

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
September 21, 2006

OFFICE OF ENERGY PROJECTS

Project No. 12053-001—California
West Valley A & B Hydro Project
Nicholas Josten

Mr. Nicholas E. Josten
2742 Saint Charles Ave
Idaho Falls, ID 83404

Reference: Dismissal of exemption application

Dear Mr. Josten:

Our recent pre-exemption inspection of your proposed project, conducted on July 21, 2006, clarified that the West Valley dam and reservoir play an integral role in the proposed operational scheme of your project. Review of your application, however, indicates that you did not provide any evidence showing that you have the real property interests for West Valley dam and reservoir, owned and operated by the South Fork Irrigation District. The Commission's regulations require an applicant seeking an exemption from licensing to show that it has all the real property interests in the lands necessary to develop and operate the proposed project, or has an option to obtain those interests.¹

In our September 13, 2004, letter, we asked you to provide evidence showing that you have the real property interests in lands necessary for the project. In your October 10, 2004, response to our deficiency letter, you indicated that since the project, as modified, would only affect federal lands, no additional real property interests were required. Our review of your proposed project, however, indicates that the 4.5-mile-long transmission line from the lower powerhouse to Likely, California, would involve non-federal lands. Again, you did not provide documentary evidence that you have the real property interests for the proposed transmission line right-of-way.

¹ 18 CFR 4.31(c)(2)(ii).

Finally, we find that your project does not qualify for a 5-megawatt exemption. The Commission is authorized to exempt from the licensing requirements of Part I of the Federal Power Act (FPA) small hydroelectric power projects with an installed capacity of 5 megawatts or less that: (1) are located at the site of any existing dam (i.e., one in existence on or before July 22, 2005), and that use the water power potential of such dam for the generation of electricity; or (2) use a "natural water feature" to generate electricity, without the need for any dam or impoundment.²

Because the upper development of your proposed project would utilize an existing 11,600-foot-long open canal, require the construction of 2,800 feet of new canal, and use the approximately 140-foot drop created by a new 400-foot-long penstock, it would neither be at the site of the existing dam nor use the water power potential created by the dam.³

Based on the above, we must dismiss your exemption application. If you decide to file a license application, it must comply with section 4.61 of the Commission's regulations.

If you have any questions, please contact Alan Mitchnick at 202-502-6074.

Sincerely,

J. Mark Robinson
Director
Office of Energy Projects

cc: Mailing List
Public Files

² See 16 U.S.C. §§ 2705 and 2708 (2000), as amended by section 246 of the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 679.

³ See *Twin Lakes Canal Company*, 37 FERC ¶ 61,168 (1986).