

140 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Public Utility District No. 2 of Grant County,
Washington

Project No. 2114-248

ORDER ON REHEARING AND AMENDING LICENSE ARTICLE 418

(Issued September 20, 2012)

1. On February 10, 2012, Commission staff issued an order modifying and approving in part amendments requested by Grant Public Utility District No. 2 of Grant County, Washington (Grant PUD) to Articles 418 and 419 of its license for the Priest Rapids Hydroelectric Project No. 2114.¹ As pertinent here, the February 10, 2012 order granted Grant PUD's requests (1) to include within the Article 418 Recreation Resources Management Plan (RRMP) the recreation measures for Crescent Bar Island required by Article 419; and (2) to revise the schedule for recreation facility development by extending various deadlines for completion of measures required by the RRMP. The order denied Grant PUD's request to modify the recreational amenities proposed for the Crab Creek Corridor and relocate them to the Burkett Lake area. In addition, the order noted that Grant PUD had not asked for extensions of the deadlines (already passed) to implement measures at three of the project recreation areas (Rocky Coulee, Sunland Day Use, and Buckshot Ranch Boat Launch).

2. Grant PUD, Mr. Pat Kelleher, and Ms. M. Coleen Kelleher filed timely requests for rehearing of the February 10, 2012 order. Grant PUD argues the Commission erred when it: (1) did not consolidate recreational amenities proposed for the Crab Creek Corridor into the Burkett Lake area; and (2) specified that the completion deadline for the Rocky Coulee, Sunland Day Use, and Buckshot Ranch Boat Launch areas is April 17, 2009. Mr. Kelleher and Ms. Kelleher argue (1) that Grant PUD has been slow to implement recreational measures; (2) that the Commission failed to give adequate notice of Grant PUD's amendment request; and (3) that it was error to consolidate the Crescent Bar Island recreational measures into the RRMP. For the reasons discussed below, the

¹ *Public Utility District No. 2 of Grant County, Washington*, 138 FERC ¶ 62,114 (2012). Commission staff issued an errata notice on February 14, 2012, to eliminate certain redundant language.

Commission grants the licensee's request for rehearing and denies Mr. Kelleher's and Ms. Kelleher's requests.

I. Background

3. Grant PUD's project includes both the Priest Rapids and Wanapum dams and associated reservoirs and is located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington. The project was originally licensed in 1955 for a 50-year term,² and the Commission issued a new, 44-year license on April 17, 2008.³

4. As part of its relicense application, Grant PUD submitted a proposed RRMP.⁴ Article 418 in the new license⁵ approved the proposed RRMP and required the licensee to implement, within one year of license issuance, certain of the project recreation measures contained in the RRMP. The provisions of the proposed RRMP that addressed the Crab Creek Corridor, Rocky Coulee, Buckshot Ranch Boat Launch, and Sunland Day Use recreation areas are summarized below.

5. Article 419 of the new license required Grant PUD to file for Commission approval a final shoreline management plan (SMP).⁶ In addition, Article 419 required Grant PUD to implement certain recreation-related measures on the project's Crescent Bar Island, including a trail, signage, and a picnic area, and to provide a construction schedule and cost estimates for the measures.⁷

II. Grant PUD's Amendment Request

6. On February 26, 2010, Grant PUD filed a request to amend certain provisions of Article 418 and to remove the Crescent Bar Island recreation measures from Article 419 and add them to Article 418, the article that deals with project recreation. The provisions of Grant PUD's request are discussed below to the extent pertinent to this order.

² 14 FPC 1067 (1955).

³ *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049 (2008).

⁴ Relicense Application, filed October 3, 2003, Exhibit E7.

⁵ 123 FERC at 61,334-35.

⁶ *Id.* at 61,335-36. Grant PUD filed its proposed SMP on March 2, 2010, and it is currently pending before the Commission in a separate proceeding. Nothing in this order affects those proceedings.

⁷ *Id.*

7. Article 418 requires Grant PUD to develop the following facilities at a site in an area known as Crab Creek Corridor: a barrier-free fishing pier or platform, two kiosks, and an approximately 5.8-mile-long water trail with a 1.6-mile-long land trail (resulting in a entire trail length of 7.4 miles).⁸ Grant PUD's amendment request proposed instead that Grant PUD would integrate these requirements, as feasible, into the nearby Burkett Lake recreation area, a site which is also located within the Crab Creek Corridor. Grant PUD stated that the Crab Creek Corridor, with the exception of the Burkett Lake area, is known to contain significant cultural resources, and Grant PUD could minimize impacts to those cultural resources by moving the Crab Creek Corridor recreation measures to the Burkett Lake area.⁹ However, Grant PUD acknowledged that "the entire 7.4 miles of trail originally proposed for the Crab Creek Corridor cannot be accommodated at the Burkett Lake site." Instead, Grant PUD proposed an approximately 2-mile-long water trail as an alternative.

8. Reasoning that the provisions of Article 419 regarding Crescent Bar Island are recreation enhancements, Grant PUD requested that its license be amended by including the Article 419 Crescent Bar Island recreation provisions in the Article 418 RRMP. Grant PUD emphasized that it did not propose to remove any substantive requirements for recreation development at Crescent Bar Island or to modify any other aspect of the SMP requirements but only wanted (1) to implement all recreational provisions for Crescent Bar Island and the rest of the project under the Article 418 RRMP in order to keep all recreation requirements coordinated; and (2) to keep all shoreline project-wide policy development and guidance under the Article 419 SMP.

III. February 10, 2012 Order

9. On February 10, 2012, the Commission staff issued an order that modified and approved in part the amendment request.¹⁰ The order denied the request to consolidate the Crab Creek Corridor measures within the Burkett Lake area, concluding that the alternative proposed by Grant PUD:

will not provide the same variety of recreational opportunities or the same ease of access to local communities in the project area. [Footnote omitted.] Under Grant PUD's proposal, the two put in/take out areas as well as the water trail along Crab

⁸ The water trail includes construction of put in/take out areas at both ends of an approximately 5.8-mile-long water trail on Crab Creek.

⁹ Because of the proposed shift in location, Grant PUD requested a change in facility name from "Crab Creek Corridor" to "Burkett Lake Recreation Area."

¹⁰ *Public Utility District No. 2 of Grant County, Washington*, 138 FERC ¶ 62,114 (2012).

Creek would be lost and the character of the existing recreation opportunities at Burkett Lake would be changed from informal to developed.¹¹

10. Regarding the potential that development to the Crab Creek Corridor could result in adverse impacts to cultural and natural resources, the order stated that Grant PUD provided no evidence that there would be any such adverse impacts. However, the order acknowledged that Grant PUD was engaging in ongoing cultural resource surveys and that, if issues arise in the future, they could be addressed at that time.¹²

11. Regarding Grant PUD's proposed revision to the recreation schedule, the order found that the high number of recreation amenities required by the license justified the extension of time.¹³ In order to make the extended implementation schedule clear, the order included a table showing the revised implementation timeline. The table included the Rocky Coulee,¹⁴ Sunland Day Use,¹⁵ and Buckshot Ranch Boat Launch¹⁶ areas, and stated that Grant PUD had not requested extensions or time for those areas and that the completion deadline thus continued to be the deadline set forth in the license, April 14, 2009.

12. The Commission also granted Grant PUD's request to move the recreational provisions of Article 419 concerning Crescent Bar Island to the Article 418 RRMP, agreeing with the licensee that the measures are recreational in nature and thus properly fit within the RRMP as a component of a holistic recreation development strategy for the project.

¹¹ *Id.* P 10.

¹² *Id.* P 11.

¹³ *Id.* P 26.

¹⁴ At Rocky Coulee, Grant PUD's RRMP proposed implementation of ten primitive walk-in campsites, five day use picnic tables, a kiosk, vault toilets, internal trails, a hand boat launch, and a trail connection. October 29, 2003 Draft RRMP, Exhibit 1.

¹⁵ At the Sunland Day Use Area, Grant PUD's RRMP proposed five new picnic sites, a new swimming area, sign, vault toilet, and gravel access road and parking. October 29, 2003 Draft RRMP, Exhibit 1.

¹⁶ At Buckshot Ranch, Grant PUD's RRMP proposed a hand boat launch, sign, vault toilet, a reorganized and smaller gravel parking area, an ADA-accessible hunting blind, and a trail on the north end of the site. October 29, 2003 Draft RRMP, Exhibit 1.

IV. Discussion

A. Grant PUD's Rehearing Request

1. Crab Creek Corridor

13. On rehearing, Grant PUD argues that the order erred when it did not move the Crab Creek recreation measures to the Burkett Lake area. Grant PUD contends that the Commission failed to recognize the significance of the archaeological properties that would be negatively affected by recreational amenities in the Crab Creek Corridor.

14. In support of its assertions regarding the archaeological significance of the Crab Creek Corridor, Grant PUD stated that new information has been collected as a result of the excavations pursuant to the project's Historic Properties Management Plan (HPMP).¹⁷ Grant PUD included in its rehearing request information summarizing these evaluations, which was not available at the time of the February 10, 2012 order.¹⁸ Grant PUD stated that surveys of the Burkett Lake area did not reveal any cultural sites eligible for listing on the National Register of Historic Places, "making the Burkett Lake property a superior location for recreation amenities." Grant PUD acknowledged that its alternative proposal for Burkett Lake results in a reduction of recreational opportunities with the loss of the water trail. Therefore, Grant PUD proposes to identify alternatives during the 2015 plan update of the RRMP.

15. Upon review of the new information provided by Grant PUD in its rehearing request, we are persuaded that Grant PUD's proposal to consolidate provisions of the Crab Creek Corridor into the Burkett Lake area is reasonable and should be approved. The potential damage to culturally sensitive areas of Crab Creek Corridor by

¹⁷ See *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049 at P 65. The Commission approved Grant PUD's HPMP in October 2011. *Public Utility District No. 2 of Grant County, Washington*, 137 FERC ¶ 62,081 (2011).

¹⁸ Exhibit A to Grant PUD's rehearing request, which was submitted separately and given privileged treatment due to the sensitive nature of the cultural resource information.

With its rehearing request, Grant PUD also included a March 2, 2012 letter from the Wanapum Band clarifying the Wanapum's support for moving the recreation measures from the Crab Creek Corridor. The letter explained that, contrary to a statement in the February 10, 2012 order that the Wanapum did not support the amendment request, the Wanapum state that the Crab Creek Corridor recreational measures at the existing locations "will harm our cultural resources by inviting more activity to the most sensitive areas."

implementing the recreation measures currently set forth in the new license outweighs the potential recreation benefits of these measures.

16. However, we do not agree with Grant PUD's proposal to delay until its RRMP update in 2015 a revised proposal for a water trail that will provide recreational benefits for boaters. The relicensing process revealed an extensive need for recreational facilities, and it should not take until 2015 to propose a revised water trail. Ideally, the new water trail should be in operation by the time Grant PUD files its updated RRMP in 2015. Therefore, Grant PUD must submit, by September 1, 2013, its proposal for an alternative water trail.

2. Buckshot Ranch Boat Launch, Rocky Coulee, and Sunland Day Use Areas

17. On rehearing, Grant PUD also objects to the finding in the February 10, 2012 order that the implementation deadline for the measures at the Rocky Coulee, Sunland Day Use, and Buckshot Ranch Boat Launch areas has passed, explaining that until the February 10, 2012 order was issued it had not realized that these facilities were considered project recreation facilities and thus saw no need to request an extension of time.¹⁹ Now that the status of the Buckshot Ranch Boat Launch, Rocky Coulee, and Sunland Day Use areas as project recreation measures has been clarified, it proposes extended implementation deadlines. Specifically, Grant PUD proposes to modify the implementation schedule to reflect the following deadlines:

- Buckshot Ranch Boat Launch - December 31, 2013
- Rocky Coulee Area - December 31, 2014
- Sunland Day Use Area - December 31, 2014.

18. The Commission finds that the implementation schedule for measures at the Buckshot Ranch Boat Launch, Rocky Coulee, and Sunland Day Use areas is reasonable and grants the request.

B. Kellehers' Rehearing Requests

19. On rehearing, Mr. Kelleher complains that Grant PUD has been slow to implement recreation measures. He asserts that Grant PUD's request to amend the RRMP is a collateral attack on the licensing order and that it was arbitrary and capricious to extend the implementation deadlines beyond April 2009.

¹⁹ We agree that, given the extensive recreation measures proposed in the RRMP, and the description of those measures in the order issuing new license, it was not entirely clear that the Rocky Coulee, Sunland Day Use, and Buckshot Ranch Boat Launch areas are considered project recreation.

20. We deny rehearing on this issue. As the February 10, 2012 order explained, the extensive recreation amenities required by the license and the complex issues involved in facility development justify the extension of time. While the relicense order identified an extensive need for recreational facilities at the project, the Commission finds that the adjustment of the deadlines will both meet that need and provide for a reasonable deadline. Moreover, the requirements of a license are not frozen in time such that any future request to change the requirements will be considered a collateral attack on the license.

21. In addition, Mr. Kelleher contends that the Commission did not give proper notice of the amendment request, citing the failure of the notice to cite specifically Article 419, which Grant PUD proposed to amend by removing certain recreation elements from the project's Shoreline Management Plan required by Article 419 and instead including them in Article 418's RRMP. In his timely supplement to his rehearing request, Mr. Kelleher expresses concerns regarding the original planned location for the water trail within the Crab Creek Corridor.

22. We deny rehearing on this issue. The public notice of the amendment proceeding was adequate. The notice clearly identified Grant PUD's filing, which was readily available on the Commission's eLibrary system as relating to project recreation facilities. In fact, Mr. Kelleher had actual notice of the nature of Grant PUD's amendment request, as evidenced by his timely motion to intervene and comments regarding Article 419.²⁰

23. Mr. Kelleher and Ms. Kelleher allege that the February 10, 2012 order was arbitrary and capricious and not supported by substantial evidence by allowing Grant PUD to move the recreation elements of Article 419 into the RRMP.

24. We deny rehearing on this issue. Moving measures required by Article 419 into Article 418 was merely a repackaging of the requirements. It did not alter the requirements themselves. As explained in the February 10, 2012 order, the facilities required by Article 419 for Crescent Bar Island are recreational in nature, and it thus was reasonable to include them in Article 418, which contains all the other recreational measures required by the license.

The Commission orders:

(A) Grant PUD's request for rehearing filed on March 9, 2012, is granted to the extent set forth below, and is otherwise denied.

(B) Grant PUD's request to extend the deadlines for recreational measures is granted. The new deadlines are:

²⁰ See Mr. Kelleher's June 11, 2010 filing at 11 (quoting Grant PUD's description of its proposal relating to the Article 419 recreational measures for Crescent Bar Island).

- Buckshot Ranch Boat Launch - December 31, 2013
- Rocky Coulee Area - December 31, 2014
- Sunland Day Use Area - December 31, 2014

(C) Grant PUD's request to consolidate the Crab Creek Corridor amenities into the Burkett Lake area and to rename it the Burkett Lake Recreation Area is granted.

(D) Grant PUD must file by September 1, 2013, a plan for an alternative water trail. The plan shall be filed after consultation with the U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, Washington Recreation and Conservation Office, U.S. Bureau of Reclamation, U.S. Bureau of Land Management, Wanapum Indians, Confederated Tribes and Bands of the Yakama Nation, and Kittitas County.

(E) The rehearing request filed by Pat Kelleher on March 7, 2012 and supplemented on March 8, 2012, and the rehearing request filed by M. Colleen Kelleher on March 12, 2012, are denied.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.