



Meeting Notes

Project: Loup River Hydroelectric Project FERC Project No. 1256	
Subject: Water Rights Work Group	
Meeting Date: July 22, 2008, 1:30 pm – 2:30 pm	Meeting Location: Conference Call
Notes by: HDR	

Attendees:

Ms. Jean Angell – Nebraska Department of Natural Resources
Ms. Pam Andersen - Nebraska Department of Natural Resources
Mr. Mike Thomopson - Nebraska Department of Natural Resources
Mr. Jim Frear – Loup Power District
Mr. Ron Ziola – Loup Power District
Mr. Neal Suess – Loup Power District
Mr. John Shadle - NPPD
Mr. Brian Barels – NPPD
Mr. Bill Sigler – HDR
Mr. George Waldow – HDR
Mr. Pat Engelbert – HDR
[Mr. Bob Harms (USFWS) Mr. David Jundt (NeHHS), Mr. Robert Mohler (LLNRD), Mr. Phil Soenksen (USGS), Mr. Gene Zuerlein (NGPC), and Mr. John Engel (HDR) were unable to attend]

Topics Discussed:

1. Items distributed by DNR;
2. List of DNR issues as detailed in June 20, 2008 DNR letter and discussed by DNR at June 24, 2008 agency meeting;
3. Next steps.

Action/Notes:

The meeting minutes listed below reflects information as discussed during the conference call. They are not to be misconstrued as the official position of DNR or LPPD.

Items Distributed by DNR

The following items were sent to the work group members prior to the conference call. They include:

- Pump irrigation agreements, rules and regulations between LPPD and irrigators, and a page from the existing FERC license regarding access to LPPD's land and water;
- A CD containing an aerial photo of the water rights along the canal and the points of diversion;
- State of Nebraska statues giving preference to irrigation appropriations over power appropriations, and compensation for exercise of preference;
- A list of the surface water appropriations on the LPPD canal;
- A list of the surface water appropriations junior to, and downstream of, the confluence of the canal tail race and the Platte River.

There was no indication from the call participants that information had yet to be received.

List of DNR issues as detailed in June 20, 2008 DNR letter and discussed by DNR at June 24, 2008 agency meeting

DNR stated that they did not bring up the issues because of opposition to re-licensing the Project; DNR wishes that the Project be re-licensed and that stakeholders be served well by it. There was extensive discussion as to whether the issues were re-licensing issues or state water policy issues. DNR's position is that FERC should determine whether or not the issues are re-licensing issues. The following is a list of the issues from the DNR letter dated June 20, 2008, and the discussion on each topic.

1. Nebraska law provides that waters used for irrigation have preference over waters used for manufacture of power. This means an irrigator with an appropriation junior to LPPD's appropriation may require the senior water right for power – LPPD -- to subordinate its water use. The law also provides that just compensation must be paid by an irrigator to LPPD when subordination is demanded. Just compensation is not an arbitrary amount, but an amount not greater than the cost of replacing the power which would be generated by the water so acquired. LPPD has set amounts for irrigators to take water out of priority. The rate for those irrigators taking water from the canal between the diversion on the Loup River and the power plants at Monroe and Columbus is different than the rate charged for those irrigators taking water upstream of the diversion. How does LPPD figure "just compensation"? The Power Interference Agreement states that the amount charged irrigators is not just compensation.

Discussion:

- o The just compensation amount has been developed and adjusted by LPPD over the 70 years of operation;
 - o DNR would like to know how the rate was determined, and what the current rate is;
 - o LPPD is currently reviewing the just compensation policy.
2. Why does LPPD allow farmers to irrigate out of its canal? The Nebraska Department of Natural Resources knows of no easements in place for those irrigators taking from the canal. LPPD appears to operate as an irrigation district, rather than a power district.
 - o There are surface water appropriators that have water rights along the canal. LPPD has pump irrigation agreements and easements with adjacent property owners.
 - o There was lengthy discussion on how to distinguish between a canal appropriator and a downstream or bypass reach appropriator. Several scenarios were discussed.
3. At times LPPD diverts most or all of the Loup River, in effect changing the channel of the river. What if an irrigator requests water be delivered out of the river downstream of the diversion point and upstream of the discharge into the Platte River, willing to pay LPPD just compensation?
 - o LPPD will follow Nebraska law and allow the necessary water to be diverted for just compensation.
 - o To LPPD's knowledge there were no subordination agreements on the bypass reach.
 - o No one on the call was aware of any preference calls on the bypass reach.
4. Has LPPD considered its response in the event irrigation development continued in areas upstream of LPPD's plants to the point of making the manufacturing of electricity no longer feasible?
 - o Historically, high flows on the Loup River occur in the spring during the non irrigation season, which historically is LPPD's highest power generating months. If LPPD were unable to divert due to irrigation preference, assuming the irrigation season lasted 3 months, they would receive just compensation under the preference system, and would continue generating during the remainder of the year.
 - o It was noted that speculation regarding future scenarios is not part of the re-licensing process.
 - o DNR noted that preference also applies to the canal water, and that LPPD has a responsibility to deliver the water.
 - o LPPD noted that it would be the same as if there was no water in the river for them divert.
5. Should LPPD be allowed to divert their entire appropriation when making power with less than the entire appropriation, given that LPPD has no storage permit?

- LPPD diverts water 24 hours a day, 7 days a week. If the Columbus Powerhouse has to shut down, LPPD would soon curtail or halt diversion from the Loup River because they do not have the reservoir capacity to pond more than approximately two feet of water.

Next Steps

July 24, 2008 Meeting – Review aerial photo of irrigators and present summary of conference call.