



City of Seattle

Gregory J. Nickels, Mayor

Seattle City Light

Jorge Carrasco, Superintendent

VIA ELECTRONIC FILING

June 10, 2008

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington D.C. 20426

RE: Boundary Project (FERC No. 2144) Response to Comments on the Initial Study Report Meeting Summary

Dear Secretary Bose:

The City of Seattle, Seattle City Light Department (SCL) herein files its response to comments on the summary of the Initial Study Report (ISR) meeting of March 26-27, 2008 pursuant to 18 C.F.R. § 5.15(c)(5) for the Boundary Hydroelectric Project (FERC No. 2144) (the "Project").

SCL filed with the Federal Energy Regulatory Commission (FERC) its ISR on March 14, 2008. As required by 18 CFR § 5.15(c)(2), SCL held a formal meeting with FERC Staff, agencies, tribes and other relicensing participants on March 26 and 27, 2008 to discuss the 2007 study results and, if any, proposed modifications of the licensee or other participants to the February 14, 2007 Revised Study Plan (RSP) for 2008 study efforts. A meeting summary was filed April 11, 2008. 18 CFR § 5.15(c)(3) provides for interested parties to file comments on the meeting summary, including any modifications to ongoing studies or new studies proposed by the licensee, within 15 days after the ISR meeting summary is filed. Three (3) relicensing participants filed written comments on the ISR meeting summary; the Selkirk Conservation Alliance (April 23, 2008), U.S. Forest Service (May 5, 2008) and the Washington Department of Ecology (May 9, 2008).

The attached matrix summarizes the comments filed by relicensing participants and SCL's response to each. There were many indications of concurrence in the letters that are not reflected in the attached matrix. SCL chose to respond to the substantive comments only.



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Kimberly D. Bose
June 10, 2008

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Please contact me at 206-615-1091, 700 5th Ave Suite 3200, PO Box 34023, Seattle WA 98124-4023, Barbara.Greene@Seattle.Gov, should you have any questions about this filing. Thank you for your consideration of these responses to ISR comments.

Sincerely,



Barbara Greene
Manager, Boundary Relicensing Project

Enclosures

cc: Distribution list (see attached).



Summary of relicensing participant comments on the Boundary Project Initial Study Report (filed March 14, 2008) and Seattle City Light’s (SCL) responses

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
Geology and Soils				
Study requests				
			None	
Study No. 1 – Erosion Study				
1	USFS 05-05-08 letter	Section 4.2	The Forest Service is concerned about the numbering scheme for inventoried erosion sites because each erosion location does not have a unique identifier. The Forest Service is concerned that now or in the future it may be important to know exactly which part of a particular site is being worked on/described. Photos were not taken of each individual site where the inventory number represents multiple sites. Individual data sheets were not completed for each site, only on the composite list. The data tables in Appendix 2 do not differentiate between single and multiple location erosion sites. This makes the discussion of number of sites vs. length of shoreline confusing. The Forest Service, SCL and other stakeholders met again (March 24, 2008 via conference call) to discuss this issue. SCL agreed to give each site a unique identifier – and also to consider giving each site a unique east/west and river mile designation. These sites would be displayed on a map and would tie into the erosion table.	SCL has agreed to re-number the sites on the map. When a site includes multiple segments, each will be given a unique identifier that includes the East-West designation. A sample of the revised map (1–2 pages) showing the proposed numbering scheme will be provided to relicensing participants for review prior to the July 21-25, 2008 erosion field visit.
2	USFS 05-05-08 letter	Section 4.3	Erosion rates were estimated using a variety of procedures – aerial photo comparison, profiles, and LiDAR. We reviewed the profiles provided, and the work looked fine. We are surprised that site #47 was not measured. A portion of an old unauthorized road was lost due to a landslide along the river. Based on the remaining road alignment, we estimate that 20-50 feet were lost at this location. The old road gives some idea of the extent of land lost. There may be other similar areas along the shoreline where old roads were lost due to sliding. These areas need a closer review.	SCL will review site #47 and provide an update in the Updated Study Report (USR). Concerning “other similar areas along the shoreline where old roads were lost due to sliding,” SCL will pay special attention to the potential for existence of such sites during the July 21-25, 2008 site visit.

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
3	USFS 05-05-08 letter	Section 4.6	The ISR indicates the ‘values at risk’ analysis is very preliminary, and data needs to be integrated with other resources. The Forest Service requests the opportunity to review the resources and values considered for this analysis prior to completion. The Forest Service commented during the WebEx meeting that any erosion to National Forest System (NFS) lands are of concern. The key point is that the Forest Service would like all erosion sites identified on NFS lands so that the Forest Service can conduct its independent analysis of potential project affects.	<p>The tables in the Erosion Study ISR, Appendices 2 and 4, contain a list of all erosion sites identified during the study and list the characteristics of each site, as well as the landowner for each site. These tables identify all erosion sites inventoried on NFS lands.</p> <p>The list of erosion sites potentially affecting high value resources identified in the ISR was based on a map analysis of erosion sites and high value resource sites. During the July 21-25 site reconnaissance, we will be visiting each of the erosion sites identified as potentially affecting high value resources to determine if resources are being affected by erosion at each site, and subsequently, if a feasibility assessment of potential stabilization or erosion control measures is needed at each site. Those participants in the site visit will be making determinations as it progresses along the reservoir as to which sites will be added to the final list (i.e., the list of sites that will undergo a feasibility analysis).</p> <p>The USFS is aware of the planned July 21-25 reconnaissance and had indicated its intention to participate.</p>
4	USFS 05-05-08 letter	Section 4.6	Known mass wasting sites, documented in the Boundary Dam Relicensing Information Library, which affect study roads need to be evaluated and reported on in the Erosion Study Report. Document numbers 40, 242, 243 and 244 are examples of documentation with information on known mass wasting sites. As an example, the mass wasting area on the West Side Access Road upstream of Boundary Dam was monitored and evaluated in the Erosion Study Interim Report. The mass wasting area which impacted the West Side Access Road downstream of Boundary Dam, and the mass wasting area which impacted the Boundary Dam/Crescent Lake Road were not evaluated in this report.	The mass wasting area on the West Side Access Road downstream of Boundary Dam was included in the Erosion Study ISR (labeled HC6). The mass wasting area on the Boundary Dam/Crescent Lake Road will be added to the map and discussion in the USR.
5	USFS 05-05-08 letter	Section 5.2.2.3	It appears that most of the roads on BLM lands have Forest Service numbers. Confirm if the identification of road numbers is correct.	Road numbers were acquired from various sources and it is possible that some of them are incorrect. SCL will contact the BLM to confirm the correct road numbers for roads on their property; any updated information will be provided in the USR.
6	USFS 05-05-08 letter	Section 5.2.2.4	The Forest Service requests a copy of the map showing the location of the wind gages.	The map showing wind gage locations will be provided in the USR.

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7	USFS 05-05-08 letter	Section 5.2.2.4	The Forest Service would appreciate a fuller discussion of the fluctuation zone. A chart, graph or graphic showing the maximum, average and median reservoir elevation levels would be most useful.	<p>The range of Boundary Reservoir water surface elevation fluctuations varies with location along the 17 mile length of Boundary Reservoir. In general, the forebay area experiences the largest fluctuations under Project operations, and the area just downstream of Box Canyon Dam experiences the smallest fluctuations. This difference in water surface elevation fluctuations in response to upstream inflows and/or Project operations is primarily the result of Metaline Falls acting as a hydraulic control as described in the report titled “Compilation of Project Hydrologic Data,” prepared for SCL by R2 Resource Consultants, Inc., dated March 2008. (The report was temporarily posted to SCL’s ftp site from March 21 to April 4, 2008 but is now available upon request.)</p> <p>Because of the hydraulic complexities in the reservoir, a single elevation describing the upper limit and a second elevation describing the lower limit of the fluctuation zone for the entire 17-mile reservoir is not appropriate. A definition of the fluctuation zone throughout the study area requires application of the Hydraulic Routing Model (HRM) to define the zone’s upper and lower limits. SCL will provide a refinement of the discussion on the fluctuation zone and define its limits along the study area in the USR based on results of application of the HRM. Application of the HRM to support Study 1 and other studies will be ongoing throughout the summer of 2008 and model results relevant to the fluctuation zone will be provided in the USRs, as appropriate.</p>
8	USFS 05-05-08 letter	Figure 5.2-3	In a few places the underlying material was identified as “Fill” when it is “Till”. See map 1 on the east side of the reservoir in the lower third of the page; and map 3, west side, halfway down the page.	SCL appreciates the USFS’s thorough review of the maps. The label “Fill” on Map 1 refers to the road fill that was mapped at the reservoir edge at site 52. There is a line from the Fill label pointing to that small geologic unit which may not be clear on all copies. The label will be moved within the map unit in the USR. The correct identifier for the site on map 3 is ML (Metaline Limestone). This correction will be made in the USR.
9	USFS 05-05-08 letter	Figure 5.2-1	It would be useful to compare the geologic setting of the erosion sites with the percentage of the shoreline in each geologic type. This would elucidate which geologies are more problematic.	SCL agrees and will include this information in the USR.
Study No. 2 – Analysis of Peak Flood Flow Conditions above Metaline Falls				
			None	
Study No. 3 – Evaluation of Total Dissolved Gas and Potential Abatement Measures				
			None	

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
Study No. 4 –Toxics Assessment: Evaluation of Contaminant Pathways, Potential Project Nexus				
			None	
Study No. 5 – Water Quality Constituent and Productivity Monitoring				
			None	
Study No. 6 – Evaluation of the Relationship of pH and DO to Macrophytes in Boundary Reservoir				
			None	
Fish and Aquatic Resources				
Study requests				
			None	
Study No. 7 – Mainstem Aquatic Habitat Modeling Study				
			None	
Study No. 8 – Sediment Transport and Boundary Reservoir Tributary Delta Habitats				
10	Selkirk Conservation Alliance 04-23-08 letter	Study 8.1	It is recommended that SCL model the probable temperature increase within the reservoir over the last 50 years and how that increase has interacted with tributary temperature profiles from the reservoir/tributary interface and upstream. The question to be addressed is whether and to what degree warmer reservoir waters have caused increasing temperature up tributaries, thus reducing cold-water refugia for native salmonids.	<p>SCL’s RSP should not be altered based on this comment for the following four reasons:</p> <p>1) If this comment is viewed as a request for study modification, SCA has not provided justification for study modifications required by 18 C.F.R. § 5.15(d) that Study 8 was not conducted as provided in the approved study plan, or that Study 8 was conducted under anomalous environmental conditions or that environmental conditions have changed.</p> <p>2) If this comment is viewed as a request for a new study, Study 8 requires an assessment of temperatures along the bed of the thalweg of selected tributaries to determine the effects of future reservoir fluctuations on temperatures at tributary deltas. <i>See SCL’s Feb. 2007 Revised Study Plan, Study No. 8, at p. 8.</i> The methodology to model the thermal interaction at the interface between the tributary deltas and Boundary Reservoir is based on data collected in August 2007 and to be collected in July, August and September of 2008. Therefore, the procedure cannot address the possible influence of temperature changes that may have occurred over the longer 50 year period referenced in the comment since the supporting data are not available. As a result, SCA’s recommendation must be considered a proposal for a new study that is not supported by any of the justifications for new studies required by 18 C.F.R. § 5.15(e). In addition, SCA’s April 2008 Comments do not identify any statutory or regulatory development or change in the project proposal to justify the new study request, and do not provide justification for why the new study request was not made</p>

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
				<p>in SCA’s February 27, 2007 Comments on the Revised Study Plan for the Boundary Dam Project.</p> <p>3) SCA must demonstrate the “nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements.” 18 C.F.R. § 5.9(b)(5). Any influences from long term temperature changes in Boundary Reservoir would be limited to the tributary delta interface. The temperature changes from the reservoir cannot travel upstream into the tributaries because the flow velocities in the tributaries are much higher than the rate at which heat transfer occurs. That is not to say that temperature changes have not occurred in the tributaries upstream of the reservoir, but if changes have occurred, the changes would be due to the changes in air temperature and solar radiation and not the influence of changes in Boundary Reservoir water temperatures.</p> <p>4) SCA’s request for modeling of the “probable temperature increase within the reservoir over the last 50 years and how that increase has interacted with tributary temperature profiles from the reservoir/tributary interface and upstream” is a divergence from FERC’s policy of “describing the existing (baseline) project-related environment and assessing the benefit and adverse effects that the proposed project and its operation would have on these resources” <i>Handbook for Hydroelectric Project Licensing</i>, Federal Energy Regulatory Commission, April 2004, at 2-10 (emphasis added). Study 8, the tributary delta sediment processes study, is a forward-looking study designed to “estimate whether the morphology of each delta is expected to change over the next 50 years (potential term of a new license) and whether any expected changes are expected to depend on various operational scenarios.” See SCL’s Feb. 2007 Revised Study Plan, Study No. 8, at p. 17. SCL’s Study 8 establishes the existing project-related environment and then considers the impact of proposed project operation scenarios under the new license on delta habitats. Although “[p]ast or ongoing environmental effects may be relevant in determining what measures may be needed for environmental protection, mitigation, and enhancement over the term of the new license,” (<i>City of Tacoma</i>, 107 FERC ¶ 61,288 at 62,095 (June 21, 2004)), SCA does not provide justification for consideration of the impact of historic reservoir temperatures on tributary temperatures.</p>
Study No. 9 – Fish Distribution, Timing, and Abundance Study				
			None	

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
Study No. 10 – Large Woody Debris Management Study				
			None	
Study No. 11 – Productivity Assessment				
			None	
Study No. 12 – Fish Entrainment and Habitat Connectivity Study				
			None	
Study No. 13 – Recreational Fishery Study (and Study No. 9 – Fish Distribution, Timing, and Abundance Study)				
11	Selkirk Conservation Alliance 04-23-08 letter		A missing goal from one or both of these studies [9 or 13] is the effect of recreational fisheries on the abundance and viability of native salmonids, i.e. the predation by recreational fish on bull trout, cutthroat and mountain whitefish. It is recommended that this goal be instituted even at this late date in the 2-year study window.	<p>The information already collected by SCL during the ILP and SCL’s on-going studies will provide SCA the information it seeks. Study 9 collects data on how, when and where recreational and native fisheries use the Project in order to determine how proposed project operations will impact the distribution and abundance of these fisheries. <i>RSP, Study No. 9, at pp. 1-2.</i> Study 13 focuses on post-stocking distribution of triploid trout, harvest level, and potential habitat overlaps between triploid trout and native salmonids. <i>RSP, Study No. 13, at p. 1.</i> Nothing in Study 9 or 13 involves consideration of predation by recreational fisheries on native fisheries.</p> <p>By proposing an additional study goal, SCA is making a request for study modification, but does not provide any justification for study modifications required by 18 C.F.R. § 5.15(d) (study not conducted as per plan or conducted under anomalous environmental conditions; or environmental conditions changed).</p> <p>If SCA’s comment is viewed as a request for a new study, this request is not supported by the requirements of 18 C.F.R. § 5.15(e) (statutory or regulatory development or change in the project proposal; why study request was not made earlier).</p>
Study No. 14 – Assessment of Factors Affecting Aquatic Productivity in Tributary Habitats				
			None	
Botanical and Wildlife Resources				
Study requests				
			None	

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
Study No. 15– Waterfowl/Waterbird Study				
12	Selkirk Conservation Alliance 04-23-08 letter	--	It is impossible to determine the impact piscivorous waterbirds and waterfowl have on native salmonids from this study. This study needs to determine the nesting sites for at least the more numerically significant piscivorous waterbirds, e.g. common mergansers, and make a reliable determination as to predation rates on native salmonids.	<p>Study 15 was not designed to determine the impact piscivorous waterbirds and waterfowl have on native salmonids. Study 15 considers whether Project operations eliminate habitat for some ground-nesting bird species and collects data on the number of piscivorous waterbirds in the project area that may prey on native salmonids. <i>RSP, Study No. 15, at p. 1.</i> Although Study 15 notes the impact that piscivorous waterbirds may have on native salmonids, the study will provide baseline data on the size of the bird population, not on their predation rates. SCL believes that the objectives of the FERC-approved study plan for Study 15 will be met pursuant to the methodologies described in the RSP and the ISR.</p> <p>If comment is viewed as a request for study modification, the comment is not supported as required by 18 C.F.R. § 5.15(d) (study not conducted as per plan or conducted under anomalous environmental conditions; or environmental conditions changed).</p> <p>If comment is viewed as a request for a new study, the request is not supported as required by 18 C.F.R. § 5.15(e) (statutory or regulatory development or change in the project proposal; why study request was not made earlier).</p>
13	USFS 05-05-08 letter	--	During the WebEx meeting of March 4, 2008, SCL proposed three modifications to the Waterfowl/Waterbird study for 2008. These included: 1) Efforts to determine breeding duck use in the study area in 2008 will concentrate on locating broods and identifying brooding habitat and will not focus on nest searches. (However, nest searches for geese will continue in 2008.) 2) Riparian shrub, upland shrub, upland grass habitats and wetlands (with an overhead cover component) will be considered suitable existing ground-nesting habitat for mallards. Conifer forest and wetlands with dense reed canary grass stands will not be considered duck nesting habitat. 3) The above assumptions regarding suitable nesting habitat will also be used in estimating the potential nesting habitat that could develop if the Boundary Project were operated at a lower level (Task 2). The Forest Service recommends that the study conclusions reflect these changes and provides an explanation of the data used to reach conclusions.	SCL will describe the study modifications that were agreed to and will provide an explanation of all data used to support any conclusions in the USR.

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
Study No. 16– Inventory of Riparian Trees and Shrubs				
14	USFS 05-05-08 letter	--	Task 3: Mapping of Potential Riparian Tree and Shrub Habitat [of the RSP states that] the bathymetry data and hydraulic routing model would be used to develop the potential riparian tree and shrub habitat in the fluctuation zone. The Forest Service requests SCL provide a more detailed explanation of how the bathymetry data and hydraulic routing model would be used. During the WebEx meeting March 4, 2008, SCL stated that once the analysis methods are further developed, they will be shared with relicensing participants.	SCL will share information with relicensing participants in June 2008 that will include detail on how the bathymetry data and the hydraulic routing model will be used for Task 3.
Study No. 17– Rare, Threatened, and Endangered (RTE) Plant Species Inventory				
15	USFS 05-05-08 letter	Section 4.3	The Forest Service recommends, so that future surveyors will have adequate detail from the 2007 surveys to determine population trends and on-going project effects, that for small plant populations the dimensional area and number of individuals in a subpopulation be recorded and for plant populations spanning large areas, the dimensional area of a subpopulation be recorded.	Table A.2-1 in Appendix 2 of the Study 17 ISR indicates the size of each of the polygons in acres. SCL will provide all polygon layers to the USFS; dimensional area for larger populations and dimensional area and number of individual plants in for subpopulations will be provided separately in the USR.
16	USFS 05-05-08 letter	Section 4.3	The Forest Service sighting form for <i>Astragalus microcystis</i> C is an example of the subpopulation information that the Forest Service would like recorded. Information in field 90 (General EO Comments) includes a breakdown by polygon (subpopulation) of Township Range and Section, dimensions, number of plants, and river mile. Would SCL provide this information for the populations on NFS lands? SCL most likely has the number of individuals and dimensional areas in the field notebook. Included is a spreadsheet (Attachment 1) showing populations and polygons/subpopulations on NFS lands. The Forest Service would appreciate the above information for them. Please note that <i>Carex flava</i> is not included on the spreadsheet, as it does not meet the 2007 criteria of Forest Service sensitive species. Since <i>Muhlenbergia mexicana</i> var. <i>mexicana</i> is not on the Regional Sensitive Species List yet, the Forest Service is not requesting more information for these species.	Appendix 4 of the Study 17 ISR displays each of the sighting forms referenced here and does provide by polygon, the location in TRS, number of plants, and river mile location. Appendix 5 displays the maps associated with all populations/subpopulations which includes the polygon locations and associated river mile. For the USR, SCL will add an ownership column to Appendix 2, Table A.2-1 which will allow this information to be sorted by ownership.

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17	USFS 05-05-08 letter	--	Rich Dwerlkotte's (EDAW) surveys in 2005 resulted in a new location of <i>Cicuta bulbifera</i> (CIBU-2) in the study area, but not in the 2007 project area. Its location on Figure 4.6-3 of the PAD indicates that it is on NFS lands. Please provide the Forest Service a sighting form.	SCL will review its records to determine the data (if any) that were collected at this site in 2005 and will provide such information to the USFS. If the site is outside of the study area for the 2007 study, then SCL did not survey the site in 2007 and will not be able to provide a detailed sighting form.
18	USFS 05-05-08 letter	--	In the WebEx conference March 4, 2008, the Forest Service also requested photos of the sites which the Forest Service will attach to the sighting forms.	The USFS botanist was contacted and informed that SCL's contractor will be in contact early the week of June 9 to make arrangements to transmit the photos taken during the RTE plant surveys (phone message from Michele Lynn [SCL] to Kathy Ahlenslager [USFS], June 5, 2008).
19	USFS 05-05-08 letter	--	Confirm whether all sighting forms submitted to the Washington Natural Heritage Program.	All sighting forms will be submitted to the WNHP after the USR has been finalized.
20	USFS 05-05-08 letter	Appendix 2	For tracking and communication purposes it would be worthwhile if Table A.2-1 included columns showing ownership and element occurrence number.	This will be done and included in the USR.
21	USFS 05-05-08 letter	Appendix 2	<i>Astragalus microcystis</i> -9: Table A.2-1 shows that it is out of the study area and it is not on Forest Service maps. Is it on NFS lands?	Ownership of the site will be investigated and the results presented in the USR. If additional field verification is needed, it will be conducted this summer.
22	USFS 05-05-08 letter	Appendix 2	<i>Dryas drummondii</i> -30: Although this site is out of the study area, the information on Table A.2-1 indicates that a visit was made to the site in 2007. Is SCL planning to complete a sighting form to document the rare plant site on NFS lands?	This location is outside the agreed upon 2007 study area. Sighting forms were not filled out for locations outside the study area.
23	USFS 05-05-08 letter	Appendix 3	<i>Thalictrum dasycarpum</i> B: The Forest Service thinks that THDA-35 is on NFS lands. Please provide a sighting form.	Ownership of the site will be investigated and any clarification will be presented in the USR. If additional field verification is needed, it will be conducted this summer.
24	USFS 05-05-08 letter	Appendix 3	<i>Astragalus microcystis</i> -1: This site is not on NFS lands and was not relocated in 2007. The negative sighting is valuable information to pass on to the Washington Natural Heritage Program in a sighting form.	Ownership of the site will be investigated and any clarification will be presented in the USR. Further, information on the site will be provided to the WNHP.

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
25	USFS 05-05-08 letter	Appendix 4	<i>Astragalus microcystis</i> -2: This population was not relocated in 2007. In clarifying the location of Monument Bar, the Forest Service found that it is submerged in T40 R43 S26 about one-fifth of the way south from the north side of section 26. The site is shown on Figure A.5-1.	This issue will be investigated and the resolution will be presented in the USR.
26	USFS 05-05-08 letter	Appendix 4	<i>Crystogramma stelleri</i> -4: The sighting form shows three subpopulations, but there are only three clumps of plants. Should this be a population with no subpopulations?	This site will be investigated and the resolution will be presented in the USR.
27	USFS 05-05-08 letter	Appendix 4	<i>Dryas drummondii</i> A: The Forest Service thinks that polygons 13 and 24A are on NFS lands. Please provide sighting forms for these sightings.	Ownership of the site will be investigated and the resolution will be presented in the USR.
28	USFS 05-05-08 letter	Appendix 4	<i>Dryas drummondii</i> B: DRDR-15 is not on NFS lands, but DRDR-15A is.	Ownership of the site will be investigated and the resolution will be presented in the USR.
29	USFS 05-05-08 letter	Appendix 4	<i>Sanicula marilandica</i> -01: Study 17 ISR shows it as “Z Canyon” on NFS lands and Figure 4.6-3 in the Preliminary Application Document (PAD) identifies it as EO#004. Because the Forest Service did not have a record of this element occurrence, we requested one from the Washington Natural Heritage Program, which includes: “sandy river banks in mist shaded areas, 1800 ft. elevation, north of Boundary Dam, Earle Laysen observed June 26, 1970, T40 R43 S3.” This information indicates that SAMA-01 is a new sighting and EO#004 may refer to one of the three <i>Sanicula</i> sightings on SCL land in T40 R43 S3.	This site will be investigated and the resolution will be presented in the USR.
30	USFS 05-05-08 letter	Appendix 5	With regards to GIS mapping, what is the scale of the map on Figure A.5-1?	The map scale is 1:12,000.

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
Study No. 18– Rare, Threatened, and Endangered (RTE) Wildlife Species Study				
31	USFS 05-05-08 letter	--	During the WebEx meeting of March 4, 2008 and the follow-up conference call of March 24, 2008, SCL suggested that mapping potential habitat for the RTE species (RSP Task 2, Page 13) except amphibians may not illustrate any useful information (i.e., most species that were not occurring have potential habitat throughout the project area) or “value added” beyond the species point data collected so far. The Forest Service agrees with and supports the modification of the study methodology to eliminate RSP Task 2 for avian and mammalian species, however, the Forest Service recommends describing the rationale for mapping potential habitat maps for amphibians and not birds and mammals in the final study report.	SCL agrees to provide the rationale for mapping potential habitat for amphibians but not for birds and mammals in the USR.
32	USFS 05-05-08 letter	--	The Forest Service agrees with and supports the modification to study methodology RSP Task 3(b) to not conduct bald eagle surveys in winter 2008-2009 however, the Forest Service recommends that the study conclusions reflect this change, providing an explanation of the data used to reach the conclusion.	SCL agrees to describe the study modifications that were agreed to regarding Task 3(b) and will provide an explanation of all data used to support any conclusions in the USR.
Study No. 19– Big Game Study				
33	USFS 05-05-08 letter	Section 4.3	The Forest Service agrees with and supports SCL’s proposed methodology for assessing the relative composition of habitat use by three big game groups (deer, elk, moose) in the study area. The Forest Service recommends that the study conclusions reflect this change, providing an explanation of the data used to reach the conclusion.	SCL will describe the study modifications that were agreed to regarding relative composition of habitat use by deer, elk and moose in the study area and will provide an explanation of all data used to support any conclusions in the USR.
34	USFS 05-05-08 letter	Section 4.3	The Forest Service agrees with and supports SCL’s proposal to eliminate ocular surveys in winter 2008-2009. Big game density and habitat use data will be further collected via interviews and the modified pellet group counts. The Forest Service recommends that the study conclusions reflect these changes, providing an explanation of the data used to reach conclusions.	SCL will describe the study modifications that were agreed to regarding winter ocular surveys for big game and will provide an explanation of all data used to support any conclusions in the USR.

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
35	USFS 05-05-08 letter	Section 4.4	The Forest Service requests additional road density analysis in the final study report.	SCL believes that this issue was addressed satisfactorily during the March 24 Terrestrial Workgroup conference call, as reflected in the following excerpt from the summary for that call: “Michele Lynn (SCL) noted that Mike Gerdes made a request for additional road density analysis in the final report. He noted that currently, the road density of the secondary study area is reported, and that it encompasses the primary study area. Mike requested that densities in the primary study area be reported separately as well. Michele stated that SCL does not want to skew results because the boundary areas are defined by roads. She noted that this issue may need to be discussed further with the workgroup to ensure that the information is presented in a useful manner and reflects the conditions in the broader landscape. SCL will follow-up with the workgroup as needed.”)
Study No. 20– Bat Surveys and Habitat Inventory				
			None	
Recreation and Land Use				
Study requests				
			None	
Study No. 21– Recreation Resource Study				
36	USFS 05-05-08 letter	Section 5.3.1.1.4	The use of off-highway vehicles (OHV) in the vicinity of Forest Road No. 3310 is of specific interest. There could be increased OHV use of the area due to the recent Pend Oreille County Ordinance allowing OHV use on designated County roads. The Forest Service suggests that SCL consider inviting County planners to the focus group meetings.	As indicated in the March 3 RLAS WebEx meeting, SCL appreciates this information and will follow up concerning the recent ordinance changes. A Pend Oreille County planning representative who has been involved in the ORV work and two County Commissioners attended the focus group meetings in May and spoke about the County ORV ordinance. SCL will follow up with these sources to obtain additional information as needed. Our understanding from the March 3 discussion was that the USFS also had some additional information about OHV use in the vicinity of Road 3310, and we look forward to reviewing this information.
37	USFS 05-05-08 letter	Section 6.2	The basis for rating the site impacts as high, moderate, or low should be clarified here or as part of Appendix 5b.	SCL agrees to clarify how the site impact ratings should be interpreted in the USR. Since no pre-specified quantitative measures were defined to determine these ratings, they represent the perspective of the researchers.
38	USFS 05-05-08 letter	Section 6.2	The lack of available public parking is also an issue for those wishing to access dispersed recreation sites within the project.	SCL agrees and will note the point about available public parking for access to dispersed recreation sites within the project in the USR.

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
39	USFS 05-05-08 letter	Section 6.2	The short trail from the Vista House to the lower overlook deck noted on page 134 should also be mentioned here.	SCL agrees and will note the trail from the Vista House in the USR.
Study No. 22– Land and Roads Study				
40	USFS 05-05-08 letter	Section 5.1.1; Figure 5.1-1	SCL should clearly explain and document the assumptions/criteria used in defining the pre-project line of ordinary high water, present full pool elevation level, and extent of landownership (NFS). What was the basis for using a river flow of 78,700 cfs as defining the Ordinary High Water Line (OHWL)? Similarly, what was the basis for using 1967 aerial photos to define the OHWL line south of Metaline Falls and why is the OHWL and full pool line assumed to be one and the same?	<p>The assumptions, criteria and data used in Study 22 to delineate land ownership within the project are the same as were used at the time of original licensure. These are documented in Exhibit K, which was approved by the Federal Power Commission after being advised by the Departments of Interior and Agriculture and by the Corps of Engineers “that they have no objection to the approval of the Licensee’s Exhibit K maps.” 40 F.P.C. 1515 (1968).</p> <p>As noted in the USFS’s comment, “identifying the OHWL on-the-ground is no longer possible nor particularly necessary at this point.” It is unnecessary to attempt to re-establish OHWL at this time for several reasons:</p> <p><i>1) Line at the time of project development, not statehood, governs.</i> To the extent that the comments suggest that the OHWL established in the original Exhibit K maps was inaccurate because it was not based on the OHWL “as it existed at the time of statehood,” the assertion is incorrect. The Equal Footing Doctrine established State ownership of the beds and banks of navigable rivers at the time of statehood. <i>Pollard’s Lessee v. Hagan</i>, 44 U.S. 212, 229-30 (1845). From that point forward, however, the State’s and adjacent land owners’ rights and boundary lines are defined by state and federal law. See, e.g., <i>Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.</i>, 429 U.S. 363, 371-72 (1977) (“Once the equal-footing doctrine had vested title to the riverbed in Arizona as of the time of its admission to the Union, the force of that doctrine was spent; it did not operate after that date to determine what effect on titles the movement of the river might have.”). Washington and federal law adjust the boundary lines of State ownership of the beds and banks due to accretions that occur after statehood. <i>State of Cal. ex rel. State Lands Comm’n v. United States</i>, 805 F.2d 857, 860-62 (9th Cir. 1986).</p> <p><i>2) OHWL upstream from Metaline Falls was based on surveyor observations and is best evidence.</i> For the portion of the reservoir between Box Canyon and Metaline Falls (the centerline of Section 21, T39N, R43E), the delineation between upland and bedland ownership is depicted by survey lines that “approximate the line of ordinary high water as observed in 1967” (Exhibit K, Sheet 8, FPC No. 2144-79,</p>

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
				<p>“Notes”, emphasis added). Thus, contrary to the comment, the pre-project OHWL upstream from Metaline Falls was established by survey, not through use of aerial photos.</p> <p>3) <i>OHWL downstream from Metaline Falls at 78,700 cfs is also best evidence.</i> Downstream from Metaline Falls, the delineation between upland and bedland ownership is depicted by the “margins of river for a flow of 78,700 cfs from aerial map 9380” (Exhibit K, Sheets 1 through 4, FPC Nos. 2144-72 through 75). Surveyors are generally qualified to exercise professional judgment as to the location of OHWL. <i>Kubanyi v. Golden Valley Elec. Ass'n, 2007 WL 3002070</i>, at *1 (D. Alaska 2007) (holding that expert surveyor's survey "determining the location of the ordinary high water mark of Seven Mile Lake" was admissible and relevant). The surveyor of record, R.L. Stuhr, signed the sheets bearing this designation to certify that “the surveys were accurately made and are correctly shown on this drawing.” (Exhibit K, Sheet 1, FPC No. 2144-72).</p> <p>4) <i>Re-defining OHWL would affect far more than USFS land.</i> Adopting USFS’s suggestion of using a 25,000 cfs. flow as a proxy would result in moving OHWL closer to the centerline of the river – reducing state land ownership at the same time it enlarges federal land ownership. This would upset the balance struck between state and federal lands at the time of licensing. SCL purchased an easement to “shorelands” from the State of Washington, entering into a settlement agreement in February 1967 after somewhat protracted quasi-judicial proceedings. The Exhibit K surveys prepared later in 1967 then depict “shorelands”, reflecting federal land ownership above the shorelands. Likewise, the FPC then used the Exhibit K maps – including the OHWL at 78,700 cfs – to define the federal lands withdrawn under Section 24 of the FPA. 34 Fed. Reg. 777 (January 13, 1969).</p> <p>5) <i>USFS’s proposal conflicts with state law.</i> The comment suggests using annual mean average flow of approximately 25,000 cfs to approximate OHWL. This approach would conflict with Washington State law, which generally provides that (1) ordinary high water mark should be based on an examination of conditions if possible (and as described above, the Exhibit K survey’s depiction of OHWL both above and below Metaline Falls is based on observations); and (2) if OHWL cannot be found, it is the elevation of the “mean annual flood” or the “line of mean high water”. See RCW 77.55.011(11) and RCW 90.58.030(2)(b). Never is it “mean average flow.”</p> <p>6) <i>Res judicata.</i> All the current parties were parties to the original</p>

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
				<p>licensing proceeding, a contested, quasi-judicial proceeding. Through FERC’s approval of Exhibit K, FERC made a final determination as to the location of OHWL. The doctrine of res judicata precludes the Forest Service, which initially concurred in FERC’s determination, from reversing itself on this issue. Am. Elec. Power Serv., 122 FERC 61,083, P 68 (2008) (slip op.) (res judicata applies in FERC administrative proceedings where an issue has been "fully litigated and decided on the merits, and no new evidence or new circumstances would justify relitigation").</p> <p>FERC’s analysis in a relicensing proceeding is based on existing conditions. <i>City of Tacoma</i>, 107 FERC ¶ 61,288 at 62,095 (June 21, 2004). Because the surveys and aerial maps used to establish ownership and project area boundaries in Exhibit K for the original licensure are the best existing evidence of ownership, Exhibit K should serve as the existing conditions for the purposes of relicensing. To the extent that the Boundary Project is using lands outside the current project area, SCL will submit proposed boundary adjustments with its License Application. FERC has no jurisdiction to resolve any underlying ownership dispute. <i>First Iowa Hydro-Electric Coop. v. FPC</i>, 328 U.S. 152, 178 (1946).</p>
41	USFS 05-05-08 letter	Figure 1.1-1; Table 1.1-1	It is not entirely clear from the land ownership maps (Figure 5.1-1) what areas are included in which Parcel PID. For example, on Map 2 is the area on the east side of the reservoir inside the dashed line, delineating full pool, (next to PID 16) counted in PID 16 or not? There is no PID number, in this area, similar to other areas mapped separately when inside the dashed line.	PID boundaries are depicted on Figure 5.1-1 with solid lines. The dashed line depicting Normal Full Pool is provided solely for the reader’s convenience to help visualize the reservoir’s current location at full pool. As discussed in response to comment 41, current full pool does not affect ownership and so was not used to define the PID boundaries depicting ownership. Accordingly, PID 16, which is in USFS ownership, includes the entire area between the project boundary to the east and the pre-project OHWL to the west – i.e., the area on both sides of the dashed line depicting full pool.

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
42	USFS 05-05-08 letter	Figure 1.1-1; Table 1.1-1	Map 7: NFS lands are not clearly identified in a few locations. See examples on Attachment 1. PID 422 is not NFS land.	<p>Attachment 1 has three areas marked “NFS lands not properly depicted.” Based on the following publicly available information, SCL believes that its ownership depiction of these lands is accurate. SCL will review any additional or different information that USFS may have and make any necessary revisions for lands within the project boundary in its license exhibits.</p> <p>1) PID 291. This PID represents patented (i.e., non-federal) lands within the Spokane Placer patent (MS 957 / PAT 162324). The unpatented portions of Government Lot 8, i.e., those areas outside of the Spokane Placer area, are identified on Map 7 as NFS lands and are labeled PIDs 547, 548 and 549.</p> <p>2) PID 228 (unlabeled triangle shaped PID SE of PID 199). This PID represents patented lands within the Spokane No. 2 Lode patent (MS 1209/ PAT 1055468).</p> <p>3) Irregular shape PID in far NE corner of Section 28. This PID represents patented lands within the Homestake Placer patent (MS 984 / PAT 347487).</p> <p>PID 422. SCL agrees that PID 422 appears to include some lands that were patented (D/C 318057), and therefore are no longer in federal ownership. The lands depicted by both PIDs are outside of the current project boundary. To the extent any of these lands are brought within a revised project boundary, SCL will make the necessary revisions for lands within the project boundary in its license exhibits.</p>
43	USFS 05-05-08 letter	Figure 1.1-1; Table 1.1-1	Map 8: PID 399 is not NFS land. A portion of PID 554, east of the railroad is not NFS land.	<p>PID 399. The response above for PID 422 applies equally to PID 399.</p> <p>PID 554. The plat map for the area of PID 554 indicates that the lands referenced in the comment, while apparently subject to mining claims, have not been patented. SCL will review any additional or different information the USFS may have and will make any necessary revisions for lands within the project boundary in its license exhibits.</p>
44	USFS 05-05-08 letter	Figure 1.1-1; Table 1.1-1	Map 10: PID 870 is drawn incorrectly. NFS land consists of all of Lot 6, section 19.	<p>The area shown on Figure 1.1-1 as NFS lands includes all of Government Lot 6 as delineated by the survey of OHWL discussed in response to comment No. 41. Lot 6 consists of PIDs 850, 870, and the unmarked triangular PID to the north east of PID 850.</p>

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
45	USFS 05-05-08 letter	Table 1.1-1	It would be helpful if Table 5.1-1 also summarized acreage totals by owner, where applicable. Summarize acreage of NFS lands both for the total inside the project boundary and between the OHWL to the full pool line (inundation zone).	The RSP did not call for an acreage summary. The table includes lands adjacent to as well as inside the Project boundary, which will be revised through the licensing process. SCL will provide boundary revisions and land ownership information as required for Exhibit G of the license application.
46	USFS 05-05-08 letter	Section 5.1.2	SCL maintains a communication site on Abercrombie via Forest Service Special Use Permit. Bonneville Power Administration owns the facilities at that location but does not own the site (land).	As stated on page 36 of Study 22, SCL is evaluating whether it has an ongoing need for this site. The USR will provide a determination of whether the site is needed for Project purposes and if so, will clarify land ownership and permit status and requirements.
47	USFS 05-05-08 letter	Section 5.2.1	Monitoring wells and access roads were constructed as part of the initial Boundary Dam licensing process. If these wells are to be abandoned, the disposition of monitoring wells and access roads need to be addressed as part of the relicensing process. No road condition analysis or permit information was included in the report for monitoring well access roads. An abandonment plan for SCL monitoring wells, and associated roads, should be part of the license application. SCL should consider gathering the necessary information/data for the development of that plan during the 2008 study season. Much of the information needed is similar to the information collected to date and information yet to be collected for roads potentially identified for recreation purposes (RSP No. 21, Page 33).	SCL intends to provide for well abandonment through the relicensing process. SCL agrees that an abandonment plan for wells and associated roads will be part of the license application. SCL will provide road condition and permit information with the plan after it has identified the roads that are used exclusively for monitoring well purposes.
48	USFS 05-05-08 letter	Section 5.2.1	According to the RSP No. 22 (Page 5) a summary of information was to be gathered and displayed for the study area on roads that provide public access to the reservoir shoreline. Information was provided for the road to the forebay recreation area; however, no project roadway condition analysis or permit analysis was done in the ISR on other roads which provide public access to the reservoir shoreline. Without this information no evaluation can be made for existing access routes to determine if the routes meet current recreation use needs for vehicle access to the reservoir.	The referenced text from page 5 of RSP Study 22 provided an overview of the three road-related tasks specified for Study 22; this overview was not intended to describe additional tasks to be conducted under the study. As noted on page 2 of RSP Study 22 (Section 3.2), "Not all roads within the study area are addressed in detail in this study. The study area is the area <i>within which</i> roads were reviewed for potential Project-related impacts." SCL has completed all of the specified tasks, and there does not appear to be a basis for adding additional tasks at this time. As noted at page 90 of ISR Study 22, through Study 21, evaluation of roads needed for Project-related recreation is ongoing. The USR will provide condition and permit information for any roads that are determined to be needed as a result of this evaluation.

Comment number	Comment source	Report reference	Relicensing participant comment	SCL response
49	USFS 05-05-08 letter	Section 5.2.2.8	There is no mention of SCL road maintenance/repair project completed (2007) for this [FR-3165] road. There is contradictory information for FR 3165-350; here it states that this road is native surfaced from the east end of the dam to the junction with the Boundary Dam/Crescent Lake Road, while Table 5.2-2 Road conditions for Project-related roads (Page 83) shows this segment of road as being aggregate surfaced.	In the USR, SCL will describe the road work that was completed on FR-3165 and will resolve any contradictory statements made in the ISR concerning FR 3165-350.
50	USFS 05-05-08 letter	Table 5.2-3	Information contained in Table 5.2-3 is not entirely accurate. The principle problem involves roads identified as being authorized via Forest Service Special Use Permit(s). With the exception of the West-Side Access Road (Site #1) all of the noted special use permits have expired or have been terminated. Project related roads on NFS lands will need to be authorized via the new FERC license or Forest Service special use authorization.	SCL has reached agreement with USFS that for purposes of use of USFS roads (and lands) outside the Project boundary during the new license term, SCL will work with the USFS to address such use either through a Special Use Permit or via the new FERC license (phone conversation between Michele Lynn [SCL] and Glenn Koehn [USFS], May 28, 2008).
Aesthetics/Visual Resources				
Study requests				
			None	
Study No. 23– Aesthetic/Visual Resource Study				
			None	
Cultural Resources				
Study requests				
			None	
Study No. 24– Cultural Resources Study				
			None	

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing pleading this 10th day of June, 2008 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Elizabeth Thomas

Elizabeth Thomas