

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RIVERBEND HOMESITES ASSOCIATION, INC.

FILE NO. W-86-002

from an environmental determination of  
Seattle City Light

#### Introduction

Appellant, Riverbend Homesites Association, Inc., challenges the adequacy of the environmental impact statement for the Cedar Falls Improvement Project of the Seattle City Light and Water Departments issued by Seattle City Light.

The appellant exercised the right to appeal pursuant to Section 25.05.680, Seattle Municipal Code.

Parties to the proceeding were: appellant represented by Harriet King, president, and respondents, the two departments, represented by William Patton, assistant city attorney.

This matter was heard before the Hearing Examiner on March 13, 1986.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. A final environmental impact statement (EIS) was issued by the Seattle City Light for the Cedar Falls Improvement Project. The proposed project involves making safety improvements in the Cedar Masonry Dam and building a new overflow dike downstream from the existing Crib Dam.

2. Appellant, Riverbend Homesites Association, Inc., operates a water system serving around 2,000 persons north of the Cedar Falls watershed.

3. The Fact Sheet in the front of the EIS describes the project as follows:

Seattle City Light and Seattle Water Department have proposed to make safety improvements in the Cedar Masonry Dam to permit passage of probable maximum flood waters through a new emergency spillway. Other modifications to the dam include raising the service spillway notch by approximately 2.4 feet, installing a gate in the notch, and restoring the upstream facing. A new overflow dike will be built downstream from the existing Crib Dam, which will be breached. Operational changes will involve an approximate one foot increase in normal maximum reservoir elevations of Chester Morse Lake and Masonry Pool. The maximum reservoir elevation that will be maintained under probable maximum flood conditions will be elevation 1570 feet.

4. The Summary at pp. ix-xvii includes a description at p. x, in language almost identical to that in the Fact Sheet. It also includes the following paragraph.

The proposed changes in the Cedar Falls facilities stem from the need to improve the safety of the Masonry Dam and to replace the timber Crib Dam built over 80 years ago. A safety investigation of the Masonry Dam by the U.S. Army Corps of Engineers

identified the need to enlarge the dams emergency spillway capacity, so that the probable maximum flood waters (PMF) can go by the dam without the reservoir reaching unacceptably high levels and possibly causing dam failure. In addition, the Crib Dam is in a badly deteriorated state and needs to be replaced. Several maintenance measures are also a part of the Cedar Falls Improvement Project.

5. Chapter 1, Introduction, explains the purpose/need for the proposed project at p. 1-4.

The proposed changes in the Cedar Falls facilities have been developed in response to the need to improve the safety of the Masonry Dam and to replace the deteriorating timber Crib Dam. The safety investigation of the Masonry Dam and the Crib Dam by the U.S. Army Corps of Engineers (1977) identified the need to enlarge the dam's emergency spillway capacity so that the probable maximum flood waters (PMF) can go by the dam without the reservoir reaching unacceptably high levels. The surface deterioration on the upstream face of the dam will at the same time be repaired. In addition, the 80-plus year old Crib Dam is in a badly deteriorated state and needs to be replaced.

6. In the past the City departments treated the Masonry Dam and Crib Dam improvements as two different projects with different time lines.

7. Under consideration by the City departments earlier was a much larger dam project, characterized by City Light as a "high pool alternative". When the more modest undertaking was selected, the safety and improvement projects were combined.

8. The statement of the purpose or need for the proposed project does not disclose that there would be a water supply benefit from the project, nor is the benefit included in the descriptions in the fact sheet or summary.

9. In the appendix, in response to a comment by Harriet King, the EIS states that the proposed action would have a water supply benefit of 6 mgd.

10. The EIS provides a list of permits and licenses required for the project in the fact sheet. The list does not include water rights or reservoir permits.

11. In 1982, the Department of Ecology advised the Riverbend Homesites Association, Inc., that if Seattle plans to appropriate seepage waters through its proposed modifications of the Cedar Falls facility, the City would have to apply for a permit. Exhibit 6. The project, at that time, involved some variation of the "high pool" alternative with much higher dams.

12. The Cedar Hills landfill is located north of the Cedar River watershed. The EIS does not notice the existence of the landfill.

13. The proponents commissioned a study of the hydrologic system of the area. In addition to that study by Hart-Crowser, other studies provided information about the hydrology of the Cedar Falls area. Figure 10, p. 3-3 of the EIS shows the Masonry Pool seepage influence area based on those studies.

14. Gavin, project engineer, is familiar with the location of the Cedar Hills landfill and testified that she believes it to be outside of the limits of the seepage influence. Appellant did not refute that testimony.

15. Rattlesnake Lake is described in the EIS, p. 3-5, as a small lake which is supplied by water which originates in the Masonry Pool. The usual lowest elevations of the lake occur during November with an average elevation of 884 ft. The highest are in July with an average elevation of 906 ft. The EIS describes the wide variation in size of the lake relating to elevation: 125 acres at elevation 900 feet, 60 acres at 880 feet and less than 25 acres at 860 ft. The hydrologic effect of the project on the lake is described at p. 3-11 and depicted in Figure 12 as causing slightly higher levels (1-3 feet) during April and May and slightly lower (1-3 feet) September through March which may be slightly beneficial.

16. Under the heading "Recreation" Rattlesnake Lake is described as the site of recreation activity in the project area. Again the effect of the project on the lake is mentioned. The EIS then states that "April through September are the months of active recreation at the lake; peak days in August draw over 300 users." p. 3-46. In response to Harriet King's comment that the estimate of recreational use was too low, the EIS states, at p. 6-23, that the estimate was based on counts three times per afternoon on each of three weekends in August. An average car occupancy was computed at some point, so that numbers of people could be estimated based on car counts. The highest number of cars was 138 at one time for 360 people.

17. Harriet King counted as many as 172 cars at one time at Rattlesnake Lake. The cars turn over several times during the day making the actual number of users a multiple of the number of users calculated at any one time.

18. The method described for estimating the number of users of Rattlesnake Lake stated in the EIS would give the total number at the lake at one time rather than the number of different users in a day.

19. A glacial moraine makes up the northern side of the Masonry Pool. Water from the Masonry Pool seeps through the embankment and forms the moraine aquifer. In 1918, a huge slide occurred in the embankment when the water level in the pool reached elevation 1556 feet. The slide, called the Boxley Burst, breached a natural seal and resulted in Boxley Creek. The EIS describes these conditions and the slope failure.

20. Alternatives to the Proposed Project evaluated in the EIS are the "Minimum Action" alternative and the "No Action" alternative. The minimum action alternative would include safety improvements to the Masonry Dam but the spillway crest would stay at its present elevation. The Crib Dam would be replaced but the new overflow dike would be at the same elevation as the Crib Dam instead of 4 feet higher. No improvements, safety or otherwise would be made under the No Action alternative. A spectrum of alternatives was considered prior to choosing the preferred alternative. Those alternatives are described generally in the EIS as categories of options all of which would have greater environmental impacts than those entitled "EIS Alternatives."

21. Appellant's witness, Harriett King, urged that it was error not to consider another alternative, safety improvements to the Masonry Dam and no change to the Crib Dam. She suggested that the safety improvements could have been accomplished without the delay which has occurred if the two components to the current proposal had been separated.

22. The EIS responds to a comment about delay in safety improvements at p. G-32 by saying that the Department of Ecology can step in if there is unacceptable delay.

23. Richard Rutz, EIS Project Manager, testified that there was an early consideration of not replacing the Crib Dam but that option was rejected because if the Crib Dam was lost there would be a

significant loss of power and water supply. In addition, Gavin would foresee higher aquifer levels, creek flows and lake levels during the fall and winter than with the control available with the dam.

24. The 4 feet difference in height between the existing Crib Dam and proposed overflow dike would allow better control of the level of Chester Morse Lake and the Masonry Pool and a more constant seepage than now exists.

25. If elevation 1530 feet at the minimum is maintained, which was proposed as a mitigating measure in the EIS and would be required as a condition of the shoreline substantial development permit, Rattlesnake Lake would be at elevation 887-890 feet.

26. The effect of the proposed project on water supply to those dependent on seepage or direct flow from the Masonry Pool is documented in the EIS at pp. 3-56 to 3-61. Continued monitoring of the wells in the area is proposed as a mitigating measure in the EIS.

### Conclusions

1. The lead agency's decision that the EIS is adequate is to be accorded substantial weight and the burden of establishing that it is not adequate is on the appellant. Section 25.05.680(1)(C), Seattle Municipal Code. The "rule of reason" is to be used in judging adequacy. Cheney v. Mountlake Terrace, 87 Wn.2d 338, 552 P.2d 184 (1976). All that is required is "a reasonably thorough discussion of the significant aspects of the probable environmental consequences." Cheney, supra, at pp. 344, 345.

2. Appellant contends that the EIS is inadequate because it does not accurately portray the nature of the project as a water project but obscured the purpose by combining it with the needed safety improvements; it fails to analyze the alternative of making safety improvements to the Masonry Dam and doing nothing to the Crib Dam; it does not list water rights and reservoir permits as needed; it misrepresents the magnitude of the recreational use of Rattlesnake Lake; it does not disclose the existence of a major landfill in the area; and it does not include any statement as to who will pay for damage from flooding or from loss of domestic water supply or water quality that occurs because of the changes caused by the project.

3. Appellant's contention that there are two projects which should have been separated is the basis for its arguments that the true purpose of the Crib Dam project is obscured in the EIS descriptions and statement of purpose, that there should have been two EIS's or that there should have been a further alternative where the safety improvements would be made but the Crib Dam remain as it is. Whether intentional or not, the descriptions of, and statements of need for, the project may lead the casual reader to believe that all improvements proposed are needed for safety. Even the statement that the "old Crib Dam is in a badly deteriorated state" implies safety concerns. A more critical reader can find the distinction between the two as to need for safety improvements versus other reasons. If the true purpose of the improvement is to secure existing and increased water supply, a statement in an appendix is too obscure to provide a full disclosure. However, the record does not establish conclusively that securing the water supply is the true intention since other benefits were described.

4. Two EIS's would have provided the distinction appellant desires between the two dam projects as to need or purpose. Where the environmental impacts of each and both together are disclosed in the one EIS and the construction is intended to be coordinated and the dams operated jointly, there is no error of law in combining

them for environmental analysis. Because the EIS has been issued, appellant's argument about delay caused by combining the projects appears to be largely moot unless the EIS must be remanded because of error in the analysis of Crib Dam impacts.

5. While a reasonably comprehensive selection of alternatives should be included, the EIS is not inadequate for failing to include another alternative, that of safety improvements to the Masonry Dam alone. WAC 25.05.440(5) requires consideration of reasonable alternatives which includes those alternatives which "could feasibly attain or approximate a proposal's objectives" at a lower environmental cost. Since the stated objectives include replacing the deteriorating Crib Dam, appellant's alternative would not be required. The minimum action alternative which was included should respond to appellant's stated objection to the Crib Dam project, the extra height, since the replacement dam in that alternative matches existing height.

6. Respondents did not respond to the issue raised that additional permits are required but not listed. The letter offered to support appellant's contention addressed a vastly different project. Given the qualified statements in the letter, the Hearing Examiner does not view the omission of those permits from the listing as error.

7. Appellant's witness' approach to quantifying usage of Rattlesnake Lake, i.e., number of users per day rather than at one time, gives a better understanding of the significance of the Lake as a recreation resource. Since the EIS recognizes its importance and projects slight beneficial impacts to the lake, the degree of usage is not a critical factor.

8. The evidence offered by appellant as to the landfill was that it may be within the affected area and could be impacted by a lowering or raising of the level of the aquifer. Testimony offered by Respondents was that the landfill is outside of the affected area. The SEPA statute requires that "only those probable adverse environmental impacts which are significant" must be analyzed. RCW 43.21C.031. Appellant was not shown a probable impact.

9. Appellant urges that the EIS should include disclosure or a commitment as to who will pay for damages resulting from flooding or loss of water supply or water quality related to the project. The purpose of EIS is stated at Section 25.05.400, Seattle Municipal Code. In brief the EIS is to provide a discussion of significant environmental impacts of a proposal. The EIS, along with other materials and considerations, is to be used by officials in making plans and decisions. Section 25.05.402, Seattle Municipal Code, sets forth the general requirements for an EIS followed by sections providing more specificity. Neither the purpose nor any of the specific requirements for information to be included requires that the EIS assign liability for damage caused by impacts. Furthermore, the EIS for this proposal projects that the improvements will reduce the likelihood of flooding and lowered water supply.

10. Appellant has not carried its burden of proving sufficient error to overcome the substantial weight that must be given to the lead agency's decision that the document is adequate. Therefore, that decision should be affirmed.

#### Decision

The lead agency's determination that the EIS is adequate is AFFIRMED.

Entered this 27th day of March, 1986.

*M. Margaret Klockars*  
M. Margaret Klockars  
Deputy Hearing Examiner

Concerning Further Review

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review of the underlying decision within 30 days after the date of official notice of that decision if a notice of intent to seek judicial review of SEPA issues is filed with the Superintendent, Seattle City Light, 1015 Third Avenue, Seattle, Washington 98104, within the time limit set for appealing the underlying governmental action. Seattle Municipal Code Section 25.05.680(3)(d).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of taped transcript relating to issues on review.