

LAWRENCE G. WASDEN
Attorney General
State of Idaho

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

HARRIET A. HENSLEY
Deputy Attorney General
Natural Resources Division
J.R. Williams Bldg., 2nd floor
700 W. State Street
P. O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8072
Idaho State Bar #5235 (Hensley)

Attorneys for State of Idaho

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

In the Matter Gordon Fulton	)	Docket No. CD15-17-000
Hydropower Project; Notice of	)	
Preliminary Determination of a	)	STATE OF IDAHO'S NOTICE OF
Qualifying Conduit Hydropower Facility	)	INTERVENTION
and Soliciting Comments and Motions	)	
to Intervene	)	
_____	)	

TO: KIMBERLY D. BOSE, SECRETARY, FEDERAL ENERGY REGULATORY COMMISSION.

On December 12, 2014, Gordon Fulton, ("applicant") filed a notice of intent with the Federal Energy Regulatory Commission ("Commission") to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 ("HREA"). The Fulton Hydropower Project ("project") would be located on Rock Creek near the city of Mackay in Custer County, Idaho.

By notice dated December 18, 2014, the Commission issued a preliminary determination that the proposal satisfies the requirements for a qualifying hydropower facility not required to be licensed or exempted from licensing and solicited comments and motions to intervene.

The State of Idaho, *ex rel.*, the Department of Idaho Fish and Game (“IDFG”) and the Idaho Water Resource Board (“Water Board”), by and through the State’s undersigned counsel, Harriet A. Hensley, Deputy Attorney General, hereby provides notice of its intervention in this proceeding pursuant to 18 C.F.R. § 385.214(a)(2). Pursuant to 18 C.F.R. 385.2001(a)(1)(iii), this document has been filed electronically with the Commission this date and thus all requirements for file copies have been met.

I. STATEMENT OF INTEREST AND AGENCY POSITIONS

A. The Attorney General is a duly established executive officer of the State of Idaho and is authorized to represent the State in all legal proceedings. Idaho Code § 67-1401. The names and addresses of the persons designated for service of documents in connection with this notice and all further proceedings are as follows:

Harriet A. Hensley, (ISB #5235)
Deputy Attorney General
Natural Resources Division
Office of the Attorney General
P. O. Box 83720
Boise, ID 83720-0010
(208) 334-2400
harriet.hensley@ag.idaho.gov

Cindy Robertson
Natural Resources Program Coordinator
Director’s Office
Idaho Department of Fish and Game
P.O. Box 25
Boise, ID 83707
(208) 287-2715
cindy.robertson@idfg.idaho.gov

Garrick Baxter
Deputy Attorney General
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
(208) 287-4811
garrick.baxter@idwr.idaho.gov

Tom Bassista
Environmental Staff Biologist
Idaho Department of Fish and Game
4279 Commerce Circle
Idaho Falls, ID 83401
(208) 525-7290
tom.bassista@idfg.idaho.gov

B. The IDFG is a duly established executive department of the State of Idaho. Idaho Code §§ 36-101 and 67-2402(1). The statutory policy of the State of Idaho is to preserve, protect, perpetuate, and manage all fish and wildlife. Idaho Code § 36-103(a). The IDFG, acting under the supervision of the Idaho Fish and Game Commission, has the responsibility to carry out that policy. Idaho Code §§ 36-102(a) and -103(b). It is not the purpose of IDFG to support or oppose the project. The IDFG works with the hydroelectric industry and the Commission to ensure that hydroelectric development will have minimal impact on fish, wildlife, and plant resources in Idaho. The IDFG assists the hydroelectric industry and the Commission by providing technical information addressing potential effects on fish, wildlife and plant resources and how any adverse effects might be avoided, minimized, or mitigated.

The IDFG has been working with the applicant since 2011 to ensure that the proposed project will have no adverse impact on fish and wildlife resources. The IDFG, as a protestant in the water right permit application proceeding before the Idaho Department of Water Resources (IDWR), worked with the applicant to include conditions in the water right permit that protect the riparian habitat below the applicant's existing diversion structure (IDWR Draft Water Right Permit No. 34-14339). The protest was resolved on April 21, 2014, contingent upon issuance of a final water right permit that includes, among other things, the following conditions: (1) the applicant will operate the project to provide a minimum bypass flow of 0.2 cfs past the point of diversion and (2) the applicant will install a permanent measuring device located no more than 100 feet downstream of the point of diversion.

C. The Water Board is a constitutionally established water agency within the Idaho Department of Water Resources and consists of eight members appointed by the Governor. Idaho Const. art. XV, § 7; Idaho Code § 42-1732. Among the Water Board's duties is to

“formulate, adopt and implement a comprehensive state water plan for conservation, development, management and optimum use of all unappropriated water resources and waterways of this state in the public interest.” Idaho Code § 42-1734A.

The Water Board adopted a resolution on November 28, 2012, which approved the Comprehensive State Water Plan Part A (“State Water Plan”). The State Water Plan contains policies in the areas of water development, water use, water quality, species of concern, instream flow, energy development and conservation, and other areas of water management. It is the policy of the State of Idaho that new hydropower developments be in conformance with the State Water Plan. The State Water Plan recognizes that small hydropower projects using existing water flows and infrastructure can be cost effective and provide for the optimum utilization of Idaho’s water resources.

This filing is for the purpose of intervention only. The IDFG and the Water Board take no position as to the Commission’s preliminary determination that the proposal satisfies the requirements for a qualifying hydropower facility not required to be licensed or exempted from licensing. Please send a copy of all pleadings filed with the Commission in this matter to the State of Idaho at the addresses stated on page 2.

DATED this 9th day of January, 2015.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

/s/ Harriet A. Hensley
HARRIET A. HENSLEY
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 9th day of January, 2015, served the foregoing document, STATE OF IDAHO'S NOTICE OF INTERVENTION, upon each person designated on the official service list compiled by the Secretary in this proceeding email..

Gordon Fulton
5907 Hwy 93
Mackay, ID 83251
tailingart@yahoo.com

/s/ Harriet A. Hensley

HARRIET A. HENSLEY

Deputy Attorney General

Natural Resources Division

Document Content(s)

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

January 9, 2015

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE Rm 1A
Washington, D.C. 20426

Re: In the Matter of Gordon Fulton Hydropower Project; Notice of Preliminary
Determination of a Qualifying Conduit Hydropower Facility and Soliciting
Comments and Motions to Intervene
FERC Project No. CD15-17-000

STATE OF IDAHO'S NOTICE OF INTERVENTION

Dear Secretary Bose:

In accordance with 18 C.F.R. § 385.2001(a)(1)(iii) attached for your files in the above-named matter is the original of the STATE OF IDAHO'S NOTICE OF INTERVENTION.

Thank you for your assistance in this matter.

Sincerely,

/s/ Harriet A. Hensley

HARRIET A. HENSLEY
Deputy Attorney General
Natural Resources Division

HH/vw
Attachment

cc: The official Service List compiled by the Secretary in Project No. CD15-17-000.

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210