



REEDSPORT WAVE ENERGY PROJECT WATER QUALITY

**March 6, 2007
Oregon Solutions Offices**

In Attendance:

Greg McMurray
Mikel O'Meally
Mike Murphy
Marilyn Fonseca
Paul Szewczykowski
Steve Kopf
Jim Hastreiter.

The purpose of the meeting was to confirm water quality issues, information requirements, and 401 certification process for FERC proceeding

Single Buoy Permitting Process

The group did a quick review of the permitting issues associated with securing the COE 404 permit. The 404 application is all that is needed for 401 and DCLD consistency review. The COE will distribute the application to DLCD and DEQ to initiate their review processes.

Consultation on ESA, EFH and MMPA will be required. COE will be the lead federal agency and will initiate consultation. To expedite the consultation process, a biological assessment (BA) submitted with the 404 application is recommended but not necessary. Once the COE receives the BA, they will distribute to the appropriate regulatory agencies. NOAA and USFWS are willing to review a draft BA for completeness prior to submission. In addition, COE is willing to review a draft 404 application for completeness.

Although this has been discussed and reviewed before, there was additional discussion about whether the single buoy may fall under a nationwide permit. The installation of the buoy far exceeds the small discharge limit of 25 cubic yards. It also does not fit the definition for a test/temporary permit. There is a possibility that it could fall under the nationwide structural discharge permit, but COE cannot determine that without a review of the application.

OPT currently estimates submitting a 404 application in May.

FERC Process

The FERC process will require a 404 application for the 14 buoy array and a very similar DLCD consistency review will be conducted. The Goal 19 checklist is the best summary of the DLCD requirements for consistency. For DEQ, because their requirement is to certify that a federal action is consistent with water quality standards, the broader scope of FERC's action will require additional review in order to provide 401 certification.

DEQ's requirement is to assure that the action does not violate the water quality standards defined in Oregon Administrative Rule 340-041. The standards are both numeric and narrative. Although not all of the numeric standards will apply because they are freshwater specific, the narrative standards will apply.

A specific application to DEQ is required. FERC application is not sufficient. Oregon Administrative rules 340-48-002 describes what needs to be in the application.

DEQ has one year from the time the application is deemed complete to review the application. On some occasions, DEQ has asked an application to withdraw and re-submit in order to achieve the one year timeline.

There is a fee for DEQ staff time associated with the 401 certification. DEQ is an entirely fee based agency and does not receive general funds from the state legislature. If the state permitting process is initiated with Water Resources Department in the lead, the fees associated with that process would cover DEQ fees for 401 certification.

The mention of water resources department prompted some discussion about whether the State permitting process will apply to the 14 buoys or not. The group discussed the current efforts to secure a legislative exemption for projects less than 5 MW, but it was unclear whether it would be required because of the FERC license requirement. Steve and Therese will check into this and get back to the group.

Settlement

The conceptual schedule and elements of settlement were discussed.

Conceptual Schedule:

- Declaration of Cooperation--May
- PAD/NOI--filed by mid-June
- Settlement Discussions--Now through late summer
- Application to FERC--

Key Settlement Elements:

- Agreement to use existing information to support review and analysis of 14 buoy area.
- Agreement on assessment of potential impacts and mitigation actions, if any.
- Agreement on study plans after 14 buoys are installed
- Trigger points for reassessment, renegotiation, and/or removal.

DEQ would need to know what commitment of time/staffing and resolve funding prior to committing to participate in settlement. Oregon DEQ will check into staff availability and participation but they typically bring their attorneys in the process also.

Next Steps

- DTA to review Oregon Administrative Rules on water quality
- Draft 404 application will be provided to COE
- Draft BA will be provided to NOAA Fisheries/USFWS
- Therese/Steve to check on legislative exemption and whether the state Water Resources Department process will apply.

