FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

NOV 23 2010

OFFICE OF ENERGY PROJECTS

ZZ09-5-000

Ken Homolka
Oregon Department of Fish and Wildlife
3406 Cherry Avenue NE
Salem, OR 97303-4924

Subject: Request for treatment of documents as Comprehensive Plans, pursuant to Section 10(a)(2)(A) of the Federal Power Act

Dear Mr. Homolka:

Thank you for your letter providing the Federal Energy Regulatory Commission (Commission) with a copy of the following 14 documents: (1) Coastal Pelagic Species Fishery Management Plan, dated December 1998; (2) Oregon Coast Coho Conservation Plan for the State of Oregon, dated March 16, 2007; (3) Oregon Statewide Planning Goals and Guidelines, dated August 20, 1999; (4) 25-year Recreational Angling Enhancement Plan, dated February 2009; (5) An Interim Management Plan Near-shore Commercial Fish, dated October 11, 2002; (6) Oregon Natural Heritage Plan, dated 2003; (7) Pacific Coast Groundfish Fishery Management Plan, dated July 2008; (8) Douglas County, Oregon Comprehensive Plan, undated; (9) Oregon Native Fish Status Report, undated; (10) Oregon Territorial Sea Plan, dated 1994; (11) Fishery Management Plan for U.S. West Coast Fisheries for Highly Migrating Species, dated June 2007; (12) Oregon Nearshore Strategy, dated January 2006; (13) Umpqua Lighthouse State Park Master Plan, dated 2004; and (14) Oregon Shore Management Plan, dated January 2005. Pursuant to section 10(a)(2)(A) of the Federal Power Act (FPA), you request that the documents be considered as comprehensive plans.

Under section 10(a)(2)(A) of the FPA, the Commission will treat as a comprehensive plan one that: is prepared by an agency established pursuant to federal law that has the authority to prepare such a plan, or by a state agency, of the state in which the proposed hydroelectric project is or will be located authorized to conduct such planning pursuant to state law; is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; includes a

description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and is filed with the Commission.

Based on staff review, the following seven documents qualify as comprehensive plans under section 10(a)(2)(A) of the FPA:

Oregon Department of Fish and Wildlife. 2007. Oregon Coast Coho Conservation Plan for the State of Oregon. Salem, Oregon. March 16, 2007.

Oregon Department of Fish and Wildlife. 2009. 25-year Recreational Angling Enhancement Plan. Salem, Oregon. February 2009.

Oregon Department of Fish and Wildlife. 2002. An Interim Management Plan for Oregon's Nearshore Commercial Fisheries. Salem, Oregon. October 11, 2002.

Oregon Department of State Lands. Oregon Natural Heritage Plan. Salem, Oregon. 2003.

Pacific Fishery Management Council. 2007. Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species. Portland, Oregon. June 2007.

Oregon Department of Fish and Wildlife. Oregon Nearshore Strategy. Salem, Oregon. January 2006.

Oregon Parks and Recreation Department. Oregon Shore Management Plan. Salem, Oregon. January 2005.

Staff finds the remaining seven documents do not meet the criteria set forth in section 10(a)(2)(A) of the FPA and therefore, cannot be considered as comprehensive plans. An explanation of our findings follows.

With regard to the "Oregon Territorial Sea Plan", staff finds the document establishes mandatory procedures and policies concerning approval of easements or installation of utilities on the seafloor in the State of Oregon's territorial waters and ocean shore and on the land. The document outlines laws and other legal authorities affecting ocean management, as well as requires regulating agencies to comply with standards and procedural requirements. The document is not a comprehensive study of one or more of the beneficial uses of a waterway or waterways. Staff concludes, therefore, the document does not meet the criteria set forth under section 10(a)(2)(A) of the FPA.

We understand your intent to fulfill your obligation with regard to preparation of a comprehensive plan for the siting of wave energy projects in the Territorial Sea of Oregon as stated in the Memorandum of Understanding between the Commission and the State of Oregon, executed in 2008. However, for the reasons noted above we cannot consider the plan as a comprehensive plan under FPA section 10(a)(2)(A) but will instead consider it under FPA section (10)(a)(1). If you wish to revise the Oregon Territorial Sea Plan to conform to section (10)(a)(2), our staff will be happy to provide the appropriate guidance.

Staff finds the "Coastal Pelagic Species Fishery Management Plan" provides a set of guidelines and criteria for northern anchovy (such as, harvest policy and goals to achieve optimum yield), including recreation licenses and permits that may be required. Staff finds the "Oregon Statewide Planning Goals and Guidelines" provide goals to coordinate and co-manage programs and activities among the levels of government. These documents provide management direction, rather than a comprehensive study of one or more of the beneficial uses of a waterway or waterways. Staff concludes, therefore, these documents do not meet the criteria set forth under section 10(a)(2)(A) of the FPA.

With regard to the "Pacific Coast Groundfish Fishery Management Plan", staff finds the document primarily identifies management measures to be used by the Pacific Fishery Management Council to meet the objectives of the Magnuson-Stevens Fishery Conservation and Management Act. In particular, the document outlines the types of data that may be collected through a regulatory program to ensure vessel compliance with fishery management measures. The document is not a comprehensive study of one or more of the beneficial uses of a waterway or waterways. Staff concludes, therefore, the document does not meet the criteria set forth under section 10(a)(2)(A) of the FPA.

With regard to the "Douglas County, Oregon Comprehensive Plan", the document was not prepared by an agency established pursuant to federal law that has the authority to prepare such a plan, or by a state agency, authorized to conduct such planning pursuant to state law, in which state the proposed hydroelectric project is or will be located. Staff concludes the document does not meet the criteria set forth under section 10(a)(2)(A) of the FPA.

With regard to the "Oregon Native Fish Status Report", staff finds the report identifies 10 fish species (such as, bull trout, Coho, and summer steelhead) along with other species, and provides an assessment (a pass or fail) on whether a fish species will meet certain criteria (such as, distribution, abundance, and productivity) within its river system. The criteria will be used to guide priorities for conservation planning. The report is a collection of data to be used for

planning and management priorities for certain fish species, rather than a comprehensive study of one or more of the beneficial uses of a waterway or waterways. Staff concludes, therefore, the document does not meet the criteria set forth under section 10(a)(2)(A) of the FPA.

With regard to the "Umpqua Lighthouse State Park Master Plan", the document provides direction to the State of Oregon regarding future development and resource activities on lands, rather than a waterway, within the planning area. The document is not a comprehensive study of one or more of the beneficial uses of a waterway or waterways. Staff concludes, therefore, the document does not meet the criteria set forth under section 10(a)(2)(A) of the FPA.

Additionally, you provided a copy of the 2007-2008 "Oregon Wildlife and Commercial Fishing Codes" to replace the 2001-2002 version. By letter dated April 2, 2010, staff determined the "Oregon Wildlife and Commercial Fishing Codes" does not meet the criteria under section 10(a)(2)(A) of the FPA. See enclosure.

The seven documents that do not meet the criteria set forth under section 10(a)(2)(A) of the FPA and therefore, cannot be considered as comprehensive plans will, however, be considered as resource plans as part of the Commission's public interest analysis under section 10(a)(1) of the FPA.

Sincerely,

Ann F. Miles

Ann F. Miles, Director
Division of Hydropower Licensing

Enclosure: Letter dated April 2, 2010

cc: Public Files

COPY

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

APR 2 2010

OFFICE OF ENERGY PROJECTS

Ken Homolka
Oregon Department of Fish and Wildlife
3406 Cherry Avenue, NE
Salem, OR 97303

Subject: Request for treatment of document as a Comprehensive Plan, pursuant to section 10(a)(2)(A) of the Federal Power Act

Dear Mr. Homolka:

Thank you for providing the Federal Energy Regulatory Commission (Commission) with a copy of "The Oregon Wildlife and Commercial Fishing Codes: 2007-2008". Pursuant to section 10(a)(2)(A) of the Federal Power Act (FPA), you request that this document be considered as a comprehensive plan.

Under section 10(a)(2)(A) of the FPA, the Commission will treat as a comprehensive plan one that: is prepared by an agency established pursuant to Federal law that has the authority to prepare such a plan, or by a state agency, of the state in which the proposed hydroelectric project is or will be located authorized to conduct such planning pursuant to state law; is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and is filed with the Commission.

By letter dated September 2, 2005 to you, the staff determined that an earlier version of "The Oregon Wildlife and Commercial Fishing Codes: 2003-2004" did not qualify as a comprehensive plan because it was not a comprehensive study of one or more beneficial uses of a waterway under section 10(a)(2)(A) of the FPA. The document provided a set of administrative and enforcement of laws and regulations. After review of "The Oregon Wildlife and Commercial Fishing Codes: 2007-2008," the staff makes the same finding as it concluded in 2005. Because "The Oregon Wildlife and Commercial Fishing Codes: 2007-2008" document is not an explicit comprehensive study of one or more beneficial uses of

a waterway or waterways, it does not meet the criteria set forth under section 10(a)(2)(A) of the FPA. The staff will consider the document, as it considers all relevant studies and recommendations, in its public interest analysis pursuant to section 10(a)(1) of the FPA.

Any future river-related plans prepared by the Oregon Department of Fish and Wildlife must be filed with the Commission in order to be considered in the Commission's section 10(a)(2)(A) of the FPA analysis of hydropower projects in Oregon.

Sincerely,

Mark Pawlowski, Chief
Hydro East Branch 2
Division of Hydropower Licensing

cc: Public Files