

145 FERC ¶ 61,144  
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. 1 of Okanogan County,                      Project No. 12569-004  
Washington

ORDER ON REHEARING AND AMENDING LICENSE

(Issued November 21, 2013)

1. On August 8, 2013, American Whitewater filed a request for rehearing of the Commission's July 9, 2013 order issuing an original license (Order)<sup>1</sup> for the Enloe Hydroelectric Project No. 12569-001.<sup>2</sup> American Whitewater challenges the license provisions regarding minimum flow requirements. As discussed below, the Commission denies American Whitewater's request for rehearing. In addition, the Commission amends the license to include conditions that were added to the project's water quality certification by the Washington Pollution Control Hearings Board (PCHB) after the issuance of the license order.

**Background**

2. On August 22, 2008, Public Utility District No. 1 of Okanogan County, Washington (Okanogan PUD) filed, pursuant to Part 1 of the Federal Power Act (FPA),<sup>3</sup> an application for an original license to construct, operate, and maintain the Enloe Project. The 9.0-megawatt (MW) project will be located on the Similkameen River at

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<sup>1</sup> *Pub. Util. Dist. No. 1 of Okanogan Cnty.*, 144 FERC ¶ 62,018 (2013).

<sup>2</sup> The Center for Environmental Law and Policy, Sierra Club, North Cascades Conservation Council, and Columbia River Bioregional Education Project were also listed in the rehearing request; however, on September 4, 2013, the Commission issued a notice rejecting the request for rehearing as to those entities, because they are not parties to this proceeding. American Whitewater's request for rehearing was not rejected as it is a party to the licensing proceeding. *See Pub. Util. Dist. No. 1 of Okanogan Cnty.*, 144 FERC ¶ 61,183 (2013).

<sup>3</sup> 16 U.S.C. §§ 791(a)-825(r) (2012).

river mile (RM) 8.8 near the city of Oroville in Okanogan County, Washington. The project will occupy about 35.47 acres of federal land administered by the U.S. Bureau of Land Management (BLM). The Similkameen River is a tributary to the Okanogan River just south of Oroville; the Okanogan flows into the Columbia River east of Brewster, Washington. The Similkameen River drains the east slopes of the Cascade Mountains in northern Washington and southern British Columbia, Canada. The majority (79 percent) of the drainage basin lies within Canada. Coyote Falls, also known as Similkameen Falls, is located about 370 feet below Enloe Dam and forms a 33-foot-long, 20-foot-high barrier impassable to anadromous fish.

3. The project will consist of: the existing 315-foot-long, 54-foot-high concrete gravity arch Enloe Dam with an integrated central overflow spillway; three sections of new automated 5-foot-high steel crest gates/flashboards;<sup>4</sup> an existing 76.6-acre reservoir; a new 190-foot-long intake canal on the east abutment of the dam diverting flows into the new penstock intake structure; a new 35-foot-long by 30-foot-wide penstock intake structure with trashracks; two new 150-foot-long above-ground steel penstocks that carry flows from the intake to the powerhouse; a new 180-foot-long tailrace channel emptying into the Similkameen River in the plunge pool downstream of Similkameen Falls; a new substation adjacent to the powerhouse; a new powerhouse with two Kaplan turbine/generating units totaling 9 MW of installed capacity; a new 100-foot-long, 13.2-kilovolt primary transmission line connecting the substation to an existing distribution line; about 2 miles of new and upgraded access roads; and appurtenant facilities. Currently, all inflow to the reservoir spills over Enloe Dam.

4. The project will be operated in a run-of-river mode and will bypass an approximately 370-foot-long section of the Similkameen River, including the aforementioned Similkameen Falls. Okanogan PUD will install automated crest gates that adjust to regulate spills and maintain a nearly constant reservoir elevation. When flows exceed 16,500 cubic feet per second (cfs) (approximately 1 percent of the time), the crest gates will be fully opened and flows will pass over the spillway. The estimated annual generation for the project is 45 gigawatt-hours (GWh). The project boundary encompasses the Enloe reservoir (generally following the 1,055-foot mean sea level (msl) elevation contour except in the area of new access roads) and the river corridor extending downstream from the dam 0.25 miles to include the tailrace channel and the bypassed reach.

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<sup>4</sup> This description of the crest gates/flashboards is more accurate than the description in the license order. Ordering paragraph (B) of this order amends Ordering paragraph (B)(2) of the license order to reflect this change.

5. The license order for the Enloe Project was issued on July 9, 2013. As relevant here, the Commission approved Okanogan PUD's proposal to provide a minimum flow to the bypassed reach of 30 cfs from mid-July to mid-September and 10 cfs the rest of the year to maintain refuge areas for resident fish, known as the 10/30 minimum flow.<sup>5</sup> The minimum flow was also required by the water quality certification issued by the Washington Department of Ecology (Ecology) under section 401 of the Clean Water Act (CWA)<sup>6</sup> and filed with the Commission on August 20, 2012.<sup>7</sup> The order also required a post-construction recreation monitoring plan (Article 411) for assessing: the amount of recreational use at the project; satisfaction with the recreation facilities at the project; and satisfaction with the views of the flows at Enloe Dam and Similkameen Falls.

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<sup>5</sup> Proposed flow diversions for project operations would cause flow in the bypassed reach to be reduced by up to 1,600 cfs when the powerhouse is in operation. When river flow is greater than 1,600 cfs, the amount of water provided to the bypassed reach would be any flow in excess of 1,600 cfs. When river flow is less than 1,600 cfs and both generating units are operational, the only flow provided into the bypassed reach would be either 10 or 30 cfs depending on the time of year. EA at 93. Since the project would be operated in a run-of-river mode, Okanogan PUD plans to maintain reservoir levels between elevation 1,048.3 feet and elevation 1,049.3 feet (top of crest gates) when inflows are equal to, or less than, the maximum hydraulic capacity of the units (1,600 cfs). Discharge through the units would be approximately equal to inflow based on the maintenance of reservoir levels. When inflows are between 1,600 and 16,500 cfs, the reservoir elevation would be maintained between elevation 1,049.3 feet and elevation 1,050.3 feet. When inflows exceed 16,500 cfs, the crest gates would be fully opened and water would flow over the crest gates. During low flow conditions, i.e., less than 500 cfs, the project would operate in run-of-river mode with one unit running.

<sup>6</sup> 33 U.S.C. § 1341(a)(1)(2012).

<sup>7</sup> See Order at PP 13, 29, 89, 118-119; ordering paragraph (D) (providing that the license is subject to the conditions in the water quality certification, as set forth in Appendix A; and Appendix A (Water Quality Certificate Conditions issued by Ecology and filed with the Commission on August 20, 2012), General Conditions 5.2(9), Aquatic Life and 5.8, Aesthetics, and Condition 20, Fish Management Plan (Fish Plan), Section 3.3.1, Minimum Instream Flow. On August 10, 2012, several organizations, including American Whitewater, filed a joint appeal of Ecology's water quality certification with the PCHB. The PCHB issued its decision on July 23, 2013; upon reconsideration, the order was amended and re-issued on August 30, 2013. The PCHB decision is discussed in greater detail below.

6. During the license proceeding, American Whitewater and others opposed the 10/30 minimum flow. These commenters recommended higher minimum flows for fisheries, recreation, and aesthetics ranging from 400 cfs to 3,400 cfs in the bypassed reach, depending on the month. They asserted that Okanogan PUD's proposal would substantially dewater flows in the bypassed reach and Similkameen Falls, resulting in, among other things, adverse effects to aesthetics and recreation.

7. The decision to approve Okanogan PUD's proposal was based on Commission staff's conclusion in the Environmental Analysis (EA) issued August 31, 2011, that the bypassed reach provides no habitat that is critical for the life stages of any fishes and does not support a large enough fish population to warrant the commenters' recommended flows, nor did the commenters provide any technical justification for the recommended higher flows.<sup>8</sup> In addition, the EA concluded that the proposed minimum flows would maintain adequate aquatic habitat in the bypassed reach for use by the few fish inhabiting the reach.<sup>9</sup>

8. The EA further concluded that the commenters' higher recommended minimum flows would not result in benefits to recreation and fisheries that would justify the estimated levelized annual cost of \$1,295,830.<sup>10</sup> The EA noted that recreational use at the project site was relatively low and that providing the 10/30 minimum flow would ensure that flow passes over the Similkameen Falls at all times.<sup>11</sup> As noted above, Article 411 of the license requires Okanogan PUD to file, after consultation with interested parties, a Recreation Monitoring Plan to assess recreational use post construction, and to determine whether different measures, potentially including flows, are warranted in the future.<sup>12</sup>

9. American Whitewater filed its request for rehearing on August 8, 2013. American Whitewater claims that Commission staff violated the National Environmental Policy Act (NEPA)<sup>13</sup> by failing to take a hard look at the environmental impacts of the 10/30 cfs

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<sup>8</sup> See Order at P 89 (citing EA at 230).

<sup>9</sup> *Id.* (citing EA at 93-95).

<sup>10</sup> See Order at P 119 (citing EA at 230. This figure is based on an estimated reduction in annual energy production of 19.1 GWh associated with the commenters' higher recommended minimum flow, or almost one-half of the estimated annual generation for the project of 45 GWh).

<sup>11</sup> *Id.* P 120 (citing EA at 131-32).

<sup>12</sup> *Id.* (citing EA at A-23).

<sup>13</sup> 42 U.S.C. § 4332(2)(C) (2012).

minimum flow requirement and by failing to analyze alternative minimum flows before project construction and operation. In addition, American Whitewater argues that Commission staff failed to balance competing interests under FPA section 10(a)<sup>14</sup> and NEPA and relied on outdated, inaccurate economic information. American Whitewater requests that the Commission require Okanogan PUD to establish an aesthetic flow work group and to prepare an environmental analysis of alternative minimum flow requirements prior to construction of the project.

### **Discussion**

10. The primary issue on rehearing is whether Commission staff was required by NEPA to direct Okanogan PUD to conduct an aesthetic flow study for the project prior to project construction. As discussed below, we find that the license order's inclusion of the 10/30 cfs minimum flows and a requirement to evaluate the impacts of the minimum flows post-licensing was reasonable and did not violate NEPA. We also amend the license order herein to include conditions related to the minimum flows that were added to the project's water quality certification by the PCHB after the license order was issued.

11. As explained above, from a biological and water quality perspective, the decision to approve Okanogan PUD's minimum flow proposal was based in part on Commission staff's conclusion in the EA that the short (370-foot-long) bypassed reach provides no habitat that is critical for the life stages of any fishes and does not support a large enough fish population to warrant higher flows, and that commenters provided no technical justification for higher flows.<sup>15</sup> The EA concluded that the proposed minimum flows would maintain adequate aquatic habitat in the bypassed reach for use by the few fish able to access and inhabit the reach, despite the fact that the proposed flow diversions for project operations would greatly reduce flows in the bypassed reach for much of the year.<sup>16</sup> As noted in the EA, effects on water quality would be related to potential changes in dissolved oxygen (DO) levels and water temperature, both of which have a significant impact on aquatic species.<sup>17</sup> The EA concluded that maintaining some flow in the bypassed reach and over the falls would continue to provide some natural aeration. The EA further concluded that passage of the minimum flow through the bypassed reach would not result in a measurable increase in water temperature at the base of the falls, even under the lowest river flow conditions, assuming that the minimum flow is provided

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<sup>14</sup> 16 U.S.C. § 803(a)(2012).

<sup>15</sup> See Order at P 89 (citing EA at 230).

<sup>16</sup> *Id.* (citing EA at 93-95).

<sup>17</sup> *Id.* (citing EA at 58-59).

via a pipe or small gate at the dam.<sup>18</sup> In addition, diverting flows from the bypassed reach, which includes the falls, would result in a decrease in total dissolved gases (TDG) in the plunge pool below the falls, which would enhance habitat for the anadromous fish that use this area.<sup>19</sup>

12. The EA further concluded that the commenters' recommended minimum flows would not result in benefits to recreation and fisheries that would justify the estimated levelized annual cost of \$1,295,830.<sup>20</sup> The EA noted that recreational use at the project site was relatively low and that providing a minimum flow of 10/30 cfs would ensure that at least some flow is passing over Similkameen Falls at all times, even during the lowest flow months of the year.<sup>21</sup> Based on the available data and the license requirement to evaluate the 10/30 flow's effect on recreation, aesthetics and water quality, while providing a framework for making improvements, if needed, the license order concluded that a pre-construction aesthetic flow study, as recommended by commenters, was not necessary.<sup>22</sup>

13. In addition, the project's water quality certification issued by Ecology on July 13, 2012, required minimum flows of 10 to 30 cfs in the bypassed reach.<sup>23</sup> Pursuant to CWA section 401(d),<sup>24</sup> the license for the Enloe Project required the minimum flows

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<sup>18</sup> EA at 59. Under section 3.3.1 of the Fish Plan for the August 20, 2012 water quality certification, Okanogan PUD was required to monitor flow, DO and water temperature during the first five years of operation.

<sup>19</sup> Currently, state water quality standards for TDG are often exceeded downstream of the falls. The beneficial reduction in TDG caused by project operations would be directly related to the proportion of river flow that is diverted through the powerhouse. See EA at 53.

<sup>20</sup> See Order at P 119 (citing EA at 230).

<sup>21</sup> *Id.* P 120 (citing EA at 58).

<sup>22</sup> *Id.* (citing EA at A-23).

<sup>23</sup> Pursuant to CWA section 401, 33 U.S.C. § 1341 (2012), states establish water quality protections for projects requiring a federal license to discharge into navigable waters.

<sup>24</sup> 33 U.S.C. § 1341(d) (2012).

established in the water quality certification.<sup>25</sup> The water quality certification required the licensee to provide the 10/30 cfs minimum flow, i.e., a minimum flow of 10 cfs from September 16 to July 15 and of 30 cfs from July 16 to September 15, for the duration of the license, “for aesthetic purposes as well as fish and other aquatic life.”<sup>26</sup>

14. On August 10, 2012, American Whitewater and others filed a joint appeal of the water quality certification to the PCHB, asserting that Ecology failed to impose instream flow conditions on the project that will ensure the protection of the aesthetic and other values of Similkameen Falls in compliance with state water quality standards. On July 23, 2013, two weeks after the license order was issued, the PCHB issued its decision. The PCHB affirmed the water quality certification, subject to the additional condition that the 10/30 cfs minimum instream flows for the aesthetic values be further monitored and evaluated by Ecology during initial operation of the project (within three years). The PCHB required Ecology, at the completion of the monitoring program, to make a finding of the aesthetic flows that meet the water quality standards for aesthetic purposes, and to condition the water quality certification consistent with the stipulations in the PCHB order, either confirming the current 10/30 cfs flow or revising it based on Ecology’s findings.<sup>27</sup> Ordering paragraph (C) amends the license order to include these additional conditions.

15. American Whitewater argues that the Commission violated NEPA by failing to require Okanogan PUD to conduct aesthetic flow studies analyzing the effects of alternative minimum flows in the bypassed reach on aesthetic, recreational, and environmental values of the Similkameen River, until after construction and operation of the project. We disagree.

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<sup>25</sup> See *Snoqualmie Indian Tribe v. FERC*, 545 F.3d 1207, 1218 (9th Cir. 2008) (citing *American Rivers, Inc. v. FERC*, 129 F.3d 99, 110-11 (2d Cir. 1997) (federal licensing agency lacks authority to reject water quality certification conditions in a federal permit). Okanogan PUD initially proposed in its water quality certification application that there be no minimum flows in the bypassed reach. Okanogan PUD informed the Commission on October 28, 2010, that consultation had resulted in consensus on the 10/30 flows among the PUD, Ecology, and Washington DFW, and that consultation with the federal agencies and the Colville Federated Tribes would continue.

<sup>26</sup> See Order at P 118 and Appendix A, Water Quality Certificate Conditions, General Conditions 5.2(9), Aquatic Life and 5.8, Aesthetics.

<sup>27</sup> On August 30, 2013, the PCHB issued an order amending certain aspects of its initial decision, including striking a statement that could be interpreted as a conclusion that aesthetic values, as a matter of law, are secondary to other designated uses, such as protection of aquatic species.

16. Contrary to American Whitewater's assertion, Commission staff took the required "hard look" under NEPA<sup>28</sup> at the impacts of the 10/30 cfs minimum instream flows proposed by Okanogan PUD and required by the project's water quality certification. Staff reasonably concluded, based on the available information, that the 10/30 minimum flow would maintain adequate aquatic habitat in the bypassed reach and would also ensure that flow is passing over Similkameen Falls at all times, even during the lowest flow months of the year. Moreover, staff concluded that the higher minimum flow recommended by American Whitewater and other commenters, i.e., from 400 to 3,400 cfs, would not result in benefits to recreation and fisheries that would justify the estimated annual cost of \$1,295,830. As explained in the EA, in consultation with the Bureau of Land Management, Okanogan PUD conducted a visual resources analysis of the project and provided aesthetic simulations showing the views of project area from various key observation points. Commission staff explained that although the proposed minimum flow of 10 cfs during certain months is less aesthetically desirable than current average flows, any minimum flow must also meet the water quality standards for temperature and DO in order to protect aquatic species. The 10-cfs flow, with seasonal adjustments to 30 cfs, would meet water quality standards based on Okanogan PUD's best estimate of the bypassed reach dimensions and modeling of the temperature gained in the bypassed reach.<sup>29</sup>

17. Commission staff also included additional measures in order to ensure that aesthetic flows were adequately addressed post-licensing. Commission staff recognized that it was difficult to ascertain the full effects of the proposed minimum flow on water quality and the aesthetic resources and that the proposed minimum flow was subject to change based on real-world results. The EA stated that the proposed minimum flow was based on several assumptions in the modeling and size estimate of the bypassed section. In addition, the method of delivery of the minimum flow was undetermined at the time of

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<sup>28</sup> See, e.g., *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1047 (9th Cir. 2013) quoting *Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1099 (9th Cir. 2008)).

<sup>29</sup> EA at 173-74. Okanogan PUD submitted an analysis that showed that temperatures in excess of state water quality standards could occur in the bypassed reach if the proposed minimum flow was allowed to pass over the entire face of the dam in a thin sheet flow, as compared with passing the minimum flow through a pipe or a smaller gate to the base of the dam, as proposed in the license application. EA at 58-59. American Whitewater and other commenters requested a study of alternatives that would include spilling water over the dam all year long, while Similkameen River fisheries managers expressed concern that aesthetic flows could increase temperature below the falls.

the EA.<sup>30</sup> The water quality certification and license order require that the minimum release structure be located at the former penstock intakes from the prior project, so that it can draw cooler water from deeper in the reservoir, thus providing a water quality benefit both in the bypassed reach and downstream of the project.<sup>31</sup> Commission staff stated that the proposed flow, along with staff's recommended evaluation to determine effectiveness, should adequately provide a means for testing the proposal's effect on aesthetics and water quality, while still providing a framework for making improvements, if needed.<sup>32</sup> In addition, staff recommended that more information be obtained about visitor experience at the falls as a part of the Recreation Monitoring Plan, as requested by commenters.<sup>33</sup> It was based on this recommendation that Article 411 was included in the license.

18. Commission staff considered requests from American Whitewater and other commenters for an aesthetic flow study prior to project construction to assess the effects of reducing flow over the spillway and rocky area below the dam. Commission staff responded that the proposed 10/30 cfs minimum flow, along with an evaluation to determine effectiveness, should adequately provide a means for testing the proposed flow's effect on aesthetics and water quality, while still providing a framework for making improvements, if needed.<sup>34</sup> In addition, observing recreation use at the falls as part of the Recreation Monitoring Plan would provide more information about the visitor experience and whether flows over the face of the dam should be considered in the future.<sup>35</sup> Based on this information, staff reasonably concluded that an additional study prior to construction to assess the effects of dewatering the spillway was not needed.<sup>36</sup>

19. In support of its argument that Commission staff was required under NEPA to order an aesthetic flow study prior to construction, American Whitewater relies on findings in the PCHB decision, which was issued after the license order and, therefore,

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<sup>30</sup> *Id.* at 174.

<sup>31</sup> *See* EA at 59 and Order at ordering paragraph (D).

<sup>32</sup> *Id.*

<sup>33</sup> *See* Order at P 106.

<sup>34</sup> EA at A-23.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

could not be considered by Commission staff,<sup>37</sup> and that there was insufficient information for Ecology to make a determination as to what minimum flows would comply with all applicable water quality standards.<sup>38</sup> Commission staff's findings are consistent with those of the PCHB. As discussed above, Commission staff, like the PCHB, acknowledged that it was difficult to ascertain the full effects of the minimum flow on water quality and the aesthetic resources, given the limited availability of real-world information. This is primarily due to the fact that flows over the dam and falls cannot be controlled to the extent needed to conduct a study of the actual aesthetics effects of a range of flows until after the project is in operation. For that reason, the license order reasonably provided a means for testing the proposed flow's effect on aesthetics and water quality after the project is constructed, while providing a framework for making improvements, if needed. In addition, similar to the license order, the PCHB required Ecology to monitor and evaluate the 10/30 cfs minimum instream flows and alternatives to those flows for aesthetic values after construction of the project. Thus, the PCHB decision does not support American Whitewater's argument that the Commission is required to order an aesthetic flow study before construction and operation of the project. In any event, we are amending the license order herein to include the conditions added to the section 401 water quality certification by the PCHB.

20. American Whitewater also cites the Commission's decision in *Puget Sound Energy Inc.*, 110 FERC ¶ 61,200 (2005) (*Puget Sound*), in support of its argument that the Commission is required to investigate alternative minimum flows prior to construction of the project. However, that decision is not analogous. In *Puget Sound*, the project was already constructed and in operation; the licensee had applied for a new license. Therefore, based on real-world information, the environmental analysis started with the goal of improving aesthetic waterfall characteristics important to the Snoqualmie Tribe and recreationists, and different flow options could be accurately analyzed. Here, the project has not yet been constructed. In both *Puget Sound* and this license order, Commission staff considered a range of alternatives that was appropriate for the respective circumstances.

21. Finally, American Whitewater claims that Commission staff was unable to appropriately balance competing interests, as required by FPA section 10(a), because the license order was based on outdated and inaccurate economic information. As discussed below, this claim is without merit.

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<sup>37</sup> American Whitewater also relies on evidence submitted to the PCHB and other documents, such as the resolution of the Lower Similkameen Indian Band, a First Nations government in British Columbia, none of which is contained in the license proceeding record.

<sup>38</sup> See Rehearing Request at 26.

22. American Whitewater relies on an economic analysis it submitted on March 5, 2012, after the final EA was issued, in arguing that market conditions and construction costs have changed since 2008, when Okanogan PUD filed its license application. American Whitewater asserts that these changed conditions indicate that the project will be uneconomical. In addition, American Whitewater argues that Commission staff's economic analysis failed to account for lost revenue due to tourism generated by recreational activities associated with Similkameen Falls, which American Whitewater estimates could approach \$20 million over the fifty-year license term.

23. The economic analysis in the final EA relied on updated data obtained after the license application was filed in 2008. The construction costs contained in Okanogan PUD's application were adjusted in the EA to 2010 dollars. In addition, the energy value used in the EA (\$67.88) was based on the Energy Information Administration (EIA) Annual Outlook for 2010, which in turn is based on the amortization and fixed operation and maintenance for a simple-cycle combustion turbine.<sup>39</sup> Thus, Commission staff relied on the best currently available information in evaluating the economics of the project. Moreover, Commission staff correctly did not factor in any lost revenue due to tourism. As explained in the license order, recreational use at the project site is relatively low under current conditions.<sup>40</sup> However, the development of a trail along the west side of the Similkameen River (Similkameen River Trail) may increase recreation use at the project.<sup>41</sup> The license order contains provisions requiring Okanogan PUD to evaluate recreational use at the dam and the falls as part of a Recreation Monitoring Plan to help determine if different measures, potentially including flows, are warranted in the future. Thus, the license order reasonably addressed the issue of aesthetic flows in the context of visitor experience, rather than attempting to calculate an economic value for tourism.

The Commission orders:

(A) The request for rehearing filed by American Whitewater on August 8, 2013, is denied.

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<sup>39</sup> EA at 194, Table 20. The table incorrectly indicates that the energy value (\$/MWh) was derived from Okanogan PUD's license application. The table should have indicated that the energy value was based on EIA's 2010 Annual Outlook.

<sup>40</sup> American Whitewater's estimate of \$20 million in lost revenue from tourism is based on a comparison with other hydroelectric projects with waterfalls that have higher numbers of visitors. American Whitewater's economic analysis concedes that Similkameen Falls is more remote than the other projects and, unlike the other projects, has no facilities in close proximity to the falls.

<sup>41</sup> EA at 158.

(B) Ordering paragraph (B)(2)(b) of the July 9, 2013 license order is amended to read as follows: “(b) three sections of new automated 5-foot-high steel crest gates/flashboards.”

(C) Appendix A, Condition 20, Fish Management Plan (Fish Plan), Section 3.3.1, Minimum Instream Flow of the license order is amended to add the following condition to the section 401 water quality certification, as required by the Washington Pollution Control Hearings Board:

The 10/30 cfs minimum instream flows over the dam and falls for the aesthetic values shall be further monitored and evaluated by Ecology during initial operation of the project (within three years). After Ecology obtains additional data and analysis of alternative flows over the dam and the falls, the 10/30 cfs flow shall either be confirmed or revised as a condition of project operation and the section 401 certification. Ecology shall develop an aesthetic flow monitoring program under the following guidelines:

1. The program shall provide for management and control of alternative flows in the bypass reach that will provide opportunities for review, monitoring and analysis of either actual minimum flows or development and review of simulated flows.
2. Flows for aesthetic purposes as a condition of the section 401 certification shall not cause an increase in water temperatures above the conditions that currently exist prior to operation of the project that would violate water quality standards at any location in the project area. A shallow flow across bedrock shelves that would cause increases in the temperature should be avoided, and under no circumstance should the flows cause a violation of the water quality standards for salmonid spawning, rearing, and migration.
3. Ecology and PUD may utilize a focus group and shall consult with the Fish Advisory Work Group to assist and provide advice regarding the proper balance between aesthetic flows and protection of water quality of the river for the fishery resource.
4. The program shall be for a period of time that provides Ecology with sufficient data and information to review actual flow levels or simulated flows. However, the program must be completed within three years from the commencement of the operation of the project.

As a result of the monitoring program, Ecology shall make a finding of the aesthetic flows that meet the water quality standards for aesthetic purposes and is consistent with the August 30, 2013 order of the Pollution Control Hearings Board. At the completion of the monitoring program, the project shall operate subject to those flows and the section 401 certification shall be conditioned to reflect such flows, either confirming the current flow regime or revising it based on Ecology's findings.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.