

**To:** Skipwith, Aurelia[aurelia\_skipwith@ios.doi.gov]  
**From:** Anderson, John M.  
**Sent:** 2018-02-08T09:39:38-05:00  
**Importance:** Normal  
**Subject:** RE: Skookumchuck  
**Received:** 2018-02-08T09:39:50-05:00

Good morning Aurelia. Thanks for the note. Sorry for the delayed response I'm just getting out of my first meeting of the day that started at 730. The draft HCP was submitted to Region 1 on Feb 6<sup>th</sup>. I'll be sending a detailed email to you this morning outlining the timeline for the development of the HCP and interaction with FWS, the timeline for what we need and by when to meet the critical deadlines, and the requested citations.

Thanks for the heads up on the meeting change. I had not heard yet that this had happened.

JA

**From:** Skipwith, Aurelia [mailto:aurelia\_skipwith@ios.doi.gov]  
**Sent:** Thursday, February 08, 2018 7:48 AM  
**To:** Anderson, John M.  
**Subject:** Skookumchuck

Good morning John,

The meeting with RES and FWS has been rescheduled for Thursday, Feb 15th. I will be calling into that meeting. It would be good if you could as well.

Do you know when RES intends to submit? And could you please provide the timeline and the citation for the NOI? Thank you.

**Aurelia Skipwith**  
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for Fish and Wildlife and Parks

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**To:** aurelia\_skipwith@ios.doi.gov[aurelia\_skipwith@ios.doi.gov]  
**From:** Anderson, John M.  
**Sent:** 2018-02-08T11:38:58-05:00  
**Importance:** Normal  
**Subject:** Skookumchuck  
**Received:** 2018-02-08T11:39:30-05:00

Aurelia,

As a follow-up to our meeting on February 5<sup>th</sup> please find the following responses you raised on the Skookumchuck Wind Farm project.

- **A clear explanation of the delay on the delivery of the draft HCP, expected delivery date, and detailed account of what has been shared with the Region 1 staff on this.**
  - RES delivered the first draft HCP July 10
  - USFWS provided comments back on Aug 25 and Sept 5 many needed further discussion to properly address.
  - RES and USFWS held calls and meetings in October and November to discuss proposed revisions in response to USFWS comments. RES used the input from those calls to inform the revised draft.
  - RES informed USFWS (Tim Romanski and Mark Ostwald) of the final decision to reduce the layout from 51 turbines to 38 turbines on November 29 and that they would be revising the revised HCP to address the layout changes.
  - RES emailed Mark Ostwald on January 2 to let him know a new draft should be available January 26.
  - During a January 10 call with Mark Ostwald and Tim Romanski (mostly focused on NEPA contracting), RES provided an update on the HCP revisions
  - During call with Tim Romanski on January 25, RES provided an HCP timeline update
  - Also on January 25, RES emailed Mark Ostwald with the latest draft of the NEPA RFP and MOU and an update that draft will be a bit later than the Jan 26 date, due to the need for owner/investor to conduct a final review of the draft.
  - Draft HCP provided to USFWS on February 6.
  
- **A clear confirmation of our COD date and explanation of why that date is firm.**
  - COD is now June 2019.
  - This is a six month delay since our December 14 meeting, and the delay arose from owner/investor confidence in the permitting timeline, which in turn has led to delays in capital investments (e.g. turbines).
  - Contractual obligations dictate that all permits need to be in hand by December 2018 to achieve the June 2019 COD date.
  - RES is already responsible for paying liquidated damages because the contracting parties do not have confidence that permit will be in hand by Dec 2018. Liquidated damages will continue or investors may back out if they lose confidence in obtaining permitting. Therefore, sticking to the following schedule and meeting the identified milestones is absolutely critical.
  
- **A clear timeline working backwards from the COD date, of when things need to be completed and why we believe they can be achieved.**
  - Given the year delay, it will be difficult, but possible, to achieve a ROD by December

2018. The latest RFP now provides the schedule below, but USFWS has not yet sent it out. This schedule is achievable but must be tightly managed to avoid any schedule slip. It is imperative that a contractor be brought on board and the NOI get published.

Reverse chronological order:

- COD June 2019
- ROD/ITP issued **December 15, 2018**
- Final EIS must be ready by **November 15, 2018**
- Public Comment period begins (60-days) **no later than August 2018.**
- Draft PEIS is provided to USFWS Washington Office and **Solicitors no later than July 2018.**
- NEPA contractor submits preliminary draft EIS to USFWS **no later than May 31, 2018.**
- NEPA contractor selected by **March 1, 2018**
- NOI must be published by **February 28, 2018**
- RFP for contractor must happen **ASAP.**

□ **A citation and/or opinion as to why review of the draft HCP is unnecessary for purposes of waiting to begin the NEPA process.**

- Scoping an EIS (e.g. the NOI) requires only basic information. USFWS has already seen a draft HCP and talked through HCP and Project issues extensively to understand the basics. Many HCPs have proceeded with NEPA scoping without a draft HCP and the USFWS' guidance supports this.

- USFWS HCP Handbook language that supports that NEPA proceed concurrently/ahead of having an application-ready HCP draft:

- "The Services also use the NEPA process to involve other stakeholders, including tribes, other affected individuals, the public, non-governmental organizations (NGOs), and anyone that would have an interest in the project to identify concerns **early in the HCP development process.**" p. 2-5
- HCP Table 2.4a provides a Gantt chart that shows the EIS process kicking off before the draft HCP is complete. p. 2-11
- "Our preparation of the NEPA documents should progress along with the HCP as we gather and analyze data." at 13-1.
- "Public notices are required to announce scoping for the EIS. Public notice for the availability of the draft EIS is generally combined with the public notice of availability of the HCP as required under ESA." At 13-14. (implies that complete/application draft HCP is not necessary until publication of the draft EIS/NOA)

- In addition, Council on Environmental Quality (CEQ) guidance titled "Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping" specifically recognizes that the scoping process can assist in early

identification of serious problems with a proposal, “which can be changed or solved because the proposal is still being developed.” The guidance further states that “the first stage [of scoping] is to gather **preliminary information** from the applicant, or to compose a clear picture of your proposal, if it is being developed by an agency.”

[https://energy.gov/sites/prod/files/CEQ\\_Scoping\\_Guidance.pdf](https://energy.gov/sites/prod/files/CEQ_Scoping_Guidance.pdf)

- Examples of NOI publication prior to receipt of application draft HCP:
  - [LCRA Transmission Services Corporation HCP](#), 82 Fed. Reg. 35539 (Jul. 31, 2017). “We...advise the public that we intend to evaluate the impacts of, and alternative to, the proposed issuance of an [ITP]...LCRA TSC proposes to draft a Habitat Conservation Plan in support of the ITP. We also announce plans for public scoping meetings and the opening of a public comment period under the [NEPA].”  
<https://www.fws.gov/policy/library/2017/2017-16056.html>
  - [American Electric Power HCP](#) 82 Fed. Reg. 6625 (Jan. 19, 2017). “We...are notifying the public that we intend to prepare a draft [EIS] to evaluate the impacts of alternatives relating to the proposed issuance of an...[ITP]...AEP intends to apply for an ITP and agrees to develop and implement the proposed HCP. We are also announcing the initiation of a public scoping process....”  
<https://www.federalregister.gov/documents/2017/01/19/2017-01176/notice-of-intent-to-prepare-a-draft-environmental-impact-statement-for-a-proposed-habitat>
  - [Deschutes River Basin HCP](#) 82 Fed. Reg. 34326 (Jul. 24, 2017). “We...intend to prepare a draft [EIS]...to evaluate the potential impacts on the human environment caused by alternatives to the Deschutes River Basin [HCP]. The Deschutes River Basin HCP is being prepared in support of a request for an [ESA] [ITP] authorizing incidental take of listed species caused by covered activities. The potential applicants for the ITP(s) include [eight irrigation districts comprising the Deschutes Basin Board of Control]. We are also announcing the initiation of a public scoping period...”  
<https://www.federalregister.gov/documents/2017/07/24/2017-15479/notice-of-intent-to-prepare-a-draft-environmental-impact-statement-for-the-proposed-deschutes-river>
- Additionally, nothing is stopping the USFWS from getting a NEPA contractor on board as RFP responses and contracting will take some time. No draft HCP is required to select and solidify NEPA contractor.

I am also including copies of a letter sent from the Service to RES on June 23, 2017 and RES’s response back to the USFWS on September 18, 2017 that we provided hard copies of in our December meeting. You will note in our response letter, we provide greater detail on the requested Covered Activities (i.e. only operations) to be authorized under the ITP, efforts by RES (in working with the USFWS staff) to reduce the impacts of the project generally, and a discussion of the NEPA alternatives

most notably that the USFWS' scope of review is limited to the proposed agency action (authorizing take) and not authorizing the applicant's project. For ease of reference on that particular point please see USFWS HCP Handbook p. 4-14.

If you have any questions on this or any other aspect of the ESA/NEPA process for this project please do not hesitate to contact me and I will work with the client and project attorneys to provide you with answers to your questions.

Sincerely,  
John

**John M. Anderson**

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