through NOAA. The NMFS was established by NOAA to exercise the functions formerly carried out by the Bureau of Commercial Fisheries, 35 Fed. Reg. 1845 5 (1970).

By virtue of this delegation of authority, NMFS is responsible for oversight and evaluation of activities which 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 NMFS be consulted “whenever the waters of any stream or other body of water are proposed or authorized to be impounded ... for any purpose whatever ... 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 those resources.”

NOAA’s Habitat Conservation Policy, published in the November 25, 1983, Federal Register, 48 Fed. Reg. 53142, provides further direction for NMFS where anadromous fish and their habitat are concerned. Anadromous fish and the preservation of their habitat are specifically identified as a top priority of NMFS.

Section 10(j) of the Federal Power Act, (16 U.S.C. 803(j)), authorizes NMFS to prescribe 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 project. NMFS’ general interest in the protection of marine, estuarine, and anadromous fishery resources also derives from the Anadromous Fish Conservation Act, 16U.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.

II. GROUNDS FOR INTERVENTION

Rule 214 of the Federal Energy Regulatory Commission (FERC) Rules of Practice and Procedure provides for intervention in hydropower proceedings before the Commission if the entity’s participation is in the public interest, 18 C.F.R. 285.214(b)(2)(iii). The statutes cited above are Congressional statements of the national public interest in the protection of aquatic resources, and they

indicate Congress's intent that NMFS represent those interests as they pertain to marine, estuarine, and anadromous fishery resources. Fishery interests would be affected by the activity covered by the Petition for Declaratory Order. Intervention by NMFS is, therefore, in the public interest, will ensure that NMFS is able to provide measures for fish protection, and that NMFS' statutory interests are adequately addressed.

III. DESCRIPTION OF THE PROJECT

The Moose Creek Dam Project, as described in the Application, would consist of: (1) a proposed intake structure, (2) a proposed 250 - foot - long, 84 - inch - diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 1.5 MW, (4) a proposed 5 - mile - long, 25 kV transmission line, and 5) appurtenant facilities. The applicant estimates that the average annual generation would be 7 GWh and would be sold to a local utility.

IV. AFFECTED FISHERY RESOURCES

The Alaska Department of Fish and Game (ADFG) anadromous waters catalog (AWC) documents spawning populations of chinook and chum salmon in the Chena River (stream number 334-40-11000-2490-3301) and its tributaries for at least 50 miles above the Moose Creek Dam. However, the AWC states, "Upper points document limits of fish surveys and usually not the extent of fish habitat." The topographical map indicates suitable gradient for fish use well beyond survey limits. An additional 11 resident species of fish are found in the Chena River.

In an informational letter dated October 5, 2001, Tom Vania and Steve Hayes of the Alaska Department of Fish and Game, Yukon Area Summer Season Management Biologists, summarize the

2001 Yukon River salmon fishery¹. Included in this summary are estimates of chinook and chum salmon escapement into the Chena River obtained from a counting tower located on the Moose Creek Dam. The 7 year average estimated escapement for the period 1995 to 2001 was 7,864 chinook salmon above the Moose Creek Dam. During the same 7 year period chum salmon counts varied from 3,515 fish to 12,810. The chum salmon numbers cannot be compared from year to year because the counting tower is not operated throughout the entire chum salmon return. The numbers are at best minimum escapement estimates.

Chinook and chum salmon of Chena River origin are extremely important to the fisheries of the Yukon River Drainage. As these fish migrate from the ocean, up the Yukon River, and into their natal spawning streams, they pass through numerous subsistence, commercial, personal use and sport fisheries. The personal use and sport fisheries are small while the subsistence and commercial fisheries are relatively large. The 10 year (1991-2000) average harvest of chinook salmon in the subsistence fishery was 50,333 fish. Likewise, the 10 year (1991-2000) average harvest of chinook salmon in the commercial fishery was 87,846 fish with a yearly average commercial value of \$4.8 million. The cumulative contribution of Chena River salmon to these fisheries is unknown. However, the contribution is most likely significant because the escapement numbers of chinook salmon into the Chena River are larger than most of the other index streams which are monitored for escapement².

¹Vania, T. and S. Hayes, 2002. Preliminary 2001 Yukon Area Chinook and Summer Chum Salmon Fishery Summary. Informational Letter. Alaska Department of Fish and Game, Anchorage. <http://www.cf.adfg.state.ak.us/region3/finfish/salmon/catchval/yukss01.pdf>

²Stuby, L. 2001. Salmon studies in interior Alaska, 2000. Alaska Department of Fish and Game, Fishery Data Series No. 01-24, Anchorage. <http://www.sf.adfg.state.ak.us/FedAidPDFs/fds01-24.pdf>

Recent returns of chinook and chum salmon to the Yukon River have been poor. Both the subsistence and commercial fisheries were impacted. No commercial harvest of chinook and chum salmon was allowed in 2001 and only a few thousand fish were harvested in 2002. Subsistence fisheries were substantially restricted in 2001³.

Based upon ADFG stock status information, NMFS believes that the proposed Moose Creek Dam project will impact anadromous fisheries.

V. PROJECT IMPACTS

The proposed project would be a run of the river hydropower facility. This would require closure of the flood control gates on the dam and creation of a reservoir to generate head for the turbines. This action would block movement of anadromous fish up and down stream. Failure of adults to reach their natal spawning grounds and forcing juveniles to descend the stream by passing through the turbines will reduce numbers or eliminate chinook and chum salmon of Chena River origin in the Yukon River Drainage.

A reduction in Chena River salmon would impact the subsistence, commercial, personal use and sport fisheries in much of the lower Yukon River. Most of these fisheries have been severely restricted in recent years due to low drainage wide returns. The subsistence and commercial fisheries are of particular concern. Subsistence fishing is an important component of the native culture in villages along the Yukon River. Chinook and chum salmon are relied on as a diet staple and viewed

³Personal communication - Tom Vania Yukon Area Management Biologist, Alaska Department of Fish and Game, Anchorage, 907/267-2131.

by most natives as necessary for the maintenance of their lifestyle and culture. Any projects that could potentially reduce salmon returns would be viewed as impacting the subsistence lifestyle of native Yukon River villagers. Likewise, economic opportunities along the Yukon River are limited. reduction in the commercial fishery has a severe economic impact on the communities along the Yukon River. Alaska Governor, Tony Knowles, has declared communities along the Yukon River as economic disaster areas in 2001 and 2002 due low salmon returns⁴. Any project which could negatively impact salmon returns would be viewed as an economic liability in Yukon River communities and be widely opposed at all levels of government.

VI. POSITION OF THE PETITIONER

Due to the potential negative impacts to anadromous fisheries of the Chena and Yukon rivers, the NMFS recommends the Moose Creek Dam project be denied a preliminary permit. The anadromous fisheries resources associated with this project have extremely high economic, cultural and recreational values. It is improbable that the economic benefits from this project can offset the potential loss of all values associated with this anadromous fishery resource.

VII. CONCLUSION

WHEREFORE, the National Marine Fisheries Service respectfully moves for intervention in this proceeding and requests a reservation of the authority of NMFS to prescribe fisheries and

⁴<http://www.gov.state.ak.us/PRESS/02199.html> and
<http://www.gov.state.ak.us/press/01193.html>

hydrologic studies and design parameters NMFS deems necessary for the protection of the anadromous fish resources of the Chena River (stream #334-40-11000-2490-3301).

DATED this 27th day of September 2002.

Respectfully submitted,

FOR THE NATIONAL MARINE FISHERIES SERVICE

James W. Balsiger
Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 12235-000)
Notice of Filing Preliminary Permit) Docket No. P-12235-000
Moose Creek Project)
_____)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by regular first class mail, a copy of the National Marine Fisheries Service's Preliminary Motion To Intervene the encaptioned action on the applicant to this proceeding, in accordance with the Commission's Rules of Practice and Procedure.

DATED this 27th day of September 2002 in Juneau, Alaska.



Janet R. Herr
Administrative Support for Habitat Conservation
National Marine Fisheries Service

DECLARATION OF SERVICE

In the matter of:
Moose Creek Hydroelectric Project (Docket No. P-12235-000)

The attached National Marine Fisheries Service Motion To Intervene has been serviced to each person below by first-class mail. NMFS requests that subsequent filings, actions, and decisions in this proceeding be served on the following representatives:

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