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Department of Water Resources
Eastern Region

142 FERC ¶ 62,033

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Bar None Ranch, LLC

Docket No. DI13-2-000

ORDER FINDING LICENSING NOT REQUIRED

(January 15, 2013)

1. On November 2, 2012, Bar None Ranch LLC filed a Declaration of Intention (DI) concerning the proposed Snodgrass Springs Micro Hydro Project (project), which will be located on Snodgrass Springs, near the town of Lava Hot Springs, Bannock County, Idaho, at T. 10 S., R. 38 E., sec. 28, Boise Meridian.

PROJECT DESCRIPTION

2. The proposed run-of-river Snodgrass Springs Micro Hydro Project will consist of: (1) water transported from three springs into an 8-foot-by-8-foot underground reservoir or cistern; (2) a buried 4-inch diameter, 200-foot-long penstock; (3) an 1,800-watt Alternative Power Machine Model 1800 turbine/generator, to be located in a cabin; (4) a 4-inch-diameter, 300-foot long pipe tailrace, directing the water into Snodgrass Creek; and (5) appurtenant facilities. The power generated will be used in a local cabin.

PUBLIC NOTICE

3. Notice of the DI was published on November 16, 2012. Protests, comments, and/or motions to intervene were to be filed by December 17, 2012. No protests, comments, or motions to intervene have been received.

JURISDICTION

4. Pursuant to Section 23(b)(1) of the Federal Power Act (FPA), 16 U.S.C. § 817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it:

- is located on a navigable water of the United States;
- occupies lands of the United States;
- utilizes surplus water or waterpower from a government dam; or
- is located on a stream over which Congress has Commerce Clause jurisdiction, is constructed or modified on or after August 26, 1935,

and affects the interests of interstate or foreign commerce.

DISCUSSION

5. Based on available information it does not appear that the proposed project would be located on a navigable water of the United States. It will not occupy any public lands or reservations of the United States, and will not use surplus water or waterpower from a Federal government dam. The proposed project would be constructed after August 26, 1935, and would use water from a Commerce Clause stream,¹ but would not affect interstate commerce because it would not be connected to the interstate grid. Therefore, the project does not require licensing under Section 23(b)(1) of the FPA.

CONCLUSION

6. Consequently, Section 23(b)(1) of the FPA does not require licensing of the proposed Snodgrass Springs Micro Hydro Project. If evidence sufficient to require licensing is found in the future, section 23(b)(1) would require licensing. Under section 4(g) of the FPA, the project owner could then be required to apply for a license.

The Director orders:

(A) Section 23(b)(1) of the Federal Power Act does not require licensing of the proposed Snodgrass Springs Micro Hydro Project. This order is issued without prejudice to any future determination upon new or additional evidence that licensing is required.

¹ For purposes of FPA section 23(b)(1), Commerce Clause streams are the headwaters and tributaries of navigable waters of the United States. *See FPC v. Union Electric Co.*, 381 U.S. 90, 94-96 (1965). Snodgrass Springs is tributary to Dempsey Creek, Portneuf River, and the Snake River, a navigable water of the United States [14 FPC 731, 31 FPC 278].

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(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2012). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Charles K. Cover, P.E.
Chief, Project Review Branch
Division of Hydropower Administration
and Compliance