



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

February 4, 2008

CERTIFIED MAIL

7007 2560 0001 7692 4646

Michelle Smith
Chelan County PUD No. 1
P.O. Box 1231
Wenatchee, WA 98807

RE: Lake Chelan Hydroelectric Project No. 637

Dear Michelle Smith:

We have received your letter of January 25, 2008, noting that you would like to change the deadline of compliance with certain activities identified in the 401 certification and compliance order that you received from the Washington State Department of Ecology (Ecology) for this project, and included in the license issued by the Federal Energy Regulatory Commission (FERC). As we discussed in our previous letter (attached), your request for a modified deadline would affect deadlines in both Section II (requirements for instream flows for fish) and Section IV (requirements for habitat modification in Reach 4 and the tailrace) of the 401 Certification.

The Certification and the conditions contained from it in the FERC license can only be modified by the issuing agency; in this case, Ecology. The federal permitting or licensing agency lacks authority to review or revise state water quality certification conditions. *Roosevelt Campobello Intern. Park Comm'n v. EPA*, 684 F.2d 1041, 1056-57 (1st Cir. 1982); *AmericanRivers, Inc. v. FERC*, 129 F.3d 99, 110-11 (2nd Cir. 1997).

Ecology has no objections to the delay in implementation, provided the steps are taken in a more timely manner, as indicated by Chelan PUD. Therefore, we are issuing an order granting your request for a modification to the schedule.

Enclosed is Order No. 5406, which amends the construction schedule for the Chelan River, contained in the Clean Water Act 401, certification issued on June 1, 2004.



February 4, 2008
Michelle Smith
Page 2 of 4

Please direct all correspondence or questions relating to this document to Pat Irle at Department of Ecology, Central Region Office, 15 W. Yakima Avenue, Suite 200, Yakima, WA 98908, telephone (509) 454-7864.

Sincerely,



Denise E. Mills, LHG
CRO Section Manager
Water Quality Program

cc: Brian Faller, AAG
Patrick Regan, FERC, Portland
Kimberley D. Bose, FERC, D.C.

Attachments

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF AN) ORDER No. 5406
ADMINISTRATIVE ORDER)
AGAINST:)
Chelan County PUD No. 1)

To: Michelle Smith
Chelan County PUD No. 1
PO Box 1231
Wenatchee, WA 98807

For the site located at:
Lake Chelan Hydroelectric Project No. 637

It is ordered that Order 1233 is amended to allow two additional years, beyond the time provided in the original 401 Certification and Department Order for completion of a system for minimum flow in the Chelan River, the Reach 4 stream channel, and the pump station.

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Pat Irle
Department of Ecology
Central Region Office
15 W. Yakima Avenue, Suite 200
Yakima, WA 98908

*For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>*

*To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED this 4th day of February, 2008 at Yakima, Washington.



Denise E. Mills, LHG
CRO Section Manager
Water Quality Program

Revised April 2005 (Appeal lang. May 2007)