

131 FERC ¶ 62,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Madison Farms

Docket No. DI10-4-000

ORDER RULING ON DECLARATION OF INTENTION
AND FINDING LICENSING NOT REQUIRED

(Issued May 04, 2010)

1. On December 1, 2009, Madison Farms filed a Declaration of Intention (DI) concerning the proposed Madison Aquifer Storage and Recovery (ASR) Hydroelectric Project, which will be located near the town of Echo, Umatilla County, Oregon, affecting T. 3 N., R. 27 E., Willamette Meridian.

PROJECT DESCRIPTION

2. The proposed Madison ASR Hydroelectric Project contains an existing system collecting ground water, approximately 20 feet below ground, which is piped into a 4-foot-diameter, 25-foot-deep shallow well. The water in the shallow well is pumped into the irrigation system, as needed. Excess water is pumped through an 8-inch-diameter pipe into a second 750-foot-deep basalt well, containing a 100-horsepower line-shaft turbine pump. It is expected that approximately 37 kW will be developed, to be sold on the interstate grid.

PUBLIC NOTICE

3. Notice of the DI was published on December 4, 2009. Protests, comments, and petitions to intervene were to be filed by January 4, 2010. No protests, comments, or motions to intervene have been received.

JURISDICTION

4. Pursuant to Section 23(b)(1) of the Federal Power Act (FPA), 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 or reservations 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. The proposed project 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 the power generated would affect the interests of interstate commerce, because the project would be connected to an interstate transmission grid. However, there is no evidence that the project would be located on a Commerce Clause stream, because the water collected and pumped into the system of wells is groundwater and there is no outlet to a stream.¹ Therefore, the project does not require licensing under section 23(b)(1) of the FPA. Because groundwater is a Commerce Clause water for purposes of section 4(e) of the FPA, the project would be eligible for a voluntary license or exemption under that section.²

CONCLUSION

6. Consequently, Section 23(b)(1) of the FPA does not require licensing of the proposed project. If evidence 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 Madison ASR Hydroelectric 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. The water used in the proposed project is groundwater collected for use in irrigation.

² See *Swanton Village, Vermont*, 70 FERC ¶ 61,325 (1995).

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

William Guey-Lee, Chief
Engineering and Jurisdiction Branch
Division of Hydropower Administration
and Compliance