



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD
ELECTRIC DIVISION, GENERATION ENGINEERING

Rely on us.

TO: Commissioners Farmer, Brown, Cassidy, Cunningham and Ernst
FROM: Cheri Wilson, Associate Engineer
DATE: November 10, 2009
SUBJECT: FERC Boat Landing Design Approval & Environmental Assessment

ISSUE STATEMENT

In late October, EWEB received the Order that the Federal Energy Regulatory Commission (FERC) has approved the boat landing design and completed the Environmental Assessment (EA) for the site. The finding of the FERC EA is in agreement with the biological assessment written in July 2008 by independent consultants.

BACKGROUND

In November of 2006, EWEB submitted a request to FERC to withdraw plans to construct a new boat landing on Leaburg Lake. EWEB's assertion was that the new boat landing was unnecessary because EWEB was planning to raise the water level of Leaburg Lake by just six inches. In March of 2007, FERC denied EWEB's request and in December 2007, issued an order directing EWEB to complete the new boat landing by September 2009. EWEB staff worked diligently to meet that deadline.

On July 10, 2009 EWEB staff was contacted by a representative of FERC who was tasked with performing an Environmental Assessment. When EWEB contacted FERC, they provided the following reasons for the decision to complete the EA: (1) it is an action for development of an undeveloped property; (2) the potential for environmental impacts; (3) the length of time it has taken to secure a site and the amount of public resistance to the location. EWEB reminded FERC that conducting an EA would delay the construction of the boat landing until 2010 thereby causing EWEB to fail to meet the 2009 construction Order.

Under Section 404 of the Clean Water Act, an ACOE permit is required for the discharge of dredged or fill material into waters of the U.S. The ACOE permit approval process requires concurrent consultation with the National Marine Fisheries Service (NMFS). EWEB submitted the 404 permit to the ACOE in September of 2008. Without an ACOE permit, it would be unlawful for EWEB to construct below the ordinary high water level.

On November 13, 2008 EWEB received notice that NMFS did not concur with the ACOE because of the potential take of listed salmonids associated with the proposed projects. Additional information was requested by NMFS and promptly supplied by EWEB.

In 2008 EWEB contracted independent consultants and fisheries experts, R2 Resource Consultants Inc. to conduct a Biological Assessment (BA) of the project. The findings of the BA concluded that the project is not likely to adversely affect listed species. Wetland, riparian zone and in-water construction work expertise was provided by independent consultant Nancy Holzhauser of Environmental Solutions. The combined efforts allowed EWEB to meet the ACOE Nationwide Permit criteria for construction in a water way.

Two archeological surveys have been completed on the Goodpasture site verifying that no prehistoric or historical artifacts, features or sites exist on the property. EWEB contracted Heritage Research Associates to complete two site investigations. An initial survey was completed in February 2008, and the final investigation in April 2009 after invasive plant species removal had taken place.

As a requirement of Article 433 of the FERC License # 2496, the Oregon State Historic Preservation Office (SHPO) was contacted and supplied with an overview of the project, maps, drawings and photographs. EWEB requested an opinion from the SHPO as to any effects the construction of the boat landing may have on the historical significance of Goodpasture Covered Bridge's listing on the National Register of Historic Places. The SHPO issued a response in April, 2009 stating that the construction of the boat landing will not have any adverse effects on the listing of the Goodpasture Covered Bridge. Further, the SHPO had no further requirements or restrictions with the boat landing site.

DISCUSSION

Federal Energy Regulatory Commission (FERC)

On October 30, 2009 EWEB received from FERC an Order Approving Amendment to Recreation Plan for Article 432 and their findings for the Environmental Assessment (EA).

The FERC EA is in agreement with the biological assessment written by independent consultants, R2 Resource Consultants, Inc. in August, 2008. The EA finds the proposal to have no impact on wetlands, and historical and cultural resources, and beneficial impacts on recreation and socioeconomic resources. Further, the boat landing would have temporary, minor adverse impacts on geology and soils, water quality and fisheries resources; and minor short and long term impacts on terrestrial and aesthetic resources.

In addition, the EA concludes that implementation of the proposed boat landing would not constitute a major federal action significantly affecting the quality of the human environment.

While the Order states the application filed on December 24, 2008, and supplemented on January 27 and April 1, 2009 to amend the project recreation plan and construct a boat landing facility on Leaburg Lake are approved, the Order fails to state a completion date for construction.

ODOT – Permit to Construct a State Highway Approach

On September 22, 2009 the *Permit to Construct a State Highway Approach* was issued to EWEB. Construction on the Approach must be completed by September 01, 2010. In the event that the approach will not be completed by the deadline, Oregon Department of Transportation (ODOT) required the applicant to contact them within 45 days of the deadline to apply for an extension. The extension period is granted for a time period no greater than required to complete the approach.

In the permit, EWEB committed to decommission Ike's Boat Ramp to ODOT standards. EWEB also committed to trim brush as needed to maintain minimum sight distances onto the boat landing approach.

Once the approach has been completed, the site must be inspected by ODOT prior to use. Providing the approach is constructed to ODOT specifications, EWEB will be notified in writing and a *Permit to Operate, Maintain and Use an Approach* will be issued. In the event that the approach is not constructed in a satisfactory matter, ODOT will provide written notice of repairs required prior to issuance of the *Permit to Operate, Maintain, and Use an Approach*.

Army Corp of Engineers (ACOE) & the National Marine Fisheries Service (NMFS)

Currently, all permits and approvals have been received for the boat landing with the exception of the Army Corp of Engineers (ACOE) 404 permit. Staff has maintained ongoing contact with the ACOE as to the status of the permit application and supplemental information supplied to NMFS since submission in September 2008. According to the ACOE, NMFS has been waiting for the issuance of the Environmental Assessment to include the alternative analysis in their final review. On November 2, 2009, staff supplied the FERC EA to these Agencies with a summary of the findings.

Issued Permits

To date, the following permits have been issued: The required applications for permit extensions will be submitted.

- Public Restroom Building Permit (BP 09-0387) – Expires Dec. 7, 2009, 180-day extension available online.
- Riparian Setback Declaration (PA 08-6270) – No expiration.
- Floodplain Special Use Permit (PA 08-6316) – Expires Nov. 19, 2010, 1-year renewal available.
- NPDES Stormwater Permit – Expires Nov. 30, 2010, annual renewal allowed.
- Land Use Compatibility Statement for ODOT Road Approach Permit (PA 08-5969 & PA 08-6317) - Minimum of two years (Nov. 7, 2010) or until the provisions of the Rural Residential Zone are changed, whichever is longer. There are no plans to change the provisions of the Rural Residential Zone.

Tree Removal

The tree-cutting season began on October 1st and continues through March 1st. This time period has been used by ODOT and their contractors as a guideline for tree removal to avoid disturbing nesting birds. There are however no applicable county, state or federal restrictions that prevent removing trees at any time that do not have nests, except for those trees within riparian zones or wetland areas. Further, the 86 trees previously marked by OBEC can be removed at anytime so long as nests have been abandoned and can easily be felled in a matter of days prior to construction. Should the ACOE permitting process continue past February 2010, a documented nesting survey will become necessary prior to tree removal.

During the month of November a large Big Leaf Maple at the southwest property line, near the Hatfield residence, will be removed. The tree has been severely pruned on the Hatfield side which has created a nonsymmetrical, unstable canopy. The Hatfield's have voiced concerns regarding the tree at community meetings and have requested its removal on more than one occasion. As a goodwill gesture and because the tree appears to not be healthy and poses a potential safety risk, it will be removed. The tree removal is being combined with other tree removal work near Leaburg Lake.

Staff recommends removing the remainder of trees upon issuance of the ACOE permit.

Grant Funding for Restrooms

Right-of-Way Agent, Ken Wedin was successful in having the grant funding from the Department of Fish and Wildlife held over through June 30, 2011. This \$50,000 grant will go toward the construction of the vault toilets which will be of similar design to the toilets installed at the Leaburg Lake Visitor Shelter.

Boat Landing Design & Construction Oversight

OBEC Consulting Engineers have fulfilled their contractual obligations for the design of the Goodpasture Boat Landing Site. One Change Order was submitted in the amount of \$4,106.55, bringing the total Not to Exceed Amount to \$118,106.55. This brings the contract to 100% of the board approved contract value.

OBEC and EWEB staffs are currently negotiating a personal services contract that will provide oversight during the construction of the project. Oversight will include construction inspection, regulatory compliance, quality control, final closeout and acceptance. The scope will also include assisting staff with the contract documents and specifications during the bidding process and mentoring associate engineering staff throughout the project. This personal services contract is estimated at \$46,011.00.

Next Steps

Based upon the current status of the permitting efforts, it is expected that construction of the boat landing will be completed during the summer of 2010. Engineering and construction documents have been finalized. Once the ACOE permit has been obtained, the Construction Bid Package will be issued and a Request for Contract Approval before the Board in approximately 6-8 weeks thereafter.

BOARD OPTIONS

This memo is provided for Board information only. No Board action is requested.

RECOMMENDATIONS

This memo is provided for Board information only. No Board action is requested.

SUGGESTED MOTIONS

This memo is provided for Board information only. No Board action is requested.

c: Lance Robertson, Public Affairs