

145 FERC ¶ 61,262  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Alabama Power Company

Project No. 2146-139

ORDER MODIFYING AND APPROVING  
NON-PROJECT USE OF PROJECT LANDS AND WATERS

(Issued December 19, 2013)

1. On March 19, 2013, and supplemented on July 12 and 25, 2013, Alabama Power Company, licensee for the Coosa River Hydroelectric Project No. 2146, filed an application for approval of non-project uses of project lands and waters. The application requests Commission authorization to permit Clear Creek Cove, LLC (Clear Creek or permittee) to construct facilities associated with an existing recreational vehicle (RV) park (Clear Creek Cove RV Resort) on Lake Logan Martin, one of the project reservoirs. Some of the facilities have already been constructed. As discussed below, we are granting the application with certain modifications and conditions.

**Background**

2. The Coosa River Project<sup>1</sup> includes seven developments. The 128.25-megawatt Logan Martin development consists of, among other things, a 48.5-mile-long, 15,263-acre reservoir (Lake Logan Martin). The lake's maximum reservoir elevations vary from 460 to 465 feet mean sea level (msl), depending on the time of year. The project boundary around the Logan Martin development is generally defined by elevations ranging from 473.5 to 489 feet msl, encloses about 27,000 acres, and encompasses all project structures, project recreation sites, and Lake Logan Martin. The licensee holds fee title to project lands below the lake's maximum reservoir elevation of 465 feet msl,

---

<sup>1</sup> On June 20, 2013, the Commission issued a new license to Alabama Power for the continued operation and maintenance of the Coosa Project. *Alabama Power Co.*, 143 FERC ¶ 61,249 (2013). Rehearing of the license order is pending before the Commission.

and in the area that is the subject of this order, Alabama Power has flowage rights over the project lands from the 465 contour inland to the project boundary.

3. Alabama Power's license authorizes Alabama Power to grant permission for certain types of non-project use and occupancy of project lands and waters without prior Commission approval (standard land use article).<sup>2</sup> For example, Alabama Power can authorize: piers, landings, or boat docks that serve single-family residential dwellings; landscape plantings; embankments, bulkheads, or similar structures to protect the existing shoreline; utility distribution lines; and public or private marinas that can accommodate no more than 10 watercraft at a time and are located at least on half mile (measured over project waters) from any other public or private marina. For non-project uses not covered by the standard land use article, Alabama Power must seek prior Commission approval.

4. Alabama Power's consideration of whether to seek Commission approval of non-project uses is guided by, as pertinent here, its General Guidelines for Non-Residential Use of Project Lands and Waters (Non-Residential Guidelines),<sup>3</sup> and its proposed shoreline management plan (SMP),<sup>4</sup> including the proposed SMP shoreline classification maps. The Non-Residential Guidelines describe the licensee's general rules (e.g., dock length, square footage, spacing, etc.) for permitting non-residential (i.e., commercial) developments on its lakes.

### **Clear Creek Cove RV Resort**

5. The Clear Creek Cove RV Resort (RV Resort) is located in a small cove on the Clear Creek arm of Lake Logan Martin in Talladega County, approximately four miles northeast of the Logan Martin Dam. The RV Resort occupies approximately 15.5 acres of land, 6.7 acres of which are located inside the project boundary. The property consists

---

<sup>2</sup> See Article 64 of Alabama Power's prior license. *Alabama Power Co.*, 14 FERC ¶ 62,217 (1981) (adding Article 64 to the license). Article 64, which was in effect until Alabama Power's new license was issued in June 2013, is identical to Article 419 of the new license. See *Alabama Power Co.*, 143 FERC at 62,634-35.

<sup>3</sup> Alabama Power provided a copy of its Non-Residential Guidelines in its July 25, 2013 Filing. The Guidelines have not been approved by the Commission and thus are not a part of the license. They are however used by Alabama Power to facilitate shoreline management of the project reservoirs.

<sup>4</sup> Alabama Power's prior license did not have an SMP. The licensee filed a proposed SMP as part of its application for a new license, and Article 414 of the new license requires Alabama Power to file (by June 20, 2014) a revised SMP for Commission approval. See *Alabama Power co.*, 143 FERC at 62,632.

of approximately 1,355 feet of shoreline, and the land inside the project boundary in this area extends from a range of approximately 175 feet to over 500 feet inland from the shore.

**A. Existing Facilities**

6. As discussed in more detail below, between 2008 and 2012 Clear Creek (or its principal, Mike Horton) constructed the following facilities at the area now occupied by the RV Resort and on lands that lie within the project boundary: four fork-shaped, wooden, stationary docks (each measuring 26 feet by 46 feet, with a 4-foot-wide, 24-foot-long walkway) and associated riprap (Docks A, B, C, and D); a concrete pad in front of each of the four docks; a covered dock (measuring 27 feet by 32 feet and an 18-foot long walkway), including a concrete pad in front of the dock (Dock E); a playground structure (measuring approximately 30 feet by 70 feet); 11 poured concrete RV pads with utility connections;<sup>5</sup> portions of an on-site sewage disposal system; and a swimming beach.

7. Originally, the plan was to develop single family residences in this area,<sup>6</sup> and between 2008 and 2011 the licensee, under its residential permitting process and the standard land use article of its license, authorized construction of Docks A through D for single-family residential use. However, in 2011, Alabama Power discovered that Clear Creek was considering changing development of this area from single family residences to a commercial RV campground, and it notified Clear Creek that:

if you convert this property into a campground or any other commercial establishment, you would immediately apply for a commercial permit and meet all the requirements including getting ... FERC approval ... . These residential piers would have to be included in the commercial application and if for any reason the commercial application is denied, you would be required to remove these piers.<sup>7</sup>

---

<sup>5</sup> There are 81 additional concrete RV pads in the RV park, but outside the project boundary. Each of the 92 RV pad tenants has permission from Clear Creek to construct an unattached wooden deck (on concrete blocks without any ground disturbance) next to its RV.

<sup>6</sup> Presumably, the residences would have been constructed on land adjacent to, but outside, the project boundary.

<sup>7</sup> See Alabama Power's Letter dated July 21, 2011, to Mike Horton, included in Attachment D of the March 19, 2013 Application.

8. In 2012, Alabama Power discovered that Clear Creek, without prior approval of Alabama Power or the Commission, had, within the project boundary, installed the covered Dock E, was in the process of pouring concrete pads in front of the five existing docks (Docks A through E), and had installed the 30-foot by 70-foot playground structure. The licensee ordered Clear Creek to stop work and seek a permit authorizing all of the above-described structures.<sup>8</sup> In April 2012, Alabama Power, without seeking Commission approval as required by its license, authorized these existing structures, and allowed Clear Creek to finish work on the concrete dock pads. The licensee also instructed Clear Creek to apply for a commercial permit for any future work it proposed to undertake within the project boundary.

9. Subsequently, Clear Creek constructed, inside the project boundary, 11 concrete RV pads with utility connections (81 additional RV pads are located outside of the project boundary), a swimming beach, and portions of an on-site sewage disposal system. Alabama Power does not address whether, or pursuant to what authority, it authorized these facilities.

10. Alabama Power now seeks Commission authorization for all the existing facilities described above, and for the proposed new facilities described below.

#### **B. Proposed Facilities**

11. Alabama Power seeks authorization to allow Clear Creek to do the following within the project boundary: (1) construct four new wooden, stationary boat docks, each measuring 8 feet by 150 feet; (2) re-configure and expand one of the four existing boat docks (now 26 feet by 46 feet, with a 24-foot-long walkway) to be 150 feet long; (3) re-purpose another one of the five existing boat docks (Dock E) into an on-water pavilion; (4) construct a boat ramp measuring 12 feet by 70 feet, 50 feet of which would be located within the summer full pool contour; (5) construct a gravel parking area (96 feet by 55 feet) and access road (105 feet of which would be inside the project boundary); (6) construct two covered pavilions on land; and (7) construct a gravel walking and cart path measuring 2,700 feet by 5 feet.

12. With the proposed new boat docks and the proposed modifications to two of the existing boat docks, the RV Resort would be able to accommodate a total of 88 watercraft (as it currently exists, the marina can accommodate 23 watercraft). Boat slips would be occupied by users of the RV Resort.

---

<sup>8</sup> See Alabama Power's July 12, 2013 Filing, at 2.

### **Non-Residential Guidelines**

13. Alabama Power's Non-Residential Guidelines allow structures to occupy a footprint of 1,000 square feet per 100 feet of shoreline. The RV Resort occupies 1,355 feet of shoreline, so under the guidelines an on-the-water footprint of 13,550 square feet would be allowed. As proposed, the existing marina facilities occupy an on-the-water footprint of approximately 4,800 square feet. With the addition of the five new docks, the footprint of the marina would increase to 10,448 square feet.<sup>9</sup>

14. The guidelines also provide for a minimum shoreline (100 feet), length of structure into the lake (lesser of 150 feet or ¼ the distance across local water), and a side lot line setback (25 feet minimum).

15. Alabama Power states that the boat dock facilities, both existing and proposed, are consistent with the Non-Residential Guidelines and the SMP it proposed in its relicense application.

### **Agency Consultation, Public Notice, Interventions, and Comments**

16. Prior to filing its application with the Commission, Alabama Power consulted relevant natural resource agencies as well as neighboring landowners regarding Clear Creek's proposal and included the results of its consultation in its March 19 application.<sup>10</sup> In a letter dated February 21, 2013, the U.S. Army Corps of Engineers authorized the installation of facilities (i.e., docks and boat ramp) in the lakebed. In a letter dated January 10, 2013, the U.S. Fish and Wildlife Service stated that the licensee's proposal would have no significant impacts on fish and wildlife resources, including sensitive species. In an email dated December 20, 2012, the Alabama Division of Wildlife and Freshwater Fisheries stated that it does not object to the proposed work. In a letter dated December 13, 2012, the Alabama Historical Commission (SHPO) stated that Clear Creek's proposal would not adversely affect cultural resources. Finally, in an email dated

---

<sup>9</sup> In its July 12, 2013 Filing, Alabama Power explains that, in calculating square footage for shoreline structures under its Non-Residential Guidelines, it:

considers the surface area for boat slips as part of the total permitted surface when the boat docking space is surrounded on three sides by decking material. Boat mooring adjacent to a straight or "finger" pier is considered temporary and is not included in [Alabama Power's] allowable square footage calculations.

<sup>10</sup> See March 19, 2013 Application, Attachment H.

December 5, 2012, the Alabama Marine Police stated that it has no objections to the proposal and recommended approval of the proposal.

17. A number of nearby landowners submitted letters and emails to the licensee indicating their objection to the proposal.<sup>11</sup> Alabama Power's application included its responses to the nearby landowners' opposing comments, which addressed safety, public use, and potential environmental impacts.<sup>12</sup>

18. The Commission issued public notice of the application on May 15, 2013, and established June 14, 2013, as the deadline for submitting comments, protests, and motions to intervene. Robert and Patsy Lagen, owners of property adjacent to the RV Park, filed a timely motion to intervene in opposition to the proposal.<sup>13</sup> The following nearby landowners filed comments in opposition to the proposal: Barry Stanley, Kim and Roland Knight, Conrad Beland, Jim Duellmer, and Nancy and Kermit Cotter. In addition, the following members of the RV Park filed comments in support of the proposal: Judy McGouyrk, Scott Pilkerton, Clark Thompson, Marie Johnson, Jack Gilbreath, Tanya Pharr, Brian Thomas, Karen Decaro-Wolfe, John Wolfe, and Jennifer Andrews.

### **Discussion**

19. We have reviewed the application pursuant to the Federal Power Act's comprehensive development/public interest standard, as informed by the public and agency comments on the proposed non-project use. As discussed below, we conclude that the proposed non-project uses of project lands and waters would have minor environmental impacts and would not interfere with licensed project purposes.

20. The comments and intervention for the most part address the proposal as it relates to the addition of the five 150-foot-long boat docks and the boat ramp. As discussed below, those opposing the proposal raise concerns regarding boater safety from increased boating activity, more limited public access to this area of the lake, and potential adverse environmental impacts (e.g., shoreline erosion) from the added docks, and the proposal's

---

<sup>11</sup> *Id.* These nearby landowners included: Barry Stanley, Bill Mardis and Tonya Holody, Charles Romanus, Chris Scaife, Conrad and Barbara Beland, Edward and Sandra Tinsley, Jerry and Glynda Bailey, Michael Ellis, Nancy and Kermit Kotter, Paul Webb, Robbie and Deb Watts, Robert and Elise Hammond, and Robert and Patsy Lagen.

<sup>12</sup> *See* March 19, 2013 Application, at 3-4.

<sup>13</sup> The motion was timely and unopposed. Therefore, it was automatically granted under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c)(1) (2013).

consistency with the Non-Residential Guidelines. Those supporting the proposal state that the additional boat slips are needed to accommodate visitors to the RV Resort.

**A. Boating Safety**

21. Those who oppose additional boat docks at the RV Resort contend that increasing the number of boat slips from 23 to 88 will result in too many boats in the area, causing boating congestion and unsafe conditions.

22. We have no information to support a finding that the added boat slips would result in unsafe boating or hinder navigation in the area. To the contrary, as Alabama Power explains in its application, the Alabama Marine Police, who oversee boat traffic and safety issues on the lake, reviewed the proposal and found “no inherent hazard to navigation” and recommended its approval, “subject to with the provision that the piers be lighted in accordance with standard lighting configuration for piers 50 feet or greater in length.”<sup>14</sup> In addition, Clear Creek has applied to the Alabama Marine Police for permission to install no-wake buoys in the cove to reduce wave action.

**B. Public Access**

23. Several of the landowners state that they fish or otherwise use the waters near the proposed structures, and they express concern that the swimming beach and 150-foot-length of the proposed docks will impede access to the area by boaters and fisherman, effectively closing off sections of the project to public use.

24. We do not consider any of the structures to unduly restrict access to the lake. Although the proposed docks would extend into the cove and, by nature, alter any boating activity that would have occurred near the shore in this area, the majority of the cove would remain unencumbered by any structures, including the nearby islands and rock pile referenced by some of the commenters. We also note that, although the dock structures themselves would be private property and only available for use by members of the RV Resort, the surrounding waters would still be available to the public for use.

25. The photograph included in Alabama Power’s July 12, 2013 filing shows the existing and proposed facilities relative to the project boundary and neighboring lake features. From this photograph, it is apparent that the existing and proposed docks are oriented such that they would occupy space in front of the RV Resort property, which is a cove. The dock structures would not extend into the lake in front of any neighbor’s property, and would not be located in or near a navigation channel.

---

<sup>14</sup> See March 19, 2013 Application, Appendix H.

### C. Erosion

26. Those opposing the proposal state that there will be increased wave action from the additional boats to be served by the new and expanded docks, which will cause excessive erosion. We disagree. Alabama Power consulted with the appropriate state and federal natural resource agencies about the proposal, and none of the agencies raised concerns regarding erosion. Moreover, as Alabama Power notes, Clear Creek is seeking permission to install no-wake buoys in the cove, which would reduce wave action. In fact, the addition of docking facilities would likely reduce any potential there might otherwise be for erosion in the cove because it would allow visitors of the RV Resort to dock their boats at a dock instead of beaching their boats on the shore,<sup>15</sup> and the fixed dock structures would provide beneficial fish habitat to the area.

### D. Wildlife Habitat

27. Commenters allege that the licensee's proposal would disturb wildlife habitat and nesting birds in the area. The opposing commenters contend that boaters (allegedly including members of the RV Resort) have disturbed the nearby islands and rockpile that commenters state have served as habitat for various species of water birds. However, as Alabama Power's application indicates, the natural resource agencies with which Alabama Power consulted on this proposal did not identify, nor do we know of, any sensitive species or habitats that would be affected by the proposal.

### E. Compliance with Non-Residential Guidelines

28. Robert and Patsy Lagen contend that the proposal fails to comply with Alabama Power's Non-Residential Guidelines regarding the 25-foot minimum setback from side lot lines. Specifically, the Lagens allege that the existing dock (Dock E) nearest to Shaddix Lane is within 25 feet of the Shaddix Lane right of way, and within 15 feet of the right of way's side lot line as extended over water.<sup>16</sup> The drawings of the area, however, do not support this argument. The existing dock is located at least 55 feet from any neighboring dock, property line, or roadway.

---

<sup>15</sup> Commenters in support of, and opposing, the licensee's proposal have both noted RV Resort members have in the past beached their boats on shore.

<sup>16</sup> The Lagens claim that the county expanded the width of a road right-of-way from 60 feet to 80 feet on March 11, 2013, and that now one of the existing docks encroaches into the 25-foot side lot line setback required under the Guidelines, but did not provide any evidence of this.

29. Conrad Beland argues that the square footage that the proposed and existing docks would occupy exceeds the 13,500 square feet that would be allowed under the Non-Residential Guidelines.<sup>17</sup> Mr. Beland's calculations include the space along the docks that would be occupied by moored boats. However, as Alabama Power explains, in calculating a marina's square footage, it considers surface area of boat slips as part of the footprint only if space is surrounded on three sides by decking material.<sup>18</sup>

30. Several of the commenters believe that a boat launch at the site is not needed because there is a public boat launch nearby that is rarely crowded.<sup>19</sup> Conversely, several of the RV Resort visitors commented that the public boat launch is inconvenient and often crowded, and that a boat launch serving the RV Resort is necessary. The extent of crowding at a nearby public boat launch is not relevant to a determination of whether the licensee may authorize construction of a new boat launch at this site as a non-project use.<sup>20</sup>

#### **F. Historic Properties**

31. Several commenters allege that there may be cultural or historic properties that could be disturbed by Clear Creek's construction activities. However, an Historical Properties Management Plan (HPMP), which contains a discovery provision, was approved as part of the license (Article 418).<sup>21</sup> Although no cultural resources have been previously identified in the vicinity of the area to be developed, the potential does exist for the discovery of cultural resources during the proposed construction, operation, and/or maintenance activities. Therefore, the licensee should include in the intended construction permit, conditions to protect previously undiscovered historic properties.

---

<sup>17</sup> Several other commenters state their belief that the proposed docks do not conform to Alabama Power's Guidelines, but do not provide evidence to support their contention.

<sup>18</sup> See note 9, *supra*.

<sup>19</sup> Clear Creek Harbor is located approximately 2 miles away by road, and charges \$3 for the public to use the boat launch (*See* <http://www.clearcreekharbor.com>, accessed December 4, 2013).

<sup>20</sup> The Lagens request that the boat launch be shortened to a length of 50 feet to accommodate use during the summer, but not during the winter months when the reservoir is at its lowest. They did not however provide any justification, nor have we identified any reasons, to restrict Clear Creek's ability to launch boats in the winter.

<sup>21</sup> *Alabama Power Co.*, 143 FERC at 62,634.

The conditions should require the permittee to: (1) if a previously undiscovered cultural resource site is discovered during construction, operation, and/or maintenance of the facilities, cease all activity at the site immediately; and (2) immediately contact the licensee. The licensee should then follow the provisions to protect historic properties as set forth in the HPMP.

### **G. Grading**

32. Several commenters allege that Clear Creek performed some unauthorized grading work associated with the installation of the swimming beach and the concrete RV pads. Any grading work that Clear Creek did would have been on lands owned in fee by Clear Creek and over which Alabama Power holds only a flowage easement. Alabama Power states in its July 12, 2013 filing that it authorized the grading work and that, to ensure that flood storage would be protected, it required Clear Creek to ensure that the cut and fill activities were equal. Because this grading work did not affect the licensee's ability to store water (i.e., flood the land, the primary project purpose of this land), and because the grading work was unlikely to adversely affect other project purposes or environmental resources, we have no reason to require the licensee to perform any further land alterations (i.e., to revert the ground to previous elevations). Although no comments were raised in opposition to the land-based facilities (i.e., parking lot, playground, cart paths, RV pads, septic systems), we note that these on-land improvements are similar to the grading work in that they would not measurably affect the licensee's ability to store water, and would not likely affect project purposes or environmental resources.

### **H. Unapproved Construction**

33. Some of the commenters argue that Clear Creek should not be rewarded for its disregard of the requirement to obtain prior approval from Alabama Power and, where required, from the Commission.<sup>22</sup> There is no doubt that Clear Creek has constructed facilities on project lands without first seeking authorization from the licensee and the Commission. It also appears that the licensee has failed to effectively monitor these activities and promptly enforce compliance with its license and its Non-Residential Guidelines.

---

<sup>22</sup> Commenters note, correctly, that the proposed conversion of one of the existing docks into a picnic pavilion has already occurred without Commission approval for the conversion. Conrad Beland's June 10, 2013 filing includes photographs documenting that the dock has already been converted without Alabama Power or Commission authorization.

34. We have jurisdiction over Alabama Power, our licensee. We have no authority over Clear Creek. However, we do not believe that we can overlook Alabama Power's failure to comply with the requirements of its license and Clear Creek's repeated disregard of the requirement to obtain prior approval of its construction activities. With respect to Alabama Power, Commission staff has been working with the licensee regarding several aspects of its shoreline compliance program across several projects, including the Coosa Project.<sup>23</sup> As for Clear Creek, we also want to ensure that it is not rewarded for constructing facilities on project lands on multiple occasions without proper authorization. Thus, as a condition of allowing Alabama Power to permit Clear Creek's non-project uses of project lands and waters, we are requiring Alabama Power to file, for Commission approval, a plan to address Clear Creek's unauthorized construction activities. For example, Alabama Power could require Clear Creek, as a condition of allowing the non-project uses, to revegetate the area to improve project aesthetics,<sup>24</sup> to participate in lake cleanup efforts or other efforts that would benefit project resources, or to take other actions that would discourage unauthorized construction in the future. Alabama Power shall not permit Clear Creek to begin any further construction activities until the plan is approved.

### **I. Conclusion**

35. The licensee has an overall obligation to ensure that all non-project uses and occupancies of project lands and waters it authorizes are not inconsistent with the purposes of the project, including public recreation, flowage, and resource protection. In this regard, the licensee should include the following conditions in any permit it issues to Clear Creek: (1) the permittee's use and occupancy of public lands and waters shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) the permittee shall take all reasonable precautions so that the construction, operation, and maintenance of the permitted facilities will occur in a manner

---

<sup>23</sup> Commission staff's August 17, 2012 Letter to Alabama Power briefly describes Alabama Power's shoreline monitoring activities as well as other shoreline compliance efforts, and requires Alabama Power to file annual reports to describe the status of its activities related to its shoreline compliance program.

<sup>24</sup> The Lagens and Conrad Beland believe that the licensee's proposal would adversely affect the aesthetic values of the shoreline, but do not provide specifics. We note that the area inside the project boundary at this location is mostly devoid of trees or any vegetation, and may benefit from vegetative plantings of native riparian vegetation. In fact, in reviewing historical aerial photographs dating back to 1998, it appears that a number of trees and shrubs have been removed inside the project boundary in order to accommodate the RV Resort.

that protects the scenic, recreational, and other environmental values of the project; and (3) the permittee shall not unduly restrict public access to project waters. Additionally, the licensee is reminded that it is responsible for ensuring that all necessary local, state, and federal permits have been obtained for the improvements before construction begins. This includes the licensee's responsibility to abide by the Alabama Marine Police's requirement that the docks be outfitted with appropriate lighting hardware.

36. We have reviewed the application pursuant to the Federal Power Act's comprehensive development/public interest standard, as informed by the public and agency comments on the proposed non-project use. As discussed above, the record indicates that constructing and operating the proposed facilities would only have minor environmental impacts and would not interfere with licensed project purposes, including flowage, public safety, and public access. For the above reasons, we conclude that the proposed non-project uses of project lands and waters, as modified above, would be consistent with project purposes and are approved. In order for the Commission to monitor the future status of the proposed facilities, the licensee must file with the Commission documentation, including photographs, showing the completed facilities approved by this order.

The Commission orders:

(A) Alabama Power Company's Application, filed on March 19, 2013, and supplemented on July 12, 2013, and July 25, 2013, requesting Commission approval for the existing and proposed facilities at Clear Creek RV Park that are located within the project boundary is approved, subject to the conditions in Ordering Paragraphs (B) through (E) below.

(B) Within 3 months of this order, Alabama Power Company shall file for Commission approval its plan to address Clear Creek's unauthorized construction activities and discourage it from undertaking unauthorized construction in the future. Alabama Power shall not permit Clear Creek to begin any construction activities authorized by this order until the plan is approved by the Commission.

(C) To ensure that any non-project uses and occupancies of project lands and waters it authorizes are not inconsistent with the purposes of the project, including public recreation and resource protection, the licensee shall include in any permit issued for these facilities the following conditions: (1) the permittee's use and occupancy of project lands and waters shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) the permittee shall take all reasonable precautions so that the construction, operation, and maintenance of the permitted facilities will occur in a manner that protects the scenic, recreational, and other environmental values of the project; and (3) the permittee shall not unduly restrict public access to project waters. Additionally, the licensee shall ensure that all necessary local,

state, and federal permits have been obtained for the improvements before construction begins.

(D) The licensee shall include as a condition of any permit it issues under this approval, a provision that if a previously undiscovered cultural resource site is discovered during construction, operation, and/or maintenance of the facilities, the permittee shall: (1) cease all activity at the site; and (2) immediately contact the licensee. The licensee shall then follow the provisions stipulated to protect historic properties as set forth in the approved Historic Properties Management Plan for the project.

(E) The licensee shall file within two years of the date of this order, documentation, including photographs, showing the type and location of the proposed facilities. The filing should also include verification that the licensee inspected the proposed facilities to ensure they have been constructed as approved in this order. If the facilities are partially completed or construction has not begun, the licensee shall include in its filing, for Commission approval, a schedule for completing construction of the proposed facilities and a description of the key factors considered in the development of the schedule.

(F) This order constitutes final agency action. Any party to this proceeding may file a request for rehearing of this order within thirty days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2013). The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.