

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of
CITIZENS RESERVOIR COMMITTEE AND
SUSAN MIKKELSEN

FILE NO. W-84-002 and
W-84-003

from an environmental determination
of the Water Department

Introduction

Appellants, Citizens Reservoir Committee and Susan Mikkelsen, challenge the adequacy of the final environmental impact statement issued by the Seattle Water Department for its proposed Eastside Reservoir, Pump Station, and Pipeline Extension.

The appellants exercised their right to appeal pursuant to Section 25.04.200, Seattle Municipal Code.

Parties to the proceeding were: appellant Citizens Reservoir Committee, represented by Dennis Edlund; appellant Susan Mikkelsen, pro se and by Erik Mikkelsen; respondent Water Department by Jeanette Pfothenhauer, assistant city attorney.

These matters were consolidated for hearing and heard before the Hearing Examiner on May 21, 1984.

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 these appeals.

Findings of Fact

1. The Seattle Water Department (Water Department) proposes to construct a 32 million gallon underground reservoir, a pump station and 4,700 ft. of pipeline connecting the two in the City of Bellevue and King County. A final environmental impact statement (EIS) was issued for the proposed action.

2. Appellants are neighboring property owners or represent neighboring property owners of the reservoir site. Timely appeals challenging the adequacy of the EIS were filed. At a prehearing conference in the appeals, appellants narrowed the claim of inadequacy to noise and noise-related impacts, in recognition of future opportunity to raise other issues in public hearings on approvals required from the City of Bellevue.

3. In the summary of impacts at p.8, the EIS states:

- . No significant long-term impacts are anticipated.
- . There would be significant though temporary noise impacts during the construction phase of the reservoir, pump station, and pipeline extension.
- . The increased noise levels would affect residents along the pipeline extension route, and the residents immediately adjacent to the reservoir and pump station sites.

- . Although increased noise levels would be temporary, there could be periods of interference with speech communication outdoors and indoors, and general annoyance. The exterior levels would clearly exceed the noise impact threshold of 55 dBA at 50 ft. and closer from the equipment.
- . Construction vehicles such as trucks are likely to cause noise intrusions along residential streets near the site.

Under Unavoidable Adverse Impacts, the EIS at p. 9 lists:

- . Significant, through temporary, noise impacts would occur from construction of the reservoir and pipeline extension, affecting nearby residences.
4. Nine mitigating measures are listed in the Summary at pp. 8 and 9. Each is phrased in the future conditional, e.g., sound-reducing barriers could be erected. The list provides a sampling of measures that could be imposed as conditions of the permit.
5. The EIS states in Section II, Description of the Proposed Action, under F. Schedule, that it is expected that construction of the reservoir would take two years.
6. Tables are provided in the EIS showing noise levels of noisy construction equipment (Table 1) and estimated noise levels at 50 ft. distance of the equipment used for different construction functions. The formula for calculating the reduction in the noise level for distance from the source is given in the text.
7. The discussion of noise impacts in the EIS, pp. 70 and 73, speaks of temporary impacts during construction and that the equipment noises would be intermittent. It states there could be periods of interference with conversation and general annoyance.
8. Table 2 is taken from a 1971 EPA publication and shows noise levels above those actually produced by equipment as stricter regulations have been imposed since that time. The levels shown at 50 ft. have not been reduced by any absorption factor.
9. The site of the proposed reservoir is at the bottom of a valley. Neighboring residences are on three sides of the valley at higher elevations. Appellants describe the setting as a natural "amphitheater."
10. The discussion of noise sets out the bases for criteria for evaluating noise impacts. One of those listed is health effects.
11. The EIS, at p. 41, indicates "N/A" (not applicable) next to the "Human Health" element of the human environment so no impact on this element is discussed in the EIS. The consultant managing the EIS interprets this to refer to effects on human health from any health hazard such as hazardous substances.
12. Curt Horner, coordinator of the noise abatement program at the Seattle-King County Department of Public Health with education and training in noise, testified that the noise section of the EIS is well done.
13. In Horner's opinion, based on studies done of airport noise over a multi-year period, the noise levels from short term construction activity would not have any health effects. It was his

understanding that the excessive noise would be from, and during, the construction of a sound barrier. A barrier can effect a 20 dB reduction in the noise level.

14. According to Russell Altermatt, the consulting acoustical engineer for the EIS, the subject site does not create any significant amphitheater effect from concentration of energy by reducing the angle of radiation. Because of the topography there would be less attenuation by absorption than at a flat site but Table 2, not having had the levels reduced for absorption, reflects the situation at the site.

15. An experiment measuring noise levels from sources at the site could be done however such a study is not common.

16. Noise at very high levels or of sufficient duration can cause physiological or psychological damage.

17. The mitigation measures listed in the EIS deal more with exposure (duration, time, etc.) than with specific sound level controls making specifying the levels of reduction to be expected either not applicable or too variable to specify or predict. Even the amount of reduction the noise barrier effects depends upon where the equipment is operating, how deep the pit is, etc.

18. The length of time for a particular construction activity such as excavation has not been stated in the EIS because it is dependent on a number of variables which cannot be determined at this time.

Conclusions

1. The determination of the lead agency that an EIS is adequate is to be accorded substantial weight by the hearing examiner in an appeal challenging its adequacy. Section 25.04.200. The "rule of reason" is the standard of adequacy, i.e., there must be a "reasonably thorough discussion of the significant aspects of the probable environmental consequences..." Cheney v. Mountlake Terrace, 87 Wn.2d 338, 344, 345, 552 P.2d 184 (1976). The standard of review applied by the hearing examiner is the "clearly erroneous" standard. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

2. Appellants, understandably, want to know, with as much precision as possible, what level of noise they can expect at their homes, what possible health consequences this noise level could have and what mitigating measures will be employed effecting what reduction in the noise level. Appellants bear the burden of proof, however. They must demonstrate that not only is this information not in the EIS but that that it is required to be there.

3. The tables and text of the EIS provide a basis for calculating what noise levels may be experienced at different locations but precision appears to be impossible because of the required movement over the site and variations in equipment, etc. The information given provides reasonable disclosure.

4. Appellants have not proved that the noise will in fact be greater than disclosed because of the topography of the site. The expert testimony showed that while there may be less absorption along the ground than occurs at a flat site, the higher than actual noise levels used in the table would offset that factor.

5. As for health consequences, the EIS consultant may have read the "human health" element of the environment too restrictively for appellants correctly pointed out that noise can present a health hazard. Appellants, to show the document is inadequate, would have to have shown that noise of the levels and duration disclosed would probably result in harm. While they raised concerns about possibilities, those concerns do not prove inadequacy of the disclosures. An EIS is required to examine only probable environmental consequences. Cheney, supra.

6. The approach taken in the outlining of mitigating measures in the EIS is appropriate where these measures are not a part of the proposal. Here they are listed as possibilities which may be voluntarily followed by the proponent or may be imposed as conditions by the Bellevue City Council or other permitting agency, if appropriate. To word the measures otherwise could mislead the reader as to what is proposed by the proponent.

7. It is not error for the document not to show the amount of reduction which each of the mitigating measures would effect, given the variables inherent in some and that others deal with duration and timing, etc.

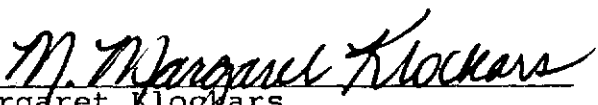
8. To most readers, and especially those who will be personally affected, the descriptions "short term" and "temporary", when describing the impact of noise over a two year period, are inaccurate. In the context of the EIS consultants' analysis they are accurate because the noise ends with the conclusion of construction and the noises are intermittent within that period. The actual impacts can be understood from the information in the EIS, in spite of those terms, because the duration of the construction period is stated as well as the nature of the construction activity. Further, there is no indication of bad faith in the use of those terms.

9. While more specific information is desired by appellants, the EIS does reasonably disclose, discuss and substantiate the probable noise impacts in a way that will be meaningful to the decision-makers. Therefore, the document meets the legal standard of adequacy.

Decision

The appeals are denied.

Entered this 4th day of June, 1984.


Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

(WAC 197-11-680(4), Judicial Appeals, provides as follows:

- (a) SEPA authorizes judicial appeals of both procedural and substantive compliance with SEPA.
- (b) When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA (SEPA issues) and those which do not (non-SEPA issues). RCW 43.21C.075 establishes time limits for raising SEPA issues, but says that existing statutes of limitations control the appeal of non-SEPA issues. The statute contemplates a single lawsuit, but allows for the SEPA and non-SEPA portions of that lawsuit to be filed at different times.
- (c) If there is a time limit established by statute or ordinance for appealing the underlying governmental action, then appeals (or portions thereof) raising SEPA issues must be filed within thirty days after the agency gives official notice....
- (d) In any instance where subsection (c) of this subsection allows the SEPA portion of an appeal to be filed after the time limit established by statute or ordinance for appealing the underlying governmental action, some judicial action must be filed within the time set by statute or ordinance. That action may be later amended to raise SEPA issues within thirty days after the agency gives official notice... In addition, where SEPA issues were first raised during an administrative appeal, any person desiring to raise SEPA issues by judicial appeal must submit a notice of intent to do so with the responsible official of the acting agency within the time limit set by statute or ordinance for appealing the underlying governmental action.
- (e) The notice of action procedures of RCW 43.21C.080 may still be used. If this procedure is used, then the time limits for judicial appeal specified in RCW 43.21C.080 shall apply, unless there is a time limit established by statute or ordinance for appealing the underlying governmental action. If so, the time limit for appeal of SEPA issues shall be within thirty days after the agency gives official notice... If the proposal requires more than one governmental decision that will be supported by the same SEPA documents, then RCW 43.21C.080 still only allows one judicial appeal of procedural compliance with SEPA, which must be commenced within the applicable time to appeal the first governmental decision.
- (f) If the time established by statute or ordinance for appealing the underlying governmental action is less than fifteen days, then the notice of action in RCW 43.21C.080(1) may be given by publishing once within that shorter time period, in a newspaper of general circulation in the area where the property that is the subject of the action is located, and meeting the other requirements of RCW 43.21C.080.
- (g) If there is no time limit established by statute or ordinance for appeal, and the notice of action provisions are not used, then SEPA provides no time limit for judicial appeals. Appeal times may still be limited, however, by general statutes of limitation or the common law.
- (h) For the purposes of this subsection, "a time limit established by statute or ordinance" does not include time limits established by the general statutes of limitation in chapter 4.16 RCW.
- (i) This subsection does not apply to petitions for judicial review or agency decisions in contested cases, or to petitions for a declaratory judgment on the validity of a rule, both of which are governed exclusively by the Administrative Procedure Act, chapter 34.04 RCW.