

BEFORE THE WATER POLICY REVIEW BOARD
OF THE
STATE OF OREGON

In the Matter of the Referral of)	
Permit Application 61188)	
involving use of water from)	FINDINGS OF FACT,
Clear Branch, Eliot Branch, and)	CONCLUSION AND
Coe Branch for Hydroelectric Power)	ORDER
)	

Middle Fork Irrigation District has submitted Permit Application 61188 for a hydroelectric project exceeding 100 theoretical horsepower.

The permit application was referred to the Water Policy Review Board by the Director of the Water Resources Department under the provisions of ORS 537.170.

A hearing on the matter was held in Parkdale, Oregon, on September 28, 1982. As a result of said hearing, the Water Policy Review Board makes the following:

FINDINGS OF FACT

1. Permit Application 61188 for a hydroelectric project using water from Clear Branch, Eliot Branch and Coe Branch was submitted by the Middle Fork Irrigation District.
2. The proposed project will use up to 40 cfs of water to generate up to 3.25 megawatts of power.
3. The proposed project will produce an average of 22,720,000 kilowatt hours of electricity annually.
4. The district has water rights on Clear Branch and Eliot Branch for irrigation, temperature control, stock watering and fire suppression purposes.
5. The proposed project will use the existing Clear Branch Dam, Eliot Branch diversion, settling ponds and existing pipelines and easements.
6. New penstocks and three new powerhouses will be constructed.
7. The district is revising existing easement agreements to include power generation.
8. Conditional use permits from Hood River County will be required for each of the three powerhouses.

9. Power development is a conditional use of the land use zones affecting the powerhouse sites.
10. The district has been advised by the county to postpone making application for the conditional use permits and an easement across county forest land until after the November, 1982 elections.
11. An agreement will be required for the district to bury a pipeline on a U.S. Forest Service easement on county land.
12. The district has not yet applied for the easement from the U.S. Forest Service.
13. Clear Branch and Eliot Branch join to form the Middle Fork Hood River about four miles south and west of Parkdale.
14. The Middle Fork Hood River and Clear Branch below Clear Branch Dam support populations of resident trout and steelhead.
15. The district has agreements with the Department of Fish and Wildlife for the maintenance of fishery flows in Clear Branch below the dam and fish protection measures at the district's diversion points.
16. The project is estimated to cost \$4.7 million.
17. The district has a commitment from the Department of Energy to finance the project under the Small Energy Loan Program.
18. The district proposes to sell the power to Pacific Power and Light Company.
19. The district has evidence of a preliminary agreement with PP&L to purchase the power at an initial price of 56 mills per kilowatt hour.
20. The district and PP&L have not reached a final agreement.
21. Farming is the principal economic activity and land use in the project area.
22. Opportunities for public recreation in the project area are limited.
23. Laurance Lake, behind Clear Branch Dam offers a recreational fishery.
24. The Department of Fish and Wildlife regularly stocks Laurance Lake with fish.
25. The proposed project is expected to have minimal impacts on recreation.
26. There are no streamflow records available for the project's source streams.

27. Streamflow estimates made through hydrologic analysis indicate sufficient flow for the districts existing functions as well as the fishery flows and the proposed hydroelectric project.
28. The district has water rights for irrigation in excess of the amount needed for power generation.
29. The proposed project will operate in conjunction with the irrigation function of the district.
30. Irrigation requirements will reduce the amount of water available for power generation at the second and third powerhouses during the irrigation season.
31. Pipelines and penstocks for the proposed project will be buried.
32. The potential for damage to the project from flooding or slides is expected to be minimal.
33. There are no known water rights in the project area which will affect or be affected by the proposed project.
34. The district also proposes to divert water from Coe Branch for the proposed project, if necessary.
35. The district has diverted water from Coe Branch for irrigation in the past.
36. The district does not currently use water from Coe Branch because the diversion works have been destroyed.
37. Use of water from Coe Branch is included in the district's agreement with the Department of Fish and Wildlife.

OFFICIAL NOTICE

The Water Policy Review Board has taken official notice of the records of the Water Resources Department pertaining to the water use permits on Clear Branch, Eliot Branch and Coe Branch in the project vicinity.

ULTIMATE FINDINGS

ORS 537.170 3a through 3g directs the Water Policy Review Board in its determination of impacts on the public interest from hydroelectric projects.

1. The project proposed in application 61188 will contribute to more efficient use of the Middle Fork Irrigation District's facilities and will promote a broader base of water use in purpose and in time. During the growing season, the proposed project will operate in conjunction with the irrigation, stock watering, fire suppression and other functions of the district and will extend the use through the winter non-irrigation

season. The proposed project will utilize many of the district's existing facilities. The proposed use is non-consumptive and will not in any apparent way adversely affect other beneficial uses of water.

2. The proposed project promotes the integrated, coordinated use of the water involved and represents a higher economic development of the water than now exist.
3. The proposed project is expected to afford the district a more efficient use of its water system and a greater degree of control of the water than presently exists. Water conveyance for the proposed project will be via a buried pipeline valved for irrigation withdrawals. The project will not adversely affect the control of the water for other beneficial purposes above or below the project area and will have no apparent adverse impacts on drainage, sanitation or flood control.
4. There are no streamflow records available for Clear, Eliot or Coe Branches. Streamflow estimates indicate sufficient water for the proposed project. The district has irrigation water rights in excess of the amount to be used for electrical generation. There are no known water rights or diversions upstream from the district's diversions.
5. There is no evidence that the proposed project represents a wasteful, uneconomic, impracticable or unreasonable use of water.
6. There are no known vested or inchoate water rights in the vicinity of the district's diversions. There is no evidence that the proposed project will affect or be affected by any vested or inchoate water rights in the Hood River Basin.
7. Power development is classified as a beneficial use in the Water Resources Program for the Hood River Basin. No special restriction or limitations on hydroelectric development apply to Clear, Eliot or Coe Branches in the proposed project area.

CONCLUSION

Application 61188 proposes a hydroelectric project on upstream tributaries of the Middle Fork Hood River. The project will utilize, in part, existing facilities and will operate in conjunction with the Middle Fork Irrigation District's existing functions. The proposed use of public and private lands by the project, is not adverse to other existing public or private land uses. The district has agreed to protection measures for fish life. The applicant has shown evidence of financing for the project, a market for the power and sufficient water for the proposed use. The proposed project does not appear to impair or be detrimental to the public interest.

ORDER

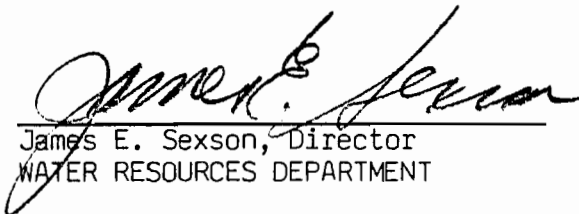
It is hereby ordered that Permit Application 61188 for a hydroelectric project using water from Clear, Eliot and Coe Branches be and hereby is approved and subjected to the following conditions:

1. The agreement between the Middle Fork Irrigation District and the Department of Fish and Wildlife for fish protection dated May 24, 1982, be attached and made a part of this Order.
2. Prior to the issuance of the permit, the district shall provide evidence to the Water Resources Department that necessary easements and conditional use permits have or can be obtained.

It is further ordered that the application be returned to the Director of the Water Resources Department for such further proceedings as may be required by statute.

Dated December 17, 1982

WATER POLICY REVIEW BOARD



James E. Sexson, Director
WATER RESOURCES DEPARTMENT

APPEALS AND JUDICIAL REVIEW

ORS 536.560 provides any order, rule or regulation of the Water Policy Review Board may be appealed to the circuit court of the county in which the property affected by such order, rule or regulation or any part of such property is situated.

ORS 183.482(1) provides that judicial review of contested cases is conferred upon the Court of Appeals. Judicial review may be obtained by filling out a petition for review within 60 days from the service of this order. Judicial review is pursuant to the provisions of ORS 183.482. Until this conflict is judicially resolved, and an appeal is desired, it may be advisable to commence appeal or review procedures in the circuit court and Court of Appeals simultaneously.

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