

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Consolidated Water Power Company

Project No. 2192-022

ORDER AMENDING LICENSE TO AUTHORIZE LAND EXCHANGE

(Issued November 17, 2006)

1. By application filed on May 24, 2005, as supplemented by a clarification filed on December 16, 2005, Consolidated Water Power Company (Consolidated) has requested that the Commission authorize its exchange of fee title to 3.14 acres of licensee-owned lands situated within the project boundary of its 6,232-kilowatt (kW) Biron Hydroelectric Project No. 2192, for fee title to three distinct parcels of privately-owned land, also situated within the project boundary. The project is located on the upper Wisconsin River, in Wood and Portage Counties, Wisconsin. As discussed below, this order authorizes the land exchange with certain modifications and conditions.

**Project Description**

2. The Biron Project includes a 34-foot high dam with three spillway sections controlled by Taintor gates; a 2,078-acre reservoir; and a powerhouse. In addition, project dikes line the northern shore of the project reservoir and underlie the shoreline side of portions of North Biron Drive,<sup>1</sup> which runs, in part, along the southerly edge of the project reservoir.<sup>2</sup>

---

<sup>1</sup> North Biron Drive is considered a county road and is also known as County Trunkline Highway U (Highway U) from Huffman Road on the west to a point just past Consolidated's pond, where the Highway U turns inland and North Biron Drive continues east along the reservoir shoreline.

<sup>2</sup> The dikes, constructed sometime between 1912 and 1922, were built to permit the water level of the river to be raised while preventing the reservoir from flooding the lands behind the dikes. *See Rocheleau v. Consolidated Water Power & Paper Company*, 189 Wis. 290 (1926).

3. In addition to the lands under the reservoir, there are approximately 5,782 acres of land within the project boundary. Of these lands, 737 acres are owned in fee by Consolidated, 2.64 acres are federally owned,<sup>3</sup> and 39 acres are public park lands (state, county, and town). The remainder, approximately 5,000 acres, is privately owned. The 100-year floodplain covers most of the area within the project boundary, and Consolidated has flowage rights on all privately owned lands within the project boundary.

4. Wetlands and private ownership of lands limit access to the reservoir. Consolidated owns in fee only about two miles of the project's total of 35 miles of shoreline. According to Consolidated, the only licensee-owned shoreline currently suitable for developing public recreation access is a narrow strip between North Biron Drive and the reservoir's southern shoreline.<sup>4</sup> Within this strip, Consolidated owns 26 lots, some of which are separated from the others by privately owned parcels. The 26 lots together comprise about 3.14 acres of land, and cover about 3,000 linear feet of reservoir shoreline.

5. For 50 to 60 years, Consolidated has leased the 26 lots to private leaseholders pursuant to what it calls "annual residency occupancy licenses."<sup>5</sup> The leaseholders have constructed permanent structures, ranging from boat docks and boat houses to recreational cabins and primary residences. While the leases stipulate that the public has a right of access to the river, the structures have, in effect, eliminated public access to the shoreline at these locations.

### **Background**

6. At issue in this proposal is the conveyance of ownership in fee, subject to flowage rights, of the 26 lots to their leaseholders in exchange for the acquisition of ownership, in fee, of three private parcels of land also located within the project boundary along the southern shore of the reservoir. From west (downstream) to east (upstream), leased lots 1 through 15 extend approximately 1500 feet along the reservoir's shoreline.<sup>6</sup> These lots

---

<sup>3</sup> The federally-owned lands are not involved in the proposed exchange.

<sup>4</sup> This area is located along a two-mile stretch of shoreline, beginning about 1.5 miles upstream from Biron Dam.

<sup>5</sup> It is not clear that Consolidated sought or obtained Commission approval for the leases.

<sup>6</sup> Lots 1 through 5, 8 through 10, and 15 contain only boat docks; lots 6, 7, and 11 contain cottages; and lots 12, 13, and 14 contain homes.

are separated from lots 16 through 21 by an approximately 450-foot section of private shoreline. Lots 16 through 21 extend about 700 feet along the shore,<sup>7</sup> followed by a 400-foot parcel of shoreline owned by Consolidated, behind which sits the Northland Cranberry Ditch (Cranberry Ditch).<sup>8</sup> At this point, North Biron Drive runs along the reservoir shoreline for about 3100 feet. A portion of the landward side of the road and the lands adjacent to that side of the road are owned by Classic Development Corporation (Classic Development). Along the shoreline in this area of North Biron Drive is a practice site for the Aqua Skiers, a local waterski group, and a public boat launch that is owned and operated by Consolidated. North Biron Drive then continues east, passing a pond on the landward side of the road, followed by lots 22 through 24 (which extend about 480 feet along the shoreline), about 200 feet of private shoreline and then lots 25 and 26 (which extend about 280 feet along the shoreline).<sup>9</sup>

7. In 2003, with a view to providing additional public access to the Biron Project reservoir's shoreline for recreational purposes, Consolidated notified the leaseholders on the 26 lots of its intention to terminate their leases and require removal of the permanent structures the leaseholders had built.<sup>10</sup> Some of the leaseholders, opposing the termination, formed the Biron Licensee Group, LLC. (Biron Group) and, in concert with Classic Development, approached Consolidated with a counter-proposal that would allow the leaseholders to take ownership of the lots that they are leasing in exchange for conveyance to Consolidated of private land within the project boundary, which the Biron Group would acquire from Classic Development expressly for the purpose of the exchange. After the exchange, both the land conveyed and that acquired would remain within the project boundary, and the licensee would retain flowage rights in the 26 lots.

8. Consolidated agreed to the proposal and, accordingly, filed with the Commission an application proposing to convey the 26 lots to the Biron Group and, in exchange, to acquire from the Biron Group, for public recreational purposes, three parcels comprising

---

<sup>7</sup> Lots 16 and 18 contain houses; lots 17, 19, and 20 contain cottages; and lot 21 contains a dock.

<sup>8</sup> Cranberry Ditch, which is not part of the Biron Project, is a canal that delivers water to cranberry bogs, in which cranberries are farmed.

<sup>9</sup> Lots 22 and 25 contain cottages, and lots 23, 24, and 26 contain houses.

<sup>10</sup> Specifically, Consolidated notified the leaseholders that it was planning to stop issuing annual residential occupancy licenses by 2008.

205.346 acres, with approximately seven miles of associated shoreline.<sup>11</sup> Parcel 1 consists of 47.546 acres with 830 feet of linear shoreline, located immediately to the east (upstream) of Cranberry Ditch. Parcel 2 consists of 2.96 acres with 126 feet of linear shoreline adjacent to the existing boat launch. Finally, Parcel 3, located about nine miles upstream from Biron Dam, consists of 48.82 acres of islands and peninsulas with approximately 34,000 feet of associated shoreline and about 106.02 acres of land that lies under the reservoir.<sup>12</sup>

9. In addition, if, as discussed, *infra*, a section of North Biron Drive located in the area of the proposed land exchange is relocated, Consolidated intends to retain a 522-linear-foot segment of the vacated road right-of-way that would revert to it. The segment is located between the east side of parcel 2 and the present intersection of North Biron Drive and the north-south section of Highway U. It would provide access to the public for recreational use, and would link the boat-launch parking facility proposed for Parcel 2 to a parcel of licensee-owned land (with 1,000 linear feet of shoreline along the east side of a pond located adjacent to the north-south section of Highway U) that currently has no available parking.

10. The Commission noticed the application.<sup>13</sup> Timely interventions were filed by the Wisconsin Department of Natural Resources (Wisconsin DNR); Biron Group; the River Alliance of Wisconsin (River Alliance); and jointly by Keith Helmrick, David W. Moodie, and Classic Development (collectively, Classic Development). A timely intervention and protest was filed jointly by George W. Mead and Susan Feith.

11. Comments were filed by the U.S. Department of the Interior, Office of Environmental Policy and Compliance (Interior); Wisconsin DNR; the Biron Group; Classic Development; River Alliance; George W. Mead and Susan Feith; Donald E. Maslowski; Wisconsin Department of Administration; the Boys & Girls Club of the Wisconsin Rapids Area; Jon T. Evenson, President, Village of Biron Board of Trustees;

---

<sup>11</sup>In its subsequently filed clarification, Consolidated maintained that it meant to request authorization solely for its conveyance of the leased acres, not for the acquisition of the private acres. However, we consider the entire exchange to constitute Consolidated's proposal. *See* discussion, *infra*.

<sup>12</sup> At the time of this order, it appears that Classic Development owns Parcels 1 and 3, and that Biron now owns Parcel 2.

<sup>13</sup> *See* the notice of application for amendment of license and soliciting comments, motions to intervene, and protests, issued on June 29, 2005, and the notice issued July 20, 2005, which clarified the June 29<sup>th</sup> notice.

Heart of Wisconsin Business and Economic Alliance; the Boardman Law Firm on behalf of 239 Wood County residents; the First Law Group on behalf of 701 residents in the immediate area of, and other Central Wisconsin communities near, the Biron Project; Gregory Nettesheim, for William and Phyllis Huffman; Kenneth M. Hill, for Carol Wilkinson; the Lac du Flambeau Band of Lake Superior Chippewa; and 22 other individuals.<sup>14</sup>

12. A draft Environmental Assessment (EA) was issued on May 12, 2006, evaluating the environmental effects of the proposed exchange. Comments on the draft EA were filed by Wisconsin Rapids Aqua Skiers, Inc.; River Alliance of Wisconsin; Wood County; Consolidated; Biron Group; Classic Development; George Mead and Susan Feith; Jerry Feith; Village of Biron; Spyros Heniadis; U.S. Representative David R. Obey; U.S. Fish and Wildlife Service; Aldo Leopold Audubon Society; and Lawrie J. Kobza.<sup>15</sup> The comments on the draft EA were considered in preparing the final EA, which is being issued with this order. The motions to intervene and all comments and filings have been fully considered in determining whether, or under what conditions, to authorize the land exchange.

### **Preliminary Matter – The Scope Of The Proposal**

13. Some intervenors have noted that the proposed exchange is part of a larger, more comprehensive real estate agreement between Consolidated, the Biron Group, and Classic Development, and that the larger real estate agreement includes Classic Development's plans for extensive residential development on private lands within the project boundary along with a system of canals connecting the residential development to the reservoir, and relocation of North Biron Drive from the shoreline to an inland location serving the new residential development.<sup>16</sup> The intervenors argue that the entire plan will greatly reduce

---

<sup>14</sup> James R. Kolinski, Lawrence B. and Judith A. Shepard, Michael T. Stark, Carl R. Lemke, Allen and Donna Rasmussen, Daniel A. Smith, Michelle Rasmussen, Andrew M. Lucas, Mark Honkomp, Marvin Bocaner, Mr. and Mrs. Kenneth Hagan, Elaine M. Gill, Cynthia Henke, Lori Lampert-Wilke, Connie M. and Gary D. Stout, Gloria Bocaner, Jerry A. Feith, and Kenneth R. Jinsky.

<sup>15</sup> The filing submitted by Lawrie Kobza was a petition with 967 signatures.

<sup>16</sup> Apparently, there is a proposal before Wood County to move North Biron Drive from its current location along the river to an inland location. It appears that, under the proposal, North Biron Drive would turn inland at lot 15, and cut at an angle across Cranberry Ditch and lands currently owned by Classic Development to meet the north-south section of Highway U about 300 feet south of the southern tip of Consolidated's pond.

public access to the river and related recreation, and they suggest that Consolidated should not be permitted to piecemeal the submission of its plan to the Commission so as to disguise its overall intent and effect.

14. In response to intervenors' arguments, Consolidated filed a supplement purporting to clarify its application, in which it maintains that, in this proceeding, it is only requesting authorization to convey fee title interest, subject to retained flowage rights, in the 26 lots. It adds that it is not requesting the Commission's authorization for its acquisition of fee title to Parcels 1, 2, and 3, but that its conveyance of the 26 lots is contingent upon such acquisition, as well as on state and local authorization for relocation of North Biron Drive. Consolidated acknowledges that proposals are being developed related to other lands within the project boundary, but states that before any action occurs based on the proposals, it will file any necessary requests for authorization concerning them.

15. Although Consolidated maintains that it is only requesting Commission authorization for the conveyance portion of the transaction, its proposed acquisition of land to provide recreation in place of that which would be lost to the project through the conveyance is an essential element of its proposal. Without it, we would not be inclined to authorize the proposal. Accordingly, we consider the entire exchange set out in Consolidated's application to constitute Consolidated's proposal.

16. Although intervenors note that the proposed exchange is part of some larger scheme for residential development within the project boundary, only authorization of the exchange set out in the application has been requested and that is all that is before us for consideration. However, no future development of private land within the project's boundaries can go forward without appropriate Commission authorization.<sup>17</sup>

---

<sup>17</sup> A request for such authorization would be considered in a new and separate proceeding. We note that, as a general matter, residential development is not permitted within a project boundary and, indeed, a licensee is required to exclude residences unless the underlying property is needed for a project purpose. *See East Bay Municipal Utility District*, 64 FERC ¶ 61,043 at 61,448 (1993), and 18 C.F.R. § 4.51(h)(2) (2006).

In the draft EA for the proposal, Commission staff recommended that if a portion of North Biron Drive is relocated away from the reservoir shoreline, Consolidated should acquire rights to the land underlying the highway to construct a recreational trail. In response to the draft EA, Classic Development argues that the scope of the land exchange is broader than the proposal described in Consolidated's application and the draft EA, and that under that broader agreement, the North Biron Drive land is to be transferred to

(continued)

**Discussion**

17. Consolidated has stated that the land exchange will permit it to improve the quality and overall quantity of the project's recreational opportunities for the public. In exchange for the 3.14 acres conveyed which, as a practical matter, do not provide public access to the project's reservoir, Consolidated will acquire ownership of undeveloped lands that can be developed and maintained for public access and use. Of the parcels being acquired, Parcel 1 will be developed as a public park with reservoir access. A 30-vehicle parking area covering less than two acres will be constructed, and a low impact trail linking the parking area to the shoreline will be installed. In addition, Consolidated has proposed to move a practice area for a local water-ski group, the Aqua Skiers, from its current location along the reservoir shoreline east of Parcel 1, to an area within and near the west side of Parcel 1, where a bank fishing area at the outlet of the Cranberry Ditch is located. Parcel 2 will be developed as a parking area with 20 vehicle spaces and 80 vehicle/trailer spaces, and will serve a new public boat launch that Consolidated will construct just east of its existing boat launch.

18. Consolidated has proposed to keep Parcel 3 in its present state for use as passive, undeveloped recreation (such as hiking, fishing, and wildlife viewing) and for preservation of wildlife habitat. However, as discussed below, we will instead require Consolidated to provide a hiking trail along the shoreline between Parcels 1 and 2. Therefore, Consolidated need not acquire Parcel 3 as part of the land exchange.

19. We agree that the exchange, as conditioned herein, will increase recreational opportunities at the project, as well as public access to the project's reservoir. However, we must emphasize that private entities that acquire land in the exchange take them subject to the licensee's flowage easement. The project lands are within the 100-year floodplain, and may be subject to flooding for project purposes. Consolidated must, in conveying these lands, fully inform the persons acquiring the lands of this risk.

---

Classic Development. Classic Development argues that, if it does not acquire that land, it has no reason to sell land to the Biron Group for the exchange, and can simply develop the land that it currently owns.

As noted in the text, the broader agreement to which Classic Development refers is not before us and, indeed, Consolidated has specifically stated that it is not requesting authorization of any proposals beyond that stated in its application. Furthermore, while this order authorizes the proposed land exchange, with specified conditions, it does not require it.

20. In addition to the foregoing, concerns have been raised by intervenors that we discuss below.

**A. Shoreline Trail**

21. Intervenors argue that Consolidated is not acquiring sufficient shoreline to compensate for that lost through the proposed conveyance. Specifically, they maintain that Classic Development owns property on or along part of the land underlying North Biron Drive's road bed, that Classic Development has applied to the County to move North Biron Drive away from the river,<sup>18</sup> and that, if North Biron Drive is moved, Classic plans to develop the river bank for private use. If this occurs, they argue, in addition to losing 3,000 linear feet of non-contiguous shoreline, which is interrupted by parcels of private lands, associated with the 3.14 acres, the public will lose the views they currently have when driving along North Biron Drive. The intervenors also note that the islands in Parcel 3 do not provide substitute shoreline for recreation since there's a lack of general access to them, and that more than two-thirds of the 154.84 acres to be acquired are under water.

22. The project reservoir's shoreline along North Biron Drive between Parcels 1 and 2 is a very popular recreational area for local residents. North Biron Drive is used by people to view the reservoir while walking, riding bicycles, and driving cars. Consolidated's boat launch, located on the highway just west of Parcel 2, is heavily used during the summer months. The Aqua Skiers team practice area, currently located on the shoreline to the east of Parcel 1, is also heavily used during the summer months by the team and its spectators. In addition, the outlet from the Cranberry Ditch, just west of Parcel 1, is a popular location for bank fishing.<sup>19</sup> In order to preserve this area for public enjoyment, we are adding a requirement that if North Biron Drive is moved away from

---

<sup>18</sup> Ostensibly, the road would be moved inland to accommodate expansive future residential development by Classic Development on private land within the project boundary. *See* discussion, *supra*.

<sup>19</sup> *See* final EA, section 5.2.8.

the shoreline, Consolidated must acquire the entire county highway roadbed and right-of-way,<sup>20</sup> and develop it as a shoreline trail for public use.<sup>21</sup>

23. Consolidated argues that if it is required to obtain rights to North Biron Drive roadbed and right-of-way and any additional land necessary to establish and maintain a public trail and shoreline access along the trail, that this be in lieu of the acquisition of the islands and other lands in Parcel 3.<sup>22</sup> We agree. Acquisition of the abandoned county highway would provide public access to the river sufficient to mitigate that lost by conveyance of the 26 lots.

### **B. 100-Foot No-Development Corridor**

24. In order to create an adequate shoreline buffer along the project reservoir, we are requiring Consolidated to establish a no-development corridor of at least 100 feet horizontally from the shoreline from the west end of Parcel 1 to the point east where Highway U diverges from North Biron Drive to turn south.<sup>23</sup> The corridor is to be

---

<sup>20</sup> As noted in the background section to this order, the project's dikes underlie portions of the North Biron Drive. Since the dikes are project works, the licensee must retain control over them and the portions of the roadway they underlie.

<sup>21</sup> See final EA, section 5.2.8, and ordering paragraphs (B) and (F). Wood County requests that the trail be designed to meet the standards of the American Association of State Highway and Transportation Officials' (Association) "Guide for the Development of Bicycle Facilities, 3<sup>rd</sup> Edition," where practical, as well as the grade guidelines of the Americans with Disabilities Act (ADA). The Association's guide appears to relate to highway design, not the kind of trail to be designed here. A licensee's obligation to comply with the ADA exists independent of its project license, and the Commission has no statutory role in implementing or enforcing the ADA as it applies to licenses. See *Northern States Power Company*, 78 FERC ¶ 61,363 at 62,510 (1997).

<sup>22</sup> Consolidated recommends that we impose as a condition of our authorization of the land exchange that the islands in Parcel 3 be conveyed to an entity that will ensure the islands remain open to public access for passive and undeveloped recreation. However, it is not clear who currently owns these islands, and we do not have authority to require actions by entities other than the licensee. In any event, if Consolidated will no longer be acquiring the islands as part of the exchange, any conveyance of the islands is outside the scope of this proceeding.

<sup>23</sup> There is to be no development in the 100-foot corridor except for the shoreline trail, the proposed trail from the parking area in Parcel 1 to the shoreline, the relocated Aqua Skiers site, the boat launch in Parcel 2, and any future recreational facilities that are required by the Commission.

revegetated using native vegetation. As discussed in the final EA that will be issued with this order, this buffer will provide a number of important resource benefits, including shoreline erosion protection; water quality and aquatic habitat protection; vegetative cover and riparian habitat protection and enhancement; shoreline control, including providing an adequate building setback restriction and limiting uses and occupancies to appropriate recreational facilities; and protection and enhancement of the natural visual character and quality of the shoreline landscape.

25. Wood County notes that the 100-foot buffer zone would require maintenance of 25 percent more natural area than required by Wisconsin's Administrative Code, Chapter NR 115.05(3)(c) -- which only requires a 35-foot natural vegetative buffer from the river's edge and building setbacks of 75 feet from the ordinary high water mark. It further states that, as required by Wisconsin law,<sup>24</sup> the Village of Biron and Wood County are developing plans consistent with Wisconsin's buffer and set back requirements; and that the license should reflect the state's requirements. It adds that a greater setback would have an adverse impact on planned development.

26. State law does not control in this matter, and the fact that Wisconsin law sets certain requirements is not, by itself, a sufficient reason to reduce the size of the 100-foot no-development corridor. Impacts on private development (which is not a project purpose) are not relevant to our determination of a proper buffer. As discussed in the EA, a 100-foot wide no-development corridor is appropriate here.

### **C. Improvements to the 3.14 Acres Required before Conveyance**

27. Under Article 412 of the project license, if a permitted use and occupancy violates any condition imposed on the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, the licensee is required to take action necessary to correct the violation. Here, it appears that structures built and modifications made on some of the 26 lots may not comply with the terms of the leaseholders annual leases, or with the Village of Biron and Wood County land use regulations, zoning ordinances, or the Wisconsin DNR's permitting process. Before conveyance occurs and the leased lands pass out of Consolidated's control, Consolidated must ensure that the lands, with their improvements, are in the condition that they would have been in had the leaseholders sought proper authorization for improvements to their lots. Accordingly, we are requiring that, prior to the conveyance of any of the leased properties, Consolidated shall provide us with documentation that any structures, improvements, or other

---

<sup>24</sup> Wisconsin Administrative Code, Chapter 66.1001(3).

modifications, existing or proposed, including septic systems,<sup>25</sup> have been executed in, or brought into compliance with the conditions specified in the existing annual leases, local land use regulations, zoning ordinances, and Wisconsin DNR's permitting process.

#### **D. Relocation of Aqua Skiers Practice Site**

28. As part of its land exchange plan, Consolidated proposed to move a practice area for a local water ski group, the Aqua Skiers, from its current location along the reservoir shoreline east of Parcel 1 to an area near the Cranberry Ditch, within and on the west side of Parcel 1. Wisconsin DNR expressed concern that the relocation could disrupt bank fishing at the outlet of Cranberry Ditch by increasing the amount of boat traffic and number of people along the shoreline in the vicinity, and recommended that the Aqua Skiers' practice area be located as far from the Cranberry Ditch's outlet as possible. Commission staff agreed with Wisconsin DNR and thus initially recommended that the practice area remain at its current location.<sup>26</sup>

---

<sup>25</sup> As regards septic systems, we are requiring documentation that each individual septic system, or plan for a septic system, meets the requirements of Wisconsin Administrative Code Chapters Comm 81 and Comm 87, which govern design, installation, and inspection of private onsite wastewater treatment systems.

Wood County maintains that the Village of Biron has made a commitment to serve the area containing the leaseholders' properties with its public sewage system, and that, where such commitment has been made, Wood County ordinance 702.04 requires the leaseholders to discontinue the private septic systems and connect to the Village of Biron's sewer system. It therefore argues that the existence of the current septic systems is temporary, not permanent, and that compliance with Wisconsin Administration Code Chapters Comm 81 and Comm 87 will only cause undue expense and delay the conveyance. While connection with a public sewage system would make our requirements concerning the private sewage systems unnecessary, Wood County has not provided evidence that a public sewer has been, or is in the process of being physically made available for connection to the leaseholders' properties, nor is the village subject to our jurisdiction, so we cannot control whether or not it constructs public sewage systems. If a public sewer is made available to the leaseholders' properties before completion of the exchange, the licensee is free to request an amendment taking account of that circumstance.

<sup>26</sup> See draft EA, section 5.2.8.

29. However, Aqua Skiers states that direct access to its practice site is necessary both for its equipment trucks and for emergency vehicles, and is also desirable for the general public, who watch the practices.<sup>27</sup> Aqua Skiers notes that, under the proposed shoreline plan, neither vehicular service nor parking is planned for its current site, but that such access would be available at the proposed new location.<sup>28</sup> In addition, Consolidated argues that relocating the site would not affect the public's ability to fish near the Ditch during peak fishing times (morning and late afternoon), because the team only practices twice per week, normally in the mid-afternoon, when – due to mid-day temperatures and light conditions -- fish species are in deeper waters.

30. To address Commission staff's and Wisconsin DNR's concerns, Consolidated proposes to relocate the practice area to about 300 feet east of Cranberry Ditch. Relocation of the Aqua Skiers' practice area as proposed by Consolidated will provide for safe recreation for the Aqua Skiers' practices and their audiences, while adequately protecting bank fishing at the Cranberry Ditch.<sup>29</sup> We will therefore adopt this proposal.

#### **E. Other Matters**

31. Our approval of the proposed land exchange is premised on Consolidated's being able to provide access to Parcels 1 and 2 as well as to other recreation facilities in the area (boat launch, Aqua Skiers site) and development of the trail in the roadbed. It appears that such access will be by way of access roads leading from the relocated county road. In consequence, our approval is conditioned on the county road being relocated. Moreover, Consolidated will have to acquire rights sufficient to provide an access road from the county road to the parking lot in Parcel 2. To ensure that this occurs, we are providing that Consolidated shall not convey title to the 26 lots until after the county road is relocated.

---

<sup>27</sup> See final EA, section 5.2.8. Aqua Skiers states that, in addition to a the display of its practice sessions, it provides free "learn to water ski" activities to the children in the community. It adds that its facilities are available for use by the general public when it is not using them, and that the new location will provide proximity to parking facilities for the public.

<sup>28</sup> Wood County also maintains that a location in Parcel 1 is safer and more accessible for ski team members and observers.

<sup>29</sup> See discussion in final EA, at section 5.2.8.

The Commission orders:

(A) The application filed on May 24, 2005, by Consolidated Water Power Company for authorization of a land exchange at its Biron Hydroelectric Project No. 2192 is granted, with the modifications and conditions set out below.

(B) Upon completion of the relocation of a portion of North Biron Drive (running from Huffman Road on the west to a point just past the licensee's pond, where it intersects the north-south section of Trunkline County Highway U) to an inland route enabling the licensee to construct access roads connecting parking lots to the relocated road, the licensee is authorized to convey in fee, subject to the licensee's flowage rights, 26 lots of land, comprising 3.14 acres, located between County Highway U and the southern shoreline of the Biron Project's reservoir. This conveyance is conditioned upon Consolidated acquiring: (a) Parcels 1 and 2; (b) the entire roadbed of North Biron Drive and its right-of-way between from the east side of lot 21 to the north-south section of County Trunkline Highway U on the east; (c) the buffer zone; and (d) lands needed to ensure access to Parcel 2 .

(C) Prior to conveyance of the 26 lots, the licensee shall provide to the Commission documentation that it has acquired all properties enumerated in Ordering Paragraph (B)(2)(a)-(c), above.

(D) Prior to conveyance of any leased properties with existing or proposed permanent improvements (including septic systems), the licensee shall provide to the Commission documentation that such permanent improvements have been executed in compliance with the conditions specified in the existing annual leases; local land use regulations; zoning ordinances; Wisconsin Department of Natural Resources' permitting process; and all required state, county, and local permits for the improvements. In addition, any existing, abandoned, or proposed septic systems shall meet the requirements of Wisconsin Administrative Chapters Comm 81 to Comm 87.

(E) Within 180 days of acquiring the segment of roadbed and right-of-way underlying North Biron Drive described in ordering paragraph (B) above, the licensee shall submit for Commission approval a plan to develop it as a shoreline trail. The plan shall include consultation with the Village of Biron, Wood County Highway Commission, Wood County Parks and Forestry, Wood County Planning and Zoning, Lac du Flambeau Band of Lake Superior Chippewa Tribe, the Wisconsin State Historic Preservation Office, National Park Service, River Alliance of Wisconsin, U.S. Fish and Wildlife Service, and Wisconsin Department of Natural Resources.

(F) Within 180 days of completion of the relocation of the portion of North Biron Drive described in Ordering Paragraph (B) above, to an inland route enabling the licensee

to construct access roads connecting parking lots to the relocated road, the licensee shall submit for Commission approval a plan to construct access roads connecting parking areas in Parcels 1 and 2 to the relocated road.

(G) Upon completion of the land exchange, the licensee shall, on the acquired 48-acre parcel: (1) construct a 30-vehicle parking area covering less than two acres; (2) construct a low impact trail linking the parking area to the shore of the project's reservoir; and (3) relocate the Aqua Skiers practice area from its current location at the licensee's boat ramp to a site upstream of and no less than 300 feet from the Northland Cranberry Ditch.

Prior to commencing construction of the parking area and the trail linking the parking area to the project reservoir's shoreline on the 48-acre parcel, the licensee shall submit, for Commission approval, a final design for the parking area, and a final trail design that avoids or minimizes impacts to wetlands. At least 90 days prior to construction of the new Aqua Skier's practice area, the licensee shall submit for Commission approval, a final design for the new area, including documentation of consultation with the Village of Biron, Wood County Highway Commission, Wood County Parks and Forestry, Wood County Planning and Zoning, Lac du Flambeau Band of Lake Superior Chippewa Tribe, Wisconsin State Historic Preservation Office, National Park Service, River Alliance of Wisconsin, U.S. Fish and Wildlife Service, and Wisconsin Department of Natural Resources.

(H) Upon completion of the land exchange, the licensee shall, on the acquired 2.96-acre parcel, construct: (1) a parking area with 20 vehicle stalls and 80 vehicle/trailer stalls; (2) a public boat launch which shall be located downstream of the licensee's pond and upstream of the licensee's current boat launch; and (3) an access road connecting the parking area to the relocated portion of North Biron Drive.

At least 90 days prior to commencing construction of the parking area, boat launch, and access road, the licensee shall submit, for Commission approval, final designs for the parking area and the boat launch, including documentation of consultation with the Village of Biron, Wood County Highway Commission, Wood County Parks and Forestry, Wood County Planning and Zoning, Lac du Flambeau Band of Lake Superior Chippewa Tribe, Wisconsin State Historic Preservation Office, National Park Service, River Alliance of Wisconsin, U.S. Fish and Wildlife Service, and Wisconsin Department of Natural Resources.

(I) Upon completion of the land exchange, the licensee shall establish a 100-foot- wide buffer zone along the shoreline of the project's reservoir from the upstream end of the Northland Cranberry Ditch extending upstream to the north-south section of Trunkline County Highway U. There shall be no development in the

100-foot-wide buffer zone, except for the required shoreline trail, trail from the parking area in the 48-acre parcel to the shoreline, relocated Aqua Skiers site, boat launch, access roads, and any future recreational facilities that may be proposed by the licensee and approved by the Commission.

The licensee shall develop, and file for Commission approval, a resource conservation plan for the long-term monitoring and protection of vegetation and wildlife in the 100-foot-wide buffer zone, including revegetation of the unpaved areas of the buffer zone with native vegetation.

(J) In any instruments conveying any of the 26 lots, the licensee shall clearly state that the conveyed lands are subject to a flowage easement and that the purchaser is on notice that Commission requirements may, at any and all times, result in the lands being flooded.

(K) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2006).

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.