

STATE OF ALASKA

OFFICE OF THE GOVERNOR ANILCA IMPLEMENTATION PROGRAM

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Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Secretary Salas:

The State of Alaska has reviewed the draft environmental impact statement (DEIS) for the Falls Creek Hydroelectric Project and Land Exchange (FERC Project No.11659-002). This letter represents the consolidated views of the State of Alaska resource and transportation agencies. The Alaska Energy Authority is commenting separately on the economic aspects of this project; and the Alaska Department of Fish and Game is submitting separate comments pursuant to Section 10(j) of the Federal Power Act –16 USC 803(j).

The Federal Energy Regulatory Commission should also be aware that the State of Alaska has not yet conducted its coastal zone management review. This review will be conducted by the Alaska Department of Natural Resources, Office of Project Management & Permitting, after all resource agency authorization applications and supporting documents have been received, per 15 CFR 930.50 - 930.66 and 6 AAC 50.425.

Specific Issues

Acreage determinations – The DEIS provides for the following acreage amounts:

<u>Alternatives</u>	<u>Land Trade Area</u>	<u>FERC Project Area</u>
1. No Action Alternative	0 acres	0 acres
2. Proposed Alternative	850 acres	117 acres
3. Maximum Boundary Alternative	1145 acres	1145 acres
4. Corridor Alternative	680 acres	680 acres

However, because the project area includes private or state land (specifically the transmission line and a portion of the access road) outside of the Glacier Bay park boundary, the land trade area and the project area should be different by that amount. This needs to be corrected for both alternative 3 & 4 and possibly for alternative 2.

We request the DEIS clarify how the figure of 117 acres in the Proposed Alternative is derived, e.g., the dimensions of the easement, the haul back site, the powerhouse site, and the diversion structure site.

Ownership – The western portion of the project area (sections 3, 9 and 10) crosses both private & state land as indicated in Figures 2-1, 2-8, & 2-9. It would be helpful to separately illustrate state and private ownership in these figures. The state ownership in this area involves multiple jurisdictions. The Mental Health Trust Land Office manages the NE ¼ of Section 9 (as well as portions of Section 4); the rest of Section 9 is within the boundary of the Gustavus Airport and is managed by the Department of Transportation and Public Facilities. In addition it would be helpful to label the township/range/sections and differentiate between national park lands, other private land, and tide and submerged lands (land below mean high water) which all appear in white in the figures.

Access across Private Land – The portion of Rink Creek Road and the access road extending through section 3 crosses private land; the State of Alaska does not hold an easement across these parcels. In conjunction with the land exchange, the State of Alaska will need to obtain legal access across section 3 from Rink Creek Road to the Access Road in Section 2. This should be granted as a limited state holding (easement) from the private land owner(s) to the State of Alaska. This limited state holding does not necessarily have to be generally open to the public; minimally the easement needs to provide access for the hydro project, and to the State for inspection and maintenance and other uses authorized by the Department of Natural Resources (DNR) and allowed within the FERC license restrictions.

Alternative route for Access Road & Transmission Line – We request the EIS additionally address an alternative access route from Rink Creek Road through the existing 60 foot public access and utility easement of ASLS 790151 & ASLS 790152. This alternate route would reduce the length of easement granted to the State from private land owner(s) from approximately 2 ¼ miles to a mere ¼ mile. The transmission line could then be routed through the Mental Health Trust Land in section 4 to the Airport. This route would also alleviate the congestion at the existing end of Rink Creek Road near Bear Track Inn; however, we recognize it would increase the road construction needs and may not be as desirable due to the geography. At any rate, we recommend analyzing this route, especially if access across private land is going to be an issue.

FERC Project Area Size – The State requests minimizing the FERC project boundary to the smallest area needed for the project as reflected in Alternative 2. Alternative 3 and 4 equate the FERC project boundary with the entire land exchange area and makes all land in the exchange subject to FERC license conditions. All of the state acquired land would then be encumbered with the restrictions and conditions of the FERC license including a public access & recreation development plan, and a land use management plan, amongst others. It is unclear what the process would be to arrive at these plans and what latitude the State of Alaska would have to manage these acquired lands into the future if the

exchanged lands were entirely within the FERC project area and subject to the licensing conditions.

A larger project boundary would have other affects as well. First, the FERC license would in effect restrict the title to the land and this would have the probable affect of reducing the appraised value of the land, in turn reducing the amount of land transferred from the State of Alaska to the National Park Service. Second, it would make the most sense for DNR's land use authorization(s), issued to Gustavus Electric Company, to encompass the same area as the FERC project boundary. This means the larger the FERC project area the larger the DNR authorization. DNR bases its land use fees on either the appraised value of the land or a per acre basis depending on the type of the land use authorization; the larger the project area the larger the land use fee.

Further, the State prefers the land ownership and exchange approach contained in the Gustavus Electric Company (GEC) proposed alternative. The maximum boundary alternative requires DNR to acquire more land than is necessary in our view for a park 'buffer' area. In addition, the corridor alternative creates blocks of isolated lands which can be challenging to manage and could potentially cause future management issues between DNR and NPS.

Land Use Fees and other costs – The economic analysis should incorporate land use fees associated with state and non-state lands. For land owned by the State and managed by DNR's Division of Mining, Land & Water, the land use fees for a lease or a private, exclusive use easement are based on the appraised fair market rental value; and a private, non-exclusive use easement costs \$100 per acre (minimum \$200). Other costs include material sales, performance guarantees, and survey and appraisal costs. These costs plus the costs associated with the Mental Health Trust Lands and private land owners should be included in the economic analysis.

Land Use Management Plans – We request the procedures used to develop and implement the Land Use Management Plans be clarified before a decision is made. For example, will the plans be a part of the FERC license or will they be conditioned by reference? As the underlying fee owner-to-be, how will the State be involved in these planning actions? Will the management responsibility be shared with FERC & GEC, and how will they be implemented and enforced? It appears as if GEC is the lead on these planning processes but how will the planning process be mediated? Will the process be public? Can the planning decision be appealed, and if so, to whom?

If the State of Alaska agrees to exchange this land with planning encumbrances to develop recreation, access, and land use management plans, will GEC pay for some or all of the additional time and resources needed for follow up? Have these costs been included in the economic analysis?

Use of Airport Property – The Alaska Department of Transportation and Public Facilities (DOT&PF) has no objection to the project's use of state property at the Gustavus Airport as long as the proposed transmission line is buried across airport

property – See Figure 2-2 on page A-10. Please be aware that the project is subject to utility permits from the DOT&PF for airport property use and transmission line burial will be stipulated.

Exchange timeline – A six month deadline for the exchange to occur is unrealistically optimistic given the need to appraise and survey lands. When authorizing land uses that require appraisals and surveys, DNR usually provides 18-24 months for conduct and review before an authorization is issued. In our experience, land exchanges can be even more cumbersome. Therefore to meet the requirements under the Glacier Bay National Park Boundary Adjustment Act of 1998 it may be required to begin appraisals and surveys prior to issuance of the FERC License. The time lag between the Final EIS/Record of Decision and issuance of the FERC License may address this concern by providing the time necessary to negotiate and process the various planning requirements, such as the Land Use Management Plan.

Page-Specific Comments

xxix, lines 10-11 & 24-26. The top paragraph says that GEC proposes to limit access to non-motorized recreation. The next paragraph says that additional recreational opportunities such as ATV's could provide a positive experience for visitors. If non-motorized recreation is proposed in the preferred alternative, how could a motorized vehicle such as an ATV be used? We suggest deleting specific references to ATVs from this section and thus deferring ATV use to the subsequent Land Use Management Plan.

xxxii, line 10. Missing word: ...would be the...

1-12, line 4-6. This states that FERC would retain authority and it is exempt from the Energy Act of 2000. Does this mean that at no time in the future the State of Alaska could be given management over the Hydro license?

1-12, line 9. The reference to "Section 3(b)(4)," should be corrected to read "Section 3(c)(4)."

1-12, line 8-12. Section 3(c)(4) indicates that a condition of the FERC license is that the land exchange needs to be completed prior to construction and operation, but it doesn't say that if it is never constructed the land exchange would revert back. DEIS statements that the boundary adjustment and the construction & operation are contingent upon each other may inadvertently imply that the exchange would be reversed if the FERC License is issued and then construction and operation did not come to fruition. We agree that the construction and operation is contingent upon the boundary adjustment happening first; however, 3(c)(4) does not seem to indicate that the boundary adjustment is contingent upon construction and operation of the hydro facility. To address this concern, perhaps a condition of the FERC license should be a posting of a performance guarantee prior to the occurrence of the land exchange to provide for certainty of construction once the exchange occurs.

2-5, line 30-32. The right of way easement width should be classified. The text only suggests the width needed for clearing not the actual land use authorization. Standard widths for road easements are typically 60 or 100 feet.

4-82, 83, Table 4.6-3. It would be helpful to also show this table as a multiple line graph, so that the changes in “weighted useable area” (WUA) %s per unit of change in discharge can be observed from the curve gradients. Such a graph (unlike the table) would use a constant unit interval on the discharge axis, or at least indicate any change in discharge interval values (2 cfs, 5 cfs, 10 cfs, 20 cfs).

4-85, 86, Tables 4.6-5 and 4.6-6. These tables could be read to imply that the frequency of flows of less than 5 cfs would increase under the GEC proposed flow regime as compared to the No-action scenario. The percentages under the columns headed “% Time Flow is 5 cfs or less” apparently include the percentage of time the flow would be exactly 5 cfs, which would increase because of the required bypass flow. However, since the GEC proposed flow regime would require a minimum instream flow of 5 cfs, increased frequencies of lesser flows would not be expected. This should be noted, or less misleading column headings used.

4-86, lines 5-11. These paragraphs misleadingly imply increased percentages of time of flows of less than 5 cfs under all of the proposed or recommended flow regimes. Lines 10 and 11, which explicitly refer to flows “in the 0 to 5 cfs range” imply that this range of flows would increase in percentage of time in the winter, although the only increase in this range would be at its upper extreme, except under the no minimum flow scenario.

4-87, lines 7-11. The first sentence in this paragraph is not correct, since under the U.S. Fish and Wildlife Service and ADF&G-recommended scenarios, diversions could not occur at stream flows of less than 10 cfs; therefore, the percentage of time of these lesser flows would not increase over the No-action scenario. The last sentence in this paragraph is literally true, but misleadingly implies that a 10 cfs winter minimum is required to prevent increases in percentage of time for flows in the 0-5 cfs range. Actually, under the 10 cfs winter minimum, flows in the entire range of 0-9.99 cfs, not just the 0-5 cfs range, would not increase in percentage of time.

4-93, line 29. The Swan Lake project near Ketchikan is constructed on Falls Creek, not on the Kahtaheena River.

4-94, lines 18-20. This sentence is misleading in that the percentage increase of time this range of flows would be experienced is true only for its upper extreme of 5 cfs, not for lesser flows of $0 < 5$ cfs.

4-197, line 20-22. The DEIS states that once construction is completed, traffic along Rink Creek Road would resume to pre-project levels with the addition of weekly trips by GEC staff. We request that the projected increase in traffic related to recreation be recognized in this context.

Thank you for the opportunity to provide these comments. If you have any questions, please feel free to contact this office.

Sincerely,

/ss/

Sally Gibert
State ANILCA Coordinator

cc: Tomi Lee, Superintendent, Glacier Bay National Park and Preserve