

**FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D. C. 20426**

**OFFICE OF ENERGY PROJECTS**

Project No. 2785-085  
Sanford Project  
Project No. 10808-047  
Edenville Project

Boyce Hydropower, LLC

August 22, 2013

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Lee Mueller  
Boyce Hydropower, LLC  
4132 S. Rainbow Blvd #247  
Las Vegas, Nevada 89103

Subject: Allegations of Non-compliance Related to Access at Recreation Amenities

Dear Mr. Mueller:

This letter concerns your compliance with providing access to the approved recreational amenities at the Sanford Project (FERC No. 2785) and Edenville Project (FERC No. 10808).

**LICENSE REQUIREMENTS**

Article 404 of your project license for the Sanford Project and the July 10, 2001 Order Modifying and Approving Recreation Plan requires you to provide for the: (1) development of public access to the reservoir and to the downstream Tittabawassee River and (2) installation of signs that identify all recreational facilities and access at the project.<sup>1</sup>

Article 410 of your license for the Edenville Project and the July 19, 2001 Order Modifying and Approving Recreation Plan requires: (1) a fishing access site at the Tittabawassee River outlet of the Edenville Dam that shall include (a) directional signs; (b) barrier-free restroom; (c) access paths to the tailwater, dike areas, restrooms, canoe

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<sup>1</sup> See Order Modifying and Approving Recreation Plan (96 FERC ¶ 62,027).

portage, and parking areas; (d) parking for 15 vehicles with designated barrier-free parking spaces; and (e) improved railed barrier-free fishing pier at the tailwater area; (2) a fishing access site at the Tobacco River outlet of the Edenville Dam that shall include (a) directional signs; (b) access paths to the tailwater, dike areas, parking lot, and fishing pier; (c) parking for 15 vehicles; and (d) an improved railed shoreline fishing pier located on the dike near the dam; (3) a canoe portage around the dam; and (4) installation of signs that identify all recreational facilities and access at the project.<sup>2</sup>

Further, standard article 17 each project license require you to construct, maintain, and operate or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic, and camping areas. Standard article 18 of each license requires you to allow free public access to project waters and adjacent lands.

### ALLEGATIONS OF NONCOMPLIANCE

We received information indicating that the recreational accesses at the Sanford Project and Edenville Project may not be in compliance with the requirements of your approved recreation plans and your licenses. Specifically, the information alleges that on May 10, 2013, anglers wanted to fish at the Edenville Project tailrace area and were not permitted to fish, and were forced to leave, by Boyce Hydropower representatives. The information indicates that you have constructed 8-foot fences, torn out the fishing access path, and installed “No Trespassing” signs.

In addition, the information indicates that at the Edenville Project you fenced off and closed the M-30 parking area, which was a park and ride, but was also used as parking for fishing access. The park and ride sign is allegedly gone and the parking area is fenced off with 8-foot fence. The information we received also alleges that although there is a main entrance gate to the project, it is also posted with signs.

Regarding the Sanford Project, the information we received alleges that you have all the access points on the north side of the dam blocked off, whereas the area used to be totally open for public use, except camping. Now the site is heavily posted and the fence extends into the water. Also, it appears the public can no longer walk from a county park to the south side of the dam because the access route through the county park to the project was eliminated.

We also received a report on July 10, 2013 informing us that at Edenville Project you installed a downstream boat barrier across the Tittabawassee River about 300 feet

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<sup>2</sup> See Order Modifying and Approving Recreation Plan (96 FERC ¶ 62,055).

downstream of the tailrace.<sup>3</sup> According to the report, this boat barrier is a heavy wire with a “No Trespassing” sign on it.<sup>4</sup> The report indicates that both the east and west downstream sides of the river at Edenville are now closed and that you closed the canoe portage. Consequently, there is no fishing, no portage, no parking area, and no restrooms.

According to the report, you built up the existing grade to 10 feet high with 4x4x6 concrete blocks so that the portage is gone and people cannot access the water to fish and that you fenced the area below the concrete blocks, and the access itself is also fenced and gated. In addition, the July 10 report indicates that the canoe portage and other access areas at the Sanford Project are closed.

## REQUESTED INFORMATION

You are required to provide a response within 30 days of the date of this letter addressing the following items.

- (1) How you are providing the recreational access required by the license articles and orders for each project;
- (2) Your response to allegations that at the Sanford Project you:
  - a) Posted exclusionary signs;
  - b) Installed exclusionary fences;
  - c) Closed public access to the North side of the dam;
  - d) Eliminated the access route from the county park to the South side of the dam;
  - e) Removed the canoe portage;
  - f) Closed other public access points;
- (3) Your response to allegations that at the Edenville Project you:
  - a) Constructed exclusionary fences;

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<sup>3</sup> On May 20, 2013, the licensee requested clarification from the FERC Division of Dam Safety and Inspections regarding the requirement for a tailrace warning sign at Edenville Project No. 10808, warning the public to stay back 200 feet from the downstream side of the dam. On May 22, 2013 the Chicago Regional Office responded and affirmed that the tailrace warning signs are required to ensure the safety of the public.

<sup>4</sup> By letter dated August 1, 2013, the FERC Division of Dam Safety Chicago Regional Office instructed the licensee to confirm by letter and photographs, by August 12, 2013, that the barbed wire wrapped around a tailrace boat barrier at Edenville Project No. 10808 has been removed. The submittal must also include a plan and schedule for updating the public safety plan. Our records do not show that this has been filed.

- b) Removed the fishing access path;
  - c) Installed “No Trespassing” signs;
  - d) Closed the M-30 parking area for fishing access;
  - e) Posted exclusionary signs at the main entrance gate;
  - f) Installed a heavy gauge wire downstream boat barrier across the Tittabawassee River about 300 feet downstream of the tailrace with a “No Trespassing” sign on it;
  - g) Closed the east and west downstream sides of the river;
  - h) Eliminated the canoe portage;
  - i) Removed the restrooms;
  - j) Installed fencing and gates at the main entrance access
- (4) Our records do not show you received any authorizations to close these facilities, however, if you did receive such authorization, please provide a copy along with any consultation with resource agencies regarding such closures.

Your response should discuss the measures that you have taken to address the concerns expressed in the allegations, including measures that you intend to implement to address the concerns expressed in the allegations, along with a timeline for implementation.

Please file your response electronically via the Internet. See 18 C.F.R. 385.2001(a)(1)(iii) and the instructions on the Commission’s website (<http://www.ferc.gov/docs-filing/efiling.asp>). For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov); call toll-free at (866) 208-3676; or, for TTY, contact (202) 502-8659. Although the Commission strongly encourages electronic filings, your response may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Please put the docket numbers, P-2785-085 and P-10808-047, on the first page of your response.

If you have any questions, please call Mrs. Patricia A. Grant at 312-596-4435.

Sincerely,

Robert J. Fletcher  
Chief, Land Resources Branch  
Division of Hydropower  
Administration and Compliance

CC: Mr. Kyle Kruger  
Senior Fisheries Biologist  
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