

171 FERC ¶ 62,148  
 UNITED STATES OF AMERICA  
 FEDERAL ENERGY REGULATORY COMMISSION

C.3.11.L (R)  
 C.3.11.L (P)  
 Letterbook  
 Licensing (eFile)

PKWD-20-042

Energy Northwest

Project No. 2244-042

ORDER MODIFYING AND APPROVING THREATENED, ENDANGERED, AND  
 SENSITIVE SPECIES MANAGEMENT PLAN

(Issued June 25, 2020)

1. On September 12, 2019, Energy Northwest, licensee for the Packwood Lake Hydroelectric Project No. 2244, filed a Threatened, Endangered, and Sensitive Species Management Plan (TES Plan), pursuant to Article 403 and U.S. Forest Service 4(e) Condition No. 12 of the project's license.<sup>1</sup> The project is located on Lake Creek, a tributary to the Cowlitz River, in Lewis County, Washington. The project occupies federal land within the Gifford Pinchot National Forest (GPNF) and Goat Rocks Wilderness, administered by the U.S. Forest Service (Forest Service).

**Background**

2. Article 403 of the project license requires that the TES Plan required by Forest Service condition 12 include:

(1) a provision to conduct surveys and develop protection measures, as needed, for Oregon goldenaster, nesting bald eagle, and nesting northern spotted owl prior to any land-disturbing or in-water construction activities associated with the stream restoration activities along lower Lake Creek required by Forest Service condition 7;<sup>2</sup> and

(2) a provision to conduct surveys and develop protection measures, as needed, for special-status amphibians prior to any land-disturbing or in-water construction

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<sup>1</sup> Order Issuing New License (165 FERC ¶ 62,031), issued October 11, 2018.

<sup>2</sup> In pertinent part, Forest Service condition 7 requires a Lower Lake Creek Stream Restoration, Enhancement and Monitoring Plan be prepared within two years of license issuance; the plan is to be filed with the Commission for approval.

activities associated with the fish passage improvements on Snyder and Hall creeks required by Forest Service condition 10.<sup>3</sup>

3. Forest Service condition 12 requires Energy Northwest to prepare a Threatened, Endangered (Federal listed) and Forest Service Regional Forester Special Status Species Management Plan for Commission approval.<sup>4</sup> The goal of the plan required by condition 12 is to provide protection, mitigation, and enhancement (PME) and monitoring of threatened, endangered, and sensitive species and their habitats that may be affected by project operation or project-related activities over the life of the license. The plan required by Forest Service condition 12 must include Energy Northwest's Rare Plant Management Plan, filed with the Commission on June 6, 2008.

4. At a minimum, the plan required by Forest Service condition 12 must create an initial species list and provide for updating the species list, as well as provisions for baseline surveys of species currently on the list, preparing biological evaluations in consultation with the Forest Service, monitoring to identify project effects at confirmed sensitive species sites at specific intervals, designing and implementing PME or restoration measures, follow-up monitoring to measure the effectiveness of protective measures, and annual reporting and consultation. As part of its Biological Opinion, the National Marine Fisheries Service (NMFS) included an Incidental Take Statement (ITS) with nine reasonable and prudent measures (RPM) to minimize take of Endangered Species Act (ESA) listed Lower Columbia River (LCR) Chinook salmon, LCR coho salmon, and LCR steelhead species, along with nine terms and conditions to implement the measures. The project license made the RPMs and implementing the terms and conditions requirements of the license through ordering paragraph (G).<sup>5</sup> Further, Article 401(a) of the license also requires Energy Northwest to prepare various plans required by the RPMs in consultation with NMFS, and file the plans for Commission approval. Therefore, as specified by the RPMs and Article 401(a), Energy Northwest is required to: minimize the likelihood of incidental take from restoration and enhancement measures by applying terms and conditions and the project specifications that avoid or minimize

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<sup>3</sup> In pertinent part, condition 10 requires a Snyder Creek Restoration, Enhancement and Monitoring Plan be prepared within two years of license issuance; the plan is to be filed with the Commission for approval.

<sup>4</sup> Article 401(a) requires the plan required by condition 12 be filed for Commission approval.

<sup>5</sup> NMFS issued a revised ITS to clarify some language and improve the efficiency and effectiveness of three of the RMP on November 9, 2018. Order Amending License to Incorporate Revised Incidental Take Statement (166 FERC ¶ 62,071), issued February 14, 2019. NMFS filed additional revisions to the ITS on April 23, 2020.

adverse effects to riparian and aquatic habitats during these activities (RPM 2: see footnotes 2 and 3 regarding the development of stream restoration plans); and prepare and provide NMFS with plan(s) and report(s) describing how listed species in the action area would be protected and/or monitored and to document the effects of the action on listed species in the action area (RPM 9).

5. In the Final Environmental Analysis (EA) for Hydropower License,<sup>6</sup> Commission staff determined that the project would have no effect on chum salmon, bull trout, Canada lynx, grizzly bear, gray wolf, marbled murrelet, howellia, Kincaid's sulfur lupine, and Nelson's checker-mallow. These species are unlikely to occur in the project area because suitable habitat does not exist for these species or, in the case of the gray wolf, has not been documented in the project area, but if it should occur, it would avoid areas in proximity to project features. Therefore, no further action under the ESA is required for these species.

### **Proposed Threatened, Endangered, and Sensitive Species Management Plan**

6. The goal of the TES Plan is to provide the general methodology to provide PME and monitoring of threatened, endangered, and sensitive species and their habitats that may be affected by project operation or project-related activities during the duration of the license. Much of Energy Northwest's management of certain threatened, endangered, and sensitive species is detailed in a series of individual plans meant to address potential impacts to specific species.

#### Initial Species List

7. The TES Plan includes an initial species list of species (fish, wildlife, and plants) that are listed under the ESA that details the species listing status, effect finding, and critical habitat finding. The initial species list also details Energy Northwest's other management plans that contain measure specifically designed to protect species that may be affected by project operation.<sup>7</sup> The TES Plan also includes Forest Service Region 6 sensitive fish and wildlife species lists that details habitat and species presence, and relevant management plans.

#### Updating the Species List

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<sup>6</sup> Final EA for Hydropower Project License issued July 1, 2009.

<sup>7</sup> Protection measures for species that have management plans are contained within those management plans and are not further discussed in the TES Plan.

8. An annual rare plant management report describing all activities related to rare plant management would be provided to the Forest Service and the Resource Agencies Committee (RAC)<sup>8</sup> 30 days prior to the annual resource coordination meeting (required under Forest Service condition 2 and discussed in more detail below). The annual rare plant management report and the Rare Plant Management Plan would include updated Forest Service, Washington Natural Heritage Program (WNHP), and FWS rare plant species lists, in which plant species are added or removed, according to changes in their status.

9. Pursuant to the revised RPMs, Energy Northwest would conduct ongoing monitoring and reporting programs to evaluate post-restoration and enhancement conditions and operational changes appropriate to minimize or to monitor the incidental take of the LCR Chinook salmon, LCR coho salmon, and LCR steelhead species, including preparation of an annual report for RAC review which would summarize actions carried out during the previous calendar year.

#### Conducting Baseline Surveys

10. The project license states that restoration activities along lower Lake Creek have the potential to affect Oregon goldenaster, nesting bald eagles, and nesting northern spotted owls. As such, Energy Northwest plans to conduct surveys and develop protection measures for these species prior to any land-disturbing or in-water construction activities associated with the stream restoration activities along lower Lake Creek.<sup>9</sup> Details regarding survey methods and TES species protection measures would be provided in the Lower Lake Creek Stream Restoration, Enhancement and Monitoring Plan, which is currently being developed.

11. The project license states that fish passage improvement activities associated with rerouting Snyder Creek to join Hall Creek immediately downstream of the project tailrace have the potential to affect special-status amphibians and fish, and ESA-listed salmonids. As such, Energy Northwest plans to conduct surveys and develop protection measures for

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<sup>8</sup> The Resource Agency Committee includes, but is not limited to, representatives from the Forest Service, U.S. Fish and Wildlife Service (FWS), NMFS, U.S. Corps of Engineers, Washington State Department of Fish and Wildlife (Washington DFW), Washington State Department of Ecology's (Washington Ecology), Washington State Department of Archaeology and Historic Preservation, and the Cowlitz Indian Tribe and Yakama Nation.

<sup>9</sup> These surveys are required by Forest Service condition 7 and NMFS RPM 2; Article 403(1) requires that the surveys are included in the TES Plan (Article 401 requires that RPM 2 is filed for Commission approval).

these species prior to any land-disturbing or in-water construction activities associated with the stream restoration activities along Snyder and Hall creeks.<sup>10</sup> Details regarding survey methods and TES species protection measures will be provided in the Snyder Creek Restoration, Enhancement and Monitoring Plan, which is currently being developed.

12. Rare plant surveys and monitoring efforts on GPNF lands will meet standards described in the Forest Service's Threatened, Endangered and Sensitive Plants Survey Field Guide. Newly located and existing rare plant occurrences will be documented following the Forest Service's Threatened, Endangered, and Sensitive Plants Element Occurrences Field Guide. Rare plant surveys and monitoring of other public, private, and Energy Northwest lands would be performed and documented according to the methodology described in the Revised Rare Plant Survey Study Plan.<sup>11</sup>

13. The project license requires Energy Northwest to submit plans for both the lower Lake Creek and Snyder Creek restoration activities within two years of license issuance (by October 2020). Energy Northwest developed a Restoration Subcommittee consisting of resource experts from all requisite agencies and is currently developing the aforementioned plans. Surveys for TES species that may be affected by the restoration implementation would be conducted prior to any ground disturbing and/or in-water work. Likewise, any measures necessary to protect these species would be developed in advance of any ground disturbing or in-water work in consultation with resource agencies. The schedule for conducting surveys and commencing restoration activities at these locations will be discussed in detail within the respective restoration plans.

#### Preparing Biological Evaluations

14. Where there is a potential for Regional Forester Special Status Species to be affected by project operations or maintenance, actions associated with other management plans, or other ground disturbing activities, Energy Northwest would consult with the Forest Service, to determine the need for, and if necessary prepare, a draft biological evaluation. Biological evaluations would be based on the location of known rare plant occurrences, the type of ground disturbing activity and potential impacts associated with it. Biological evaluations are subject to review and approval by the Forest Service for habitat and ground-disturbing activities on National Forest System lands. If project related effects to rare plant occurrences are anticipated, reasonable protection, mitigation,

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<sup>10</sup> These surveys are required by Forest Service condition 10 and required to be included in the TES plan in Article 403(2); these surveys are also required by NMFS RPM 2 and Article 401.

<sup>11</sup> The Revised Rare Plant Survey Study Plan was filed on August 22, 2005, during the licensing process.

enhancement or restoration measures would be implemented, as defined in the approved biological evaluation. Updated Forest Service, WNHP, FWS rare plant species lists would be included in the biological evaluation. Any field surveys or monitoring would be conducted and reported according to Forest Service standards. The annual rare plant management report would provide details for the coming year's planned activities and determine whether preparation of any biological evaluations would be necessary.

### Monitoring Project Effects

15. In order to monitor project effects on ESA-listed salmonids and identified critical habitats, Energy Northwest proposes to follow the previously filed Lake Creek Instream Flow and Ramping Rate Monitoring Plan<sup>12</sup> and Tailrace Water Temperature Monitoring Plan.<sup>13</sup> These plans, in part and as relevant here, ensure compliance with the ramping rate and flow requirements to ensure the protection of ESA-listed salmonids in the anadromous reach of Lake Creek (RPM 6), and evaluates the effectiveness of project operation to meet water temperature standards (RPM 8). Energy Northwest states that plans to provide baseline information on fall-run Chinook population density in areas associated with and potentially affected by the project (RPM 7) have been put on hold until further notice, in agreement with NMFS.<sup>14</sup>

16. The project license states that fish passage improvement activities associated with re-routing Snyder Creek to join Hall Creek have the potential to affect special-status amphibians and fish and ESA-listed salmonids. As such, Energy Northwest plans to conduct surveys and develop protection measures for these species prior to any land-disturbing or in-water construction activities associated with the stream restoration activities along Snyder and Hall creeks. Details regarding survey methods and TES species protection measures would be provided in the Snyder Creek Restoration, Enhancement and Monitoring Plan, which is currently being developed.

17. The project license is subject to the Forest Service conditions through ordering paragraph (E). Forest Service condition 17 requires that Energy Northwest completely and fully comply with all provisions of the Avian Protection Plan filed with the Commission on June 6, 2008 and any approved revisions of the Avian Protection Plan throughout the length of the license. The Avian Protection Plan provides for surveys that

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<sup>12</sup> Filed April 23, 2019; does not require Commission approval.

<sup>13</sup> Order Approving Revised Tailrace Water Temperature Monitoring and Enhancement Plan Pursuant to Article 401 (168 FERC ¶ 62,017), issued July 12, 2019.

<sup>14</sup> Request to put the Fall-Run Chinook Monitoring Plan on hold filed with the Commission on May 2, 2019.

determine system configuration and monitors the effects on avian species, including potential fatalities. Annual surveys of non-compliant structures would continue until the upgrade or replacement occurs consistent with current Avian Power Line Interaction Committee configuration standards.

18. Two rare plant species have been located in the project area: *Peltigera pacifica* and Oregon goldenaster (*Heterotheca oregona*).<sup>15</sup> Energy Northwest proposes the following measures for PME of the *Peltigera pacifica* occurrence in the project area: monitor every two years for six years following license issuance and at five-year intervals thereafter. For PME of the Oregon goldenaster occurrence in the project area, Energy Northwest proposes the following measures: survey Oregon goldenaster occurrence in the project area prior to ground-disturbing activities in lower Lake Creek, and resurvey every five years to monitor and identify project effects during the new license term.

#### Implementing Protective Measures

19. The TES Plan details protective measures for rare plants (*Peltigera pacifica* and Oregon goldenaster), as well as restoration activities along lower Lake and Snyder creeks. Creek restoration activities along lower Lake Creek have the potential to affect Oregon goldenaster, nesting bald eagles, and nesting northern spotted owls; fish passage improvement activities associated with rerouting Snyder Creek to join Hall Creek have the potential to affect special-status amphibians.

#### *Peltigera pacifica*

20. While monitoring for project effects on *Peltigera pacifica*, Energy Northwest also proposes monitoring for noxious weed infestations in *Peltigera* habitat; if noxious weeds are located, they would be controlled according to the project's Integrated Weed Management Plan in consultation with the Forest Service.<sup>16</sup> The TES Plan details Forest

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<sup>15</sup> "Rare plant species" include: Forest Service Regional Forester Special Status Species vascular plants, bryophytes, and lichens, WNHP plant species, and FWS Threatened, Endangered and Sensitive plant species. Two rare plant species, *Peltigera pacifica* and Oregon goldenaster (*Heterotheca oregona*) have been located in the project area; proposed rare plant protective measures are described in the TES Plan. Energy Northwest is in regular contact with the Forest Service in regards to surveys and the targeted species; when modifications are necessary, Energy Northwest updates its plans accordingly.

<sup>16</sup> Energy Northwest developed an Integrated Weed Management Plan for the project pursuant to Article 404 of the project license; the plan was approved on September 18, 2019 (Order Modifying and Approving Integrated Weed Management Plan [168 FERC ¶ 62,154]).

Service Road maintenance, and states that a biological evaluation for *Peltigera pacifica* subpopulations would be done in advance of any road or trail maintenance, tree and shrub trimming, or other ground disturbing activities planned for the area outside of the road or trail prism that would affect *Peltigera pacifica* thalli. A plan would be developed in consultation with the Forest Service, with a goal of avoiding or minimizing damage to *Peltigera pacifica* thalli and habitat and would include provisions to monitor, mark, protect, or move affected subpopulations during ground-disturbing activities. The TES Plan details steps that would be taken if damage to *Peltigera pacifica* thalli or habitat, or destruction of *Peltigera pacifica* subpopulations, is unavoidable.

21. Rare plant training would be provided to appropriate Energy Northwest personnel. Training would cover all Forest Service rare plant species in the project area, and provide information related to identification, ecology and protection.

#### Oregon goldenaster

22. While surveying Oregon goldenaster occurrence (prior to ground-disturbing activities in lower Lake Creek, and every five years to monitor and identify project effects), Energy Northwest proposed monitoring for noxious weed infestations in Oregon goldenaster habitat. If noxious weeds are located, they would be controlled according to the Integrated Weed Management Plan in consultation with the Lewis County Noxious Weed Control Board.

23. If project-related ground disturbing activities in the vicinity of the Oregon goldenaster occurrence were to occur (none planned), the Forest Service would be consulted to determine the need for a biological evaluation. If necessary, a biological evaluation would be prepared in advance of any ground disturbing activities in the area, with the goal of avoiding or minimizing damage to the goldenaster occurrence. Energy Northwest would ensure that any fish habitat restoration efforts in the lower Lake Creek area (RM 0.0 to 0.3) do not disturb the small Oregon goldenaster subpopulation at the mouth of Lake Creek.

24. For both *Peltigera pacifica* and Oregon goldenaster, if there is a potential for Regional Forester Special Status Species to be affected by project operations or maintenance, actions associated with other management plans, or other ground disturbing activities, Energy Northwest would consult with the Forest Service to determine the need for, and if necessary prepare, a draft biological evaluation.

#### Creek Restoration Activities and Protective Measures

25. Energy Northwest plans to conduct surveys and develop protection measures for species that could be affected by lower Lake Creek and Snyder Creek restoration activities prior to any land-disturbing or in-water construction work. Details regarding survey methods and TES species protection measures would be provided in the Lower

Lake Creek and Snyder Creek restoration, enhancement and monitoring plans, which are currently being developed.<sup>17</sup>

26. The project license requires plans for both the lower Lake Creek and Snyder Creek restoration activities within two years of license issuance (by October 2020). Energy Northwest is currently developing these plans.<sup>18</sup> Surveys for TES species that may be affected by the restoration implementation would be conducted prior to any ground disturbing and/or in-water work. Any measures necessary to protect TES species would be developed in advance of any ground disturbing or in-water work in consultation with resource agencies, including development of Water Quality Protection Plans which are a necessary component of the stream restoration plans. The schedule for conducting surveys and commencing restoration activities at these locations will be discussed in detail within the respective restoration plans.

#### Effectiveness Monitoring and Adaptive Management

27. Energy Northwest would oversee and monitor activities relating to the TES Plan, evaluate the effectiveness of existing protective measures, coordinate with the Forest Service and RAC, and maintain an in-house rare plant occurrence database, as well as preparing the annual rare plant management report. New information would be added to the TES Plan annually and it would be reviewed every five years and updated, if needed, in consultation with the agencies.

#### Consultation, Reporting, and Updating the TES Plan

28. Forest Service condition 2 required that Energy Northwest prepare a Resource Coordination Plan (RCP).<sup>19</sup> In pertinent part, the RCP must provide for a rolling three-year annual report/work plan that documents the previous year's activities, describes the current year's activities, and drafts a work plan for the following year's activities (RCP annual report/work plan). NMFS RPM 6 and 9 require annual reports regarding project activities, monitoring results, and effects on listed species; Energy Northwest would include the RPM 6 and 9 annual reports in the RCP annual report/work plan. Washington

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<sup>17</sup> Lower Lake Creek Stream Restoration, Enhancement and Monitoring Plan: Forest Service condition 7 and RPM 2 (Commission approval per condition 7 and Article 401 [RMP 2]); Snyder Creek Restoration, Enhancement and Monitoring Plan: Forest Service condition 10 and RPM 2 (Commission approval per condition 10).

<sup>18</sup> Commission staff approved an extension of time request for the Lake Creek Stream Restoration Plan on June 3, 2020. The new deadline is September 30, 2021.

<sup>19</sup> The RCP was filed for Commission approval on July 16, 2019, and is pending under a separate proceeding.

Ecology's Water Quality Certification for the project requires annual reporting on items pertaining to water quality including tailrace water temperature monitoring, spill reporting, instream flow, and habitat forming flows; Energy Northwest would include reporting items required by Washington Ecology in the RCP annual report/work plan. Water quality has the potential to affect listed species, and all reporting items required by Washington Ecology would be addressed in the RCP annual report/work plan.

29. As part of the RCP annual report/work plan, Energy Northwest would report to the RAC the status of TES species surveying, monitoring, and protection measure effectiveness. The RCP annual report/work plan would also contain information regarding the planned activities pertaining to listed species for the upcoming year and out-year. The RCP annual report/work plan would be provided to the RAC prior to the annual resource coordination meeting, and a second RAC review period would occur after the annual meeting. If updates to the TES Plan are necessary as a result of agency consultation, the license would revise the TES Plan and resubmit it to the resource agencies for comment prior to filing an updated version with the Commission.

#### Rare Plant Management Plan

30. Forest Service condition 12 requires that the TES Plan include the Rare Plant Management Plan, filed with the Commission on June 6, 2008. The first version of the Rare Plant Management Plan was filed in 2008 during project relicensing, and an updated version, including species list updates, was filed in January 2019 following license issuance. As required by the project license measures described in the Rare Plant Management Plan are included in the TES Plan. Since the January 2019 filing of the Rare Plant Management Plan, the Forest Service published an updated Regional Forester's Sensitive Species list, which includes GPNF. As a result, the TES Plan includes the most recent list of GPNF Sensitive Species.

31. The Rare Plant Management Plan would ultimately be a part of, and would be coordinated with, the TES Plan. Lands addressed by the Rare Plant Management Plan include those within the project boundary, or those outside the project boundary influenced by project-related, ground-disturbing activities, or any other activities conducted as a part of project operations or license compliance.

32. NMFS RPM 9 requires that Energy Northwest prepare annual reports to describe protection and monitoring activities in the project area and to document the effects of project activities on listed salmonids in the action area, and term and condition 5 part 2.g of the RPMs requires an annual reports summarizing the results of the tailrace fish barrier biological monitoring and effectiveness evaluations. Energy Northwest proposes to include the reports in its RCP annual report/work plan presented to the RAC in March and filed with the Commission in May.

#### Agency Consultation

33. As required by Article 403, the TES Plan was developed in consultation with the Forest Service, FWS, Washington Ecology, Washington DFW, and NMFS. The TES Plan was provided to the agencies on July 29, 2019. Energy Northwest also consulted with the Cowlitz Indian Tribe and Yakama Nation. NMFS and the Forest Service provided comments on the draft TES Plan.

34. In comments provided on August 30, 2019, NMFS requested that Energy Northwest explain how the TES Plan would meet terms and conditions from the NMFS Biological Opinion and revised RPM 9, since the TES Plan specifically listed the elements needed to ensure compliance with Forest Service condition 12 requirements. Further, NMFS noted that the TES Plan does not detail the contents of the management plans that are referenced throughout and stated that it was unclear how Energy Northwest would ensure the referenced plans would meet the requirements and timelines of the NMFS Biological Opinion and revised RPMs. In order to clarify how the requirements of the RPMs are met by the TES Plan, Energy Northwest provided the dates and status of the relevant management plans for ESA-listed species. Energy Northwest responded that there are a series of natural resource monitoring plans and license articles specifically designed to assess listed species' condition in relation to operations within the project area, and that the plans, in cooperation, represent the collaboratively agreed to mechanism for protecting and monitoring listed species to ensure timelines from the Biological Opinion and RPMs would be met. The relevant management plans were collaboratively developed with NMFS and other agencies during relicensing or upon license issuance, or are still in development and would go through the requisite review process with the RAC members as required by the license and the agency conditions. These plans were reviewed in draft form by the agencies and all comments were considered prior to any finalization and filing with the Commission. Per the RCP, Energy Northwest would convene annual meetings and prepare an annual resource coordination report to document conditions based on data collected the previous year and outline future activities (RCP year annual report/work plan).<sup>20</sup> Energy Northwest states that the resource coordination report would be the primary document utilized for summarizing data collection efforts and plans for upcoming years. NMFS suggested that Energy Northwest revise Table 1 of the TES Plan (species listed under the ESA that may occur in the project area, and management plans that specifically address listed species) to indicate the species and critical habitat findings from NMFS and FWS, rather than from the Commission's July 1, 2009 Environmental Assessment, but Energy Northwest did not make this change in the final plan.

35. In comments provided on August 29, 2019, the Forest Service stated that at least 10 bald eagles were observed at the upper end of the lake, and that bald eagle nesting at

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<sup>20</sup> The RCP indicates that Energy Northwest would hold the future resource coordination meetings annually during the third week of March.

the lake is worth noting even though there are not effects to bald eagles from the project. Nesting bald eagle occurrence and protection measures are included in the TES Plan as well as the Avian Protection Plan.

### **Discussion**

36. The TES Plan details the general methodology to provide PME and monitoring of TES species and their habitats that may be affected by project operation or project-related activities during the duration of the license. Energy Northwest's management of TES species is detailed in a series of individual plans meant to address potential impacts to specific species; the TES Plan references several of these plans.

37. As required by Article 403 and Forest Service condition 12, the TES Plan contains an initial species list and provisions for updating the list, as well as provisions for baseline surveys of currently listed species, preparing biological evaluations in consultation with the Forest Service, monitoring for project effects at confirmed sensitive species sites, designing and implementing PME or restoration measures, follow-up monitoring to measure the effectiveness of protective measures, and annual reporting and consultation. The TES Plan includes measures described in the Rare Plant Management Plan and the most recent list of GPNF Sensitive Species. The TES Plan also includes provisions to conduct surveys and develop species specific protection measures prior to any land-disturbing or in-water construction activities associated with the stream restoration activities along lower Lake Creek and fish passage improvements on Snyder and Hall creeks.

38. Energy Northwest states that the RCP annual report/work plan would be the primary document utilized for summarizing data collection efforts and plans for upcoming years. As part of the RCP annual report/work plan, Energy Northwest would report to the RAC the status of TES species surveying, monitoring, and protection measure effectiveness. Energy Northwest proposes including the reports required by NMFS RPM 9 and term and condition 5 part 2.g of the RPMs in its RCP annual report/work plan presented to the RAC in March and filed with the Commission in May. This approach ensures the licensee would prepare an annual monitoring report for listed fish species and meets the requirements of NMFS RPM 9 and term and condition 5 part 2.g of the RPMs, and is acceptable.

39. The TES Plan describes how the currently developed and enacted management plans would provide protection and monitoring of ESA-listed salmonids in the project area, pursuant to NMFS's RPMs and Article 401(a), and indicates that the restoration and water quality protection plans under development would undergo review by the RAC and require Commission approval, which responds to the NMFS comments on the TES Plan and would ensure continued protection of listed species. Further, the TES Plan provides for reporting within the RCP annual report/work plan, which would describe protection

and monitoring of listed species in the project area to document the effects of the project activities on TES species, and is submitted to the RAC for review and comment.

40. Forest Service condition 12 requires that the TES Plan include a provision to monitor for project effects at confirmed sensitive species sites every two years for six years following license issuance and at three-year intervals thereafter, unless a determination can be made at year six that no additional monitoring is necessary. The TES Plan states that Energy Northwest would monitor confirmed sensitive species every two years for six years following license issuance and at five-year intervals thereafter. The schedule in the TES Plan is consistent with the Rare Plant Management Plan that was filed on June 6, 2008. This discrepancy was not addressed during consultation. Energy Northwest should discuss the monitoring frequency with the appropriate agencies during the next annual resource coordination meeting and clarify the monitoring schedule or request an amendment in the next RCP annual report/work plan, filed with the Commission by May 31, 2021.

41. The licensee did not make the changes NMFS requested to revise Table 1 to indicate the species and critical habitat findings from NMFS and FWS, rather than from the Commission's July 1, 2009 Environmental Assessment. Though the table's references to the relevant species management plan(s), the protections for the species under each plan, and implementation of the TES Plan would remain the same, the table in its current form does not reflect the designation of critical habitat for LCR coho salmon in 2016, and therefore does not reflect the effect determination of "likely to adversely affect critical habitat" in the NMFS' Biological Opinion. Therefore, the licensee should make an administrative update the table to include references to the effects determinations issued by NMFS and FWS for the ESA listed species, and include this update in the next RCP annual report/work plan, filed with the Commission by May 31, 2021.

42. Implementation of the TES Plan, in conjunction with Energy Northwest's other plans that address potential impacts to specific species, would provide protection, mitigation, and enhancement, as well as monitoring, of threatened, endangered, and sensitive species and their habitats that may be affected by project operation or project-related activities over the life of the license. Energy Northwest's TES Plan should be approved.

The Director orders:

(A) Energy Northwest's Threatened, Endangered, and Sensitive Species Management Plan, filed September 12, 2019, pursuant to Article 403 and U.S. Forest Service 4(e) Condition No. 12 of the license for the Packwood Lake Hydroelectric Project No. 2244, as modified by paragraphs (B) and (C) below, is approved.

(B) Energy Northwest's Resource Coordination Plan rolling three-year annual

report/work plan, that is due to the Commission by May 31, 2021, must clarify the monitoring schedule or request an amendment to resolve the discrepancy between Forest Service condition 12 and the Threatened, Endangered, and Sensitive Species Management Plan.

(C) Energy Northwest must update the species effect finding and critical habitat finding for species listed under the Endangered Species Act to reflect the determinations issued by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. This administrative change to the Threatened, Endangered, and Sensitive Species Management Plan must be included in the Resource Coordination Plan rolling three-year annual report/work plan, that is due to the Commission by May 31, 2021.

(D) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2019). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Robert J. Fletcher  
Land Resources Branch  
Division of Hydropower Administration  
and Compliance

Document Content(s)

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