



The Enterprise

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PacifiCorp lawyer replies to dam filing

Story by: Jesse Burkhardt

Wasting little time, the law firm representing PacifiCorp, a Portland utility, has responded to a recent legal filing regarding Condit Dam by the law firm representing Klickitat County and Skamania County.

Condit Dam is a hydroelectric facility on the White Salmon River, built in 1913 and owned by PacifiCorp. The western end of the dam is in Skamania County, while the eastern end is in Klickitat County.

In a Jan. 26 filing to Secretary Magalie R. Salas of the Federal Energy Regulatory Commission (FERC), Jeffrey S. Lovinger of Lovinger/Kaufmann LLP, a Portland law firm representing PacifiCorp, said the request from the attorney representing the counties should be rejected.

On Jan. 12, the law firm representing the two counties -- Winston & Strawn LLP of Washington, D.C. -- submitted a legal filing that urged FERC to "dismiss PacifiCorp's Condit Dam removal application."

In 1999, PacifiCorp signed a "settlement agreement" with the Yakama Nation and a number of state and federal agencies and environmental organizations to decommission Condit Dam rather than pay to meet fish passage requirements.

PacifiCorp has requested approval from FERC to remove the dam, and has proposed a tentative target date of October 2008 to begin the removal process. A previous target of October 2006 was pushed back to allow PacifiCorp more time to obtain the necessary permits involved in the decommissioning process.

Winston & Strawn based its call for dismissal of PacifiCorp's application on the contention that FERC policy would not allow the imposition of caps limiting what PacifiCorp would pay to cover dam removal costs.

"Cost caps on the removal of Condit Dam contained in the 1999 settlement agreement entered into by PacifiCorp ... were clearly contrary to established (FERC) policy," read an excerpt from Winston & Strawn attorney John A. Whittaker IV's Jan. 12 letter to Secretary Salas.

In a five-page response, Lovinger raised three key points regarding the filing by Winston & Strawn:

It is premature to conclude that FERC will reject the settlement cost caps;

It is premature to conclude that PacifiCorp would reject a surrender order that excludes settlement cost caps; and

FERC should deny the counties' request.

"The counties argue that further consideration is a waste of time and resources because: 1) the commission (FERC) must, as a matter of policy, reject the settlement cost caps; and 2) PacifiCorp has made it clear that it will reject any surrender order that does not include cost caps ... the counties are wrong on both counts and their attempt to dismiss should be denied," Lovinger wrote.