

June 1, 2004

CERTIFIED MAIL

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Gregg Carrington
Relicensing Project Manager
Public Utility District No. 1 of Chelan County
PO Box 1231
Wenatchee, WA 98807-1231

**RE: Lake Chelan Hydroelectric Project (FERC No. 637)
401 Certification - Order No. 1233**

Dear Mr. Carrington:

Enclosed is Ecology Administrative Order No. 1233. The purpose of this Order is to amend the 401 certification per Pollution Control Hearings Board (PCHB) Order No. 03-075, dated April 21, 2004, to include the clarifications that the Board directed be added. The 30-day appeal period for the PCHB order ran as of May 21, 2004, so the Board's order is now final. This Ecology order amends the previous Ecology Order No. DE 03WQCR-5420.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Pat Irle at (509) 454-7864. Written comments and correspondence relating to this document should be directed to Section Manager, Water Quality Program, Department of Ecology, Central Regional Office, 15 W. Yakima Avenue, Suite 200, Yakima, WA 98902.

Because this order merely transmits without change the clarifications required by the PCHB, no new appeal period is triggered.

Sincerely,



G. Thomas Tebb, L.E.G.
Section Manager
Water Quality Program
GTT:ww

Enclosure

cc: Secretary, FERC
Rod Woodin, WDFW
Steve Lewis, USFWS
Rich Domingue, NOAA Fisheries
Alan Quan, USDA-FS
Bill Paleck, NPS

Brett Swift, American Rivers
Bob Heinith, CRITFC
Carl Merkle, Umatilla Tribe
John Gangemi, American Whitewater
Bob Rose, Yakama Nation

3. Conformance with any and all applicable provisions of Chapter 90.48 RCW and of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

CERTIFICATION:

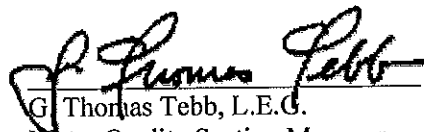
In view of the foregoing and in accordance with 33 USC 1341, RCW 90.48.260 and Chapter 173-201A WAC, it is ordered that:

1. Subject to the attached conditions, certification under the provisions of 33 USC 1341 is granted to Chelan PUD for the Lake Chelan Hydroelectric Project.
2. This certification does not exempt compliance with the state's Shorelines Management Act.
3. This certification does not exempt compliance with other statutes and codes administered by federal, state and local agencies.
4. This certification will cease to be valid if the project is constructed and operated in a manner not consistent with the application for certification, or the attached conditions of the certification.
5. This certification will cease to be valid and the applicant must reapply with an updated application if five or more years elapse between the date of the issuance of this certification and receipt of federal license.
6. This certification will cease to be valid and the applicant must reapply with an updated application if the information contained in the application is voided by subsequent submittals to the federal agency.
7. The conditions of this certification may be modified by Ecology or the certification will cease to be valid, as determined by Ecology, if there is a change in the terms of the Settlement Agreement, or of any of its components, particularly the Comprehensive Plan, Chapter 7, "Chelan River Biological Evaluation and Implementation Plan" (CRBEIP) (revised April 18, 2003 and included as an attachment), after this 401 certification has been issued. Ecology also reserves authority to modify this certification pursuant to the attached conditions.

Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars for each day of continuing noncompliance.

This Order may not be appealed.

June 1, 2004 at Yakima, Washington


G. Thomas Tebb, L.E.G.
Water Quality Section Manager
Central Regional Office
Department of Ecology
State of Washington

Attachment: Chelan River Biological Evaluation and Implementation Plan (CRBEIP)

for this project predict that the proposed minimum flows for the Chelan River would result at times in temperature more than 0.3 ° C above temperatures that would naturally occur.

- C. Where it is not feasible to fully meet water quality standards Clean Water Act regulations allow Ecology to take action to remove or modify a designated use or to modify the criteria assigned to protect that designated use if other criteria would sufficiently protect that use. The process may involve a use attainable analysis and/or standard modification. However, the Chelan River has been dewatered for over 76 years and it is not currently known what level of support for fish and water temperature for such use can reasonably be achieved in the river. To make that determination, Ecology believes that the best approach is to proceed with a ten year adaptive management plan which will allow a sufficiently lengthy period of time to determine what level of fish support and water temperature is reasonable and feasible to achieve.
- D. Ecology has worked collaboratively for a number of years with a relicensing team that includes the Chelan PUD, federal and state fishery resource agencies, and other stakeholders develop biological objectives to be achieved in the Chelan River. Those objectives identify three key species of fish (westslope cutthroat trout, steelhead trout and fall chinook salmon) for restoration or enhancement. The biological objectives and the initial measures that shall be implemented to attain those objectives are described in the Chelan River Biological Evaluation and Implementation Plan (CRBEIP revised April 18, 2003). Once those initial measures are implemented, regular monitoring and evaluation, as prescribed below, will be undertaken to identify any new measures or modification of the initial measures that may be necessary to achieve the objectives or effectively monitor and evaluate conditions. Changes to the implementation measures will be made in coordination with the Chelan River Fishery Forum (CRFF); however, Ecology retains authority to order additional changes or modifications to the extent necessary.
- E. The adaptive management plan contemplates, at the end of the ten years or sooner, Ecology will determine whether Chelan PUD has undertaken all known, reasonable, and feasible measures to achieve the biological objectives, and if so whether water quality standards have been fully achieved. If Chelan PUD has undertaken such measures and water quality standards have not been fully achieved, Ecology will seek to resolve such non-compliance through a process to make site-specific and/or use-based rule changes to the water quality standards or such other process as may be consistent with state and federal law.
- F. The intent of these actions is to support the goals of the State of Washington to “maintain the highest possible standards to ensure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington.” (RCW 90.48.010).

- vi) Higher flows may also be determined to be needed by the CRFF or by Ecology, as a result of studies performed as part of the CRBEIP (revised April 18, 2003).
- vii) In order to assure continuing compliance with Chapter 173-201A WAC, Ecology retains the right to amend the instream flow requirements specified in this certification to provide adequate habitat and to meet the biological objectives for cutthroat in Reaches 1, 2 and 3 of the Chelan River, or for fall Chinook or steelhead in Reach 4 of the Chelan River, or any species included in the future on a state or federal listing of endangered or threatened species.
- viii) This is a non-severable requirement of Ecology's certification. If it is rejected, in whole or part by the Federal Energy Regulatory Commission (FERC), Ecology's water quality certification for the Lake Chelan Project shall be deemed denied.

B. Ramping Rates

- i) The project shall not exceed the following ramping rate for the purpose of preventing stranding of fish in the Chelan River, of two inches per hour, to be modified in consultation with the CRFF, as described in Section 3.2, table 7-6 of the CRBEIP (revised April 18, 2003).

C. Flow Security Criteria for Tailrace

- i) The project shall adhere to the flow security criteria for the tailrace as described in Section 4.1.3, table 7-9, 7-10 and Sections 3.6, 4.1.3 and 5.5.1 of the CRBEIP (revised April 18, 2003). This condition is to prevent damage to salmon redds that may occur as a result of a powerhouse shutdown.

IV. Habitat Modifications and Biological Evaluation

- A. **Improvement of Habitat in Reach 4 and the Tailrace:** No later than two years after the effective date of the license, Chelan PUD shall complete modifications to improve habitat in Reach 4 and the tailrace, as set forth in Section 3.1 and 3.2 respectively of the CRBEIP (revised April 18, 2003). The Chelan PUD shall use standard river habitat restoration techniques to accomplish the goals of providing and maintaining gravel areas for spawning, boulder placements for cover and pool formation, and increased structural roughness to moderate velocities and provide additional area and habitat diversity, as described in detail in Section 3.1, figures 7 through 9, and Section 3.2, figures 7 through 10 of the CRBEIP (revised April 18, 2003).
- B. **"As-Built" Plan:** An "As-Built" plan shall be prepared by Chelan PUD after construction and/or modifications to improve habitat in Reach 4 and the Tailrace as set forth in Section 3 of the CRBEIP (revised April 18, 2003). The plan shall be of sufficient detail as necessary to support achievement of the biological objectives identified in Section 4 of the CRBEIP (revised April 18, 2003). The "As-Built" plan shall be included in the first Biological Objectives Status Report, submitted in year four.

part of this Order if consensus is achieved by the agencies and Chelan PUD. If however, such measures should require an amendment to the license or Federal Energy Regulatory Commission (FERC) approval, Chelan PUD shall petition FERC to so amend the license.

- G. Resolution of disagreements over new or modified measures: If within sixty (60) days after issuance of each of the final Biological Objectives Status Report, the fish agencies, Ecology and Chelan PUD do not reach consensus as to new or modified measures needed to achieve the biological objectives, including the implementation schedule, or to carry out monitoring and evaluation, the Department of Ecology, in consultation with CRFF members and Chelan PUD as time permits, will make final determination of measures to be implemented. During the pendency of the consultation process, the minimum level of new or modified measures that the agencies and Chelan PUD can agree upon shall be implemented.
- H. Compliance with Biological Objectives and State Water Quality Standards: Chelan PUD shall comply with the implementation schedule as provided in tables 7-9 and 7-10 of the CRBEIP (revised April 18, 2003). No later than ten (10) years after the effective date of the license, Chelan PUD shall provide Ecology with the information necessary to make a determination on whether the biological objectives in the CRBEIP (revised April 18, 2003) and the state water quality standards have been achieved. Ecology agrees that it will confer with the fish agencies and the Chelan PUD prior to making a determination whether and to what extent the biological objectives contained in the CRBEIP (revised April 18, 2003) have been met. If Ecology determines that the biological objectives have been met but non-compliance with water quality standards exists, Ecology intends that it will initiate a process to modify the applicable standards through rulemaking or such alternative process as may otherwise be authorized under applicable state and federal law. If Ecology determines that some or all of the biological objectives have not been met and that Chelan PUD has undertaken all known, reasonable, and feasible measures to achieve those objectives, Ecology intends to initiate a process to modify the applicable water quality standards to the extent necessary to eliminate non-compliance with such standards. Such modifications of state water quality standards shall not release Chelan PUD from compliance with implementation and monitoring measures required by this order. Chelan PUD shall upon request by Ecology, fully respond to all reasonable requests for materials to assist Ecology in making determinations under this order and any resulting rulemaking or other process.
- I. Actions if Biological Objectives are not Achieved: Following the issuance of the final Biological Objectives Status Report in year ten (10), if the Chelan PUD concludes that a biological objective cannot be met in part or whole despite its having undertaken all known, reasonable, and feasible measures to meet that objective, Chelan PUD may petition in writing Ecology, NOAA Fisheries, United States Fish and Wildlife Service (USFW), and the Washington Department of Fish and Wildlife (WDFW) to modify or eliminate a biological objective and/or associated implementation measure. Ecology reserves the authority to make the final decision.

- iv) In year 6, Chelan PUD shall provide the results of a study to determine the geomorphic influences on water temperatures in the Chelan River in order to address temperature, velocity, depth, and substrate to determine the best methods to achieve the biological objectives for cutthroat trout. The plan and results shall be approvable by Ecology. This study shall be incorporated into the second submittal of the Biological Objectives Status Report.
- v) Chelan PUD shall re-evaluate and propose needed revisions to the QAPP. Changes to the QAPP need written approval by Ecology before taking effect.

C. Monitoring and Modeling Results

- i) Water quality monitoring data for flows and temperature shall be available on a monthly basis from July through September and on a quarterly basis the rest of the year (i.e., Oct-Dec; Jan-March; and April-June). The data shall present any water quality exceedances and measures taken by Chelan PUD in conformance with the CRBEIP (revised April 18, 2003). The data shall be made available no later than the 30th day of the month following the reporting period. The data shall be posted on the Chelan PUD website.
- ii) A summary data report shall be prepared and submitted annually, providing the data assessment described in the QAPP to determine compliance with state water quality standards. The report shall be submitted by February 28th of the year following the collection of the data.
- iii) Data shall be summarized and reported in a format approved by Ecology. Ecology will use the results to determine compliance with state water quality standards.
- iv) Data reports shall be submitted to Department of Ecology, Water Quality Program, Central Regional Office, and to any other party that requests them.

D. Modification to Monitoring

- i) The Chelan PUD may request that all or part of the above sampling described in this section be suspended or modified after a minimum of three (3) years of complete, reliable data collection.
- ii) A more rigorous water quality sampling program for the listed parameters or additional parameters may be required by Ecology if necessary to protect water quality in the future based on monitoring results, regulatory changes, changes in project operations and/or requirements of TMDLs or to otherwise provide reasonable assurance of compliance with state water quality standards.

E. Water Quality Violations

- i) Any observed values in violation of Class A water quality standards in the bypassed reach of the Chelan River for any of the parameters listed below shall be reported to Washington Department of Ecology, Central Regional Office immediately upon observation or no later than 48 hours with explanation for cause and notification of the course of action taken. The parameters include temperature (above modeled natural temperatures), pH, dissolved oxygen, total

- a. For waters up to 10 cfs flow at the time of construction, the point of compliance shall be 100 feet downstream from activity causing the turbidity exceedence.
- b. For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be 200 feet downstream from activity causing the turbidity exceedence.
- c. For waters above 100 cfs flow at the time of construction, the point of compliance shall be 300 feet downstream from activity causing the turbidity exceedence.

C. Construction Water Quality Protection Plan (WQPP)

- i) A water quality protection plan (WQPP) shall be prepared, submitted to Ecology for approval, and implemented for all in-water construction work related to the project. The plan shall include 1) the necessary water quality protection requirements consistent with a Hydraulic Project Approval (HPA) for the project, 2) a description of all applicable Best Management Practices (BMPs) for in and near-water work, 3) a plan for sampling and monitoring during construction, 4) a plan for implementing mitigation measures should a water quality exceedence occur, and 5) a plan for reporting any water quality violations to the Department of Ecology.
- ii) The sampling and monitoring plan shall include the performance standards for measuring compliance with turbidity and dissolved oxygen 100 feet upstream of the location where in-water construction is taking place and at the point of compliance during construction. Samples shall be taken of a minimum of once each day during construction in or adjacent to any water bodies within the project area that may be affected by the construction.
- iii) Coverage under an NPDES Construction Stormwater Permit shall be obtained prior to the start of construction activities covering more than one acre and any other applicable state requirement such as SEPA.
- iv) A copy of the water quality protection plan shall be in the possession of the on-site construction manager, and available for review by Department of Ecology staff, whenever construction work is under way.
- v) Chelan PUD shall obtain Ecology review and approval before undertaking Project repair or maintenance activities that might significantly affect water quality (other than repair or maintenance activities required by or considered in this Certification). Ecology may, at Chelan PUD's request, approve specified repair and maintenance activities on a periodic basis.

VII. Oil Spill Prevention and Control

A. Standards

Chapter 90.56 RCW prohibits any discharge of oil, fuel or chemicals into state waters, or onto land with a potential for entry into state waters.

- iv) Compliance with this condition does not relieve the Chelan PUD from responsibility to maintain continuous compliance with terms and conditions of this order or resulting liability from further failure to comply.

VIII. Project Changes

Chelan PUD shall obtain Ecology review and approval before undertaking any change to the project that might significantly and adversely affect the water quality (other than project changes required or considered by this Order).

IX. Additional Requirements

This certification does not relieve the applicant from the responsibility of meeting applicable regulations of other agencies.

X. Clarifications Required per Pollution Control Hearings Board (PCHB) Order dated April 21, 2004 (Confederated Tribes v. Ecology, PCHB No. 03-075).

- A. With respect to instream flows for spawning in Reach 4, incubation flows are added as needed in all years, including dry years. See Section III. A.i (listing incubation flows).
- B. The monitoring required under the adaptive management plan is not intended to stop at the end of the compliance schedule in year 10, but should continue throughout the life of the new license. At the end of year 10 under the adaptive management plan, Chelan PUD will submit to Ecology for Ecology's approval a new schedule for monitoring of biological objectives and measures implemented — based upon the data and other information acquired during the 10 year period — under the adaptive management plan.
- C. The reference areas selected in the Methow River for salmon and steelhead spawning will be of high-quality habitat, comparable to or better than that of the Chelan River.
- D. An additional study of water temperature at the dam face must be performed by Chelan PUD to determine how best to design the new outlet structure to maximize the potential for cold water withdrawal at the base of the dam.
- E. A riparian feasibility study must be conducted by Chelan PUD to better characterize the opportunities for the establishment of riparian vegetation on the banks of the Chelan River.
- F. To the extent there is any ambiguity between the CRBEIP and this 401 Certification, to change or remove any biological objective — including the objective of 200 westslope cutthroat trout — Chelan PUD must petition Ecology in writing and receive approval in writing. See Section IV. I. Ecology has reserved for itself the authority to make such a decision.
- G. The portion of this 401 Certification detailing Ecology's reservation of authority (Section IV J) includes the provision that Ecology has the authority to require new or modified "requirements," as opposed to merely "measures," and that the term "requirements" includes "new or modified biological objectives;"