

158 FERC ¶ 61,036  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, and Colette D. Honorable.

Public Utility District No. 2 of Grant County,  
Washington

Project No. 2114-277

ORDER AMENDING PROJECT BOUNDARY

(Issued January 19, 2017)

1. On October 7, 2015, as supplemented on December 23, 2015 and March 1, 2016, Public Utility District No. 2 of Grant County, Washington (Grant PUD), licensee for the Priest Rapids Hydroelectric Project No. 2114 (Priest Rapids Project), filed an application to amend the project boundary to include a parcel of licensee-owned land in order to ensure Grant PUD access to a portion of the project shoreline along the Wanapum reservoir. As discussed below, this order approves Grant PUD's request to amend the project boundary.

**I. Background and Proposal**

2. The Priest Rapids Project is located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington, and includes the Wanapum and Priest Rapids developments. The Wanapum development consists of a 38-mile stretch of the Columbia River beginning approximately 0.5 miles downstream of Public Utility District No. 1 of Chelan County's Rock Island Dam, and continuing downstream to Wanapum Dam at river mile 415. Wanapum reservoir has a surface area of approximately 14,680 acres. The Priest Rapids development begins immediately below the Wanapum Dam, continues 18 miles downstream to Priest Rapids Dam at river mile 397, and ends approximately two miles below Priest Rapids Dam. The project boundary includes lands along the shoreline that generally average from 100 to 150 feet inland from the full pool elevation at both reservoirs, extending to as much as 2,000 feet in some locations to include project features such as project recreation sites. The project boundary is established primarily by metes and bounds property lines.

3. An original license for the project was issued in 1955, and the Commission issued a new 44-year license for the project in April 2008.<sup>1</sup> The Relicense Order required that lands within the project boundary be managed for public recreation, shoreline control, and environmental protection.<sup>2</sup> In addition, Article 419 of the Relicense Order required Grant PUD to develop and implement a Shoreline Management Plan (SMP) to ensure that public access controls and site rehabilitation measures are addressed and consistent with project and adjoining public land management goals and objectives.<sup>3</sup> On April 18, 2013, the Commission approved Grant PUD's March 2, 2010 SMP.<sup>4</sup> The SMP Order required Grant PUD to develop and implement a monitoring and compliance plan to ensure that non-project uses and activities on Grant PUD-owned and managed project lands and waters are consistent with authorization instruments and the terms and conditions of the license.<sup>5</sup> On July 29, 2014, Commission staff issued an order approving the monitoring and compliance plan for shoreline management.<sup>6</sup> Grant PUD's Monitoring and Compliance Plan outlines methods and schedules for monitoring non-project uses of project lands, requirements for reporting non-project uses that conflict with the SMP or other license conditions, and procedures for addressing non-compliance.

4. A 540-lot residential community, Sunland Estates, is located on privately-owned lands along the eastern shore of Wanapum Reservoir, inland from the project boundary. Over the years, Grant PUD has worked with members of the Sunland Estates community to allow certain activities and uses of licensee-owned property in the Sunland Estates

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<sup>1</sup> *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049 (2008) (Relicense Order).

<sup>2</sup> *Id.* P 17.

<sup>3</sup> *Id.* at 61,335. Article 419 required the SMP to include, at a minimum, provisions for general land use policies and a land use classification system.

<sup>4</sup> *Public Utility District No. 2 of Grant County, Washington*, 143 FERC ¶ 61,046 (2013) (SMP Order); Grant PUD SMP, Docket No. P-2114-208 (filed March 2, 2010) (SMP).

<sup>5</sup> SMP Order, 143 FERC ¶ 61,046, at ordering para. (D).

<sup>6</sup> *Public Utility District No. 2 of Grant County, Washington*, 148 FERC ¶ 62,078 (2014) (Monitoring and Compliance Plan).

area.<sup>7</sup> Grant PUD states that it is currently processing applications for allowable non-project uses of project lands in the Sunland Estates area where such uses would provide a community-wide benefit (e.g., Quilomene Yacht Club, stair access and dock in Sunland cove, and new mooring buoys).<sup>8</sup> In 2001, Grant County acquired one of the lots, Lot 51, within Sunland Estates. Grant PUD states that it has used the lot to access its adjacent fee-owned shoreline property for maintenance and management purposes. Specifically, Grant County states that, in order to implement the project's SMP and perform non-project use monitoring and compliance, it uses Lot 51 to access project lands on the adjacent shoreline to: (i) monitor for encroachments on project lands; (ii) monitor for compliance with conditions associated with authorized non-project uses of project lands; (iii) remove encroachments; (iv) implement shoreline restoration projects; and (v) perform noxious weed control and vegetation management activities.<sup>9</sup>

5. According to Grant PUD, implementation of the Monitoring and Compliance Plan requires land-based monitoring by foot, truck, and all-terrain vehicle (ATV) to identify and address changes in land-use patterns, such as vegetation clearing or modification, vandalism, erosion, dumping, unauthorized uses, and encroachments. Grant PUD indicates that another access point is located one mile downstream at the U.S. Bureau of Reclamation-owned Sunland Boat Launch. However, due to the steep topography that exists between the boat launch and the shoreline, Grant PUD states that it is not possible to transport the necessary equipment, such as trucks or ATVs, to the shoreline. Therefore, Grant PUD requests this amendment to include Lot 51 in the project boundary to allow it clear and unencumbered access to identify and resolve non-compliance issues, as required by the SMP and the Monitoring and Compliance Plan.

6. In addition, because the only other land-based public access point under its control – Rattlesnake Cove Day Use Area – is located 1.6 miles downstream, Grant PUD states that Lot 51 also serves as an important community and public access point to the project shoreline adjacent to the northern end of the Sunland Estates development.<sup>10</sup> According

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<sup>7</sup> Grant PUD's March 1, 2016 Supplemental Filing at 7. For example, Grant PUD states that it issued a land-use authorization to Sunland Estates HOA in 1989 for use of Grant PUD property for a community park.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> Application at 1-2.

<sup>10</sup> Grant PUD's December 23, 2015 Supplemental Filing at 1.

to Grant PUD, contiguous access from Rattlesnake Cove Day Use Area to the project shoreline adjacent to Lot 51 is difficult at high reservoir levels because of steep terrain.<sup>11</sup>

## **II. Public Notice, Interventions, and Comments**

7. On January 15, 2016, the Commission issued public notice of Grant PUD's application to amend the project boundary, establishing February 18, 2016, as the deadline for filing comments, interventions, and protests. Sunland Estates Homeowners Association (Sunland HOA), Pat Kelleher, Gary and Kathryn Strand, Jennifer and Jeff Cravens (the Cravens), Sam and Sharyn Stalin with Tor and Ingrid Tollessen, and Todd C. Thomas filed timely motions to intervene.<sup>12</sup> The intervenors, as well as several commenters, oppose the inclusion of Lot 51 in the project boundary, contending that the parcel is not needed for project purposes.<sup>13</sup> Commenters also complain about Grant PUD's decision to deny non-project use requests for lawns and ornamental plantings.

8. In response, Grant PUD filed supplemental information on March 1, 2016. Gary R. Strand, Sunland Estates HOA, Jennifer Cravens, Barbara and James H. Nichols, Ingrid Tollessen, and Sharyn and Sam Stalin filed responses to Grant PUD's March 1, 2016 supplemental filing.

9. On March 9, 2016, the Washington Department of Fish and Wildlife (Washington DFW) filed comments in support of Grant PUD's proposal to include Lot 51 in the project boundary.

## **III. Discussion**

10. Section 4.41(h)(2) of the Commission's regulations provides that a project boundary "must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources . . . ."<sup>14</sup> Thus, in evaluating Grant PUD's proposal, we must

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<sup>11</sup> *Id.*

<sup>12</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2016).

<sup>13</sup> Larry Lewis (January 16, 2016), Dan and Melyssa Higgins (January 16, 2016), Russ Miele (January 18, 2016), Tor and Ingrid Tollessen (February 11, 2016), and Gary Faubion (February 17, 2016), filed comments on the proposed amendment.

<sup>14</sup> 18 C.F.R. § 4.41(h)(2) (2016).

determine whether the lands proposed for inclusion in the project boundary serve a project purpose. Depending on the circumstances, project purposes may include power production (including reservoir elevations and flowage), public recreation, environmental protection, flood control, shoreline control, public access, irrigation, and water supply.<sup>15</sup> Here, Grant PUD contends that Lot 51 is necessary to maintain shoreline control for maintenance and compliance monitoring and to ensure public access to the project's shoreline.

**A. Shoreline Control**

11. Grant PUD owns approximately 56 acres of shoreline lands adjacent to Sunland Estates, all of which are within the project boundary. The SMP classifies these project lands as public recreation development,<sup>16</sup> which means that Grant PUD commits to allowing reasonable and balanced public access, and ensuring that private uses do not exclude or inhibit public use and access.<sup>17</sup> The primary uses of lands included in the public recreation development classification include recreation development and habitat restoration and/or enhancement activities.<sup>18</sup>

12. Since 2001, Grant PUD has used Lot 51 to access the adjacent project shoreline for compliance monitoring, noxious weed spraying on foot and by ATV, and shoreline cleanup and restoration. Washington DFW supports including Lot 51 in the project boundary, recommending that the Commission approve Grant PUD's request based on "the need for access to the habitat restoration project for initial establishment of native plants, weed control, and monitoring of encroachments upon public lands managed by Grant PUD."<sup>19</sup> Washington DFW further explains that a habitat restoration plan is necessary to preserve the natural resources and aesthetic value of the area due to the level of habitat disturbance caused by upland encroachment.<sup>20</sup>

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<sup>15</sup> See *Union Electric Co.*, 137 FERC ¶ 61,114, at P 2 and ordering para. B (2011).

<sup>16</sup> SMP, Appendix E at 3.

<sup>17</sup> See SMP at 16.

<sup>18</sup> SMP at 19.

<sup>19</sup> Washington DFW's March 9, 2016 Filing at 1.

<sup>20</sup> *Id.*

13. The intervenors and commenters dispute the need and appropriateness of adding a residential lot to the project boundary. They allege that Lot 51 is not, and has never been, needed for project purposes,<sup>21</sup> and that its use for maintenance equipment access is disruptive in a residential community. Those opposed to the proposed project boundary amendment emphasize that Lot 51 is a narrow residential lot located within a densely populated residential community with one main access road and no space for parking, restrooms, storage, or garbage containers. In addition, they claim that Grant PUD's use of a residential lot for maintenance and construction equipment access is unsafe, creates noise, dust, and interference with typical residential uses, could lower property values, and will violate the Sunland Estates HOA rules. In addition, commenters allege that Grant PUD can access the shoreline adjacent to Sunland Estates using several alternative access points (e.g., the end of Old Vantage highway, the existing Washington DFW trail, the Sunland Boat Launch, or the Sunland Estates Community Park).

14. Lot 51 currently provides Grant PUD access to project lands for the purposes of shoreline monitoring and compliance, shoreline restoration, and vegetation management. Although the SMP classifies the project lands adjacent to Lot 51 as public recreation development, this classification does not foreclose the possibility that these same project lands might require, or benefit from, habitat restoration measures or measures to enhance the natural environment and aesthetics of the surrounding landscape. The SMP expressly contemplates that wildlife and habitat restoration may also occur in the public recreation development land use classification.<sup>22</sup> Grant PUD's need to access the shoreline adjacent to Sunland Estates for monitoring, restoration, and vegetation maintenance activities is supported by Washington DFW's recommendation that habitat restoration is needed to address habitat disturbance caused by upland encroachment.

15. Lot 51 is the only land-based access point that is owned and controlled by Grant PUD, and provides Grant PUD access to the project shoreline adjacent to Sunland Estates. According to Grant PUD, the additional access points identified by commenters are not suitable alternatives because of steep topography or vehicle access restrictions that may prevent Grant PUD's ability to transport trucks, ATVs, or other equipment to the shoreline for restoration and encroachment removal activities. We find it reasonable for Grant PUD to utilize Lot 51 for access to the shoreline in order to manage project

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<sup>21</sup> Several Sunland Estates landowners allege that although Grant PUD has owned Lot 51 since 2001, it has never identified the lot as needed for project purposes until now. In addition, they claim that no relevant facts surrounding project purposes have changed since 2001, the project's relicensing (2003-2008), approval of the SMP (2013), or Grant PUD's updated Public Recreation Development Plan for Sunland Estates (July 2015).

<sup>22</sup> SMP at 19.

lands and to include these lands within the project boundary. Indeed, we typically require licensees to control lands that will give them access to project works, lands, and waters.<sup>23</sup> To the extent possible, we expect Grant PUD to coordinate such use with adjacent landowners and consider measures to minimize any potential disruption to the community.

**B. Public Access**

16. Grant PUD states that Lot 51 provides a point of community access to the project shoreline for the public and Sunland Estate HOA members that do not have property adjacent to the shore. Sunland Estates HOA and various adjacent landowners assert that public access via Lot 51 is not appropriate, and that several alternative public access points are available nearby.

17. Grant PUD explains that the public can access project lands using three access points in the vicinity of Lot 51: (i) U.S. Bureau of Reclamation's Sunland Boat Launch located one mile south of Lot 51; (ii) Grant PUD's Rattlesnake Cove Day Use Area located 1.6 miles south of Lot 51; and (iii) Washington DFW's Quincy Wildlife Access Area.<sup>24</sup> In addition to these public access points, Sunland Estates HOA members may access project lands through Sunland Estates Community Park and an access path north of the Sunland Boat Launch.<sup>25</sup>

18. Grant PUD states that it has not formalized the use of Lot 51 for public access to the project shoreline, nor has it posted any signage to that effect.<sup>26</sup> In addition, Grant PUD does not anticipate proposing any formalized public access through Lot 51 in the update to its Recreation Resources Management Plan.<sup>27</sup> We note, however, that

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<sup>23</sup> Standard article 5 of the project license requires licensees to acquire and retain sufficient property and rights to construct, maintain, and operate the project. This includes sufficient property rights to ensure a licensee has access to land necessary to execute its license requirements.

<sup>24</sup> Grant PUD's March 1, 2016 Supplemental Filing at 7.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 8.

<sup>27</sup> *Id.* at 11. On October 6, 2016, Commission staff issued an ordering granting Grant PUD's request to extend the deadline for filing the Recreation Resources Management Plan update until April 1, 2017.

providing, or permitting, public access to project lands and waters via licensee-owned lands is consistent with a licensee's obligation to foster public recreation. However, if Grant PUD intends to propose formalized public access or recreation amenities on the shoreline adjacent to Lot 51 in the future, Grant PUD should consult with Commission staff to determine whether it needs to file an amendment to its Recreation Resources Management Plan for Commission approval.

19. Several Sunland Estates residents express concerns that incorporating Lot 51 into the project boundary will exacerbate existing public safety, parking, and sanitation concerns related to large crowds of visitors that travel to Sunland Estates and nearby public access areas in Grant County during event weekends at the Gorge Amphitheatre, a popular concert venue located approximately five miles from the Sunland Estates community. Commenters claim that Grant PUD is unwilling to participate in efforts to mitigate negative impacts related to large concert crowds, and that Grant PUD's inadequate response is forcing private individuals and communities to address those impacts. Grant PUD states that it has been involved in ongoing coordination with the operator of the concert venue, the Grant County Sheriff, Washington DFW enforcement personnel, a Grant County Commissioner, several Sunland Estates residents, and a Sunland Estates HOA member to reduce future impacts from large concert crowds on adjacent communities and recreation areas.<sup>28</sup>

20. The Gorge Amphitheatre is not a project recreation facility, nor is it located within the project boundary. Accordingly, Grant PUD has no responsibilities with respect to the impacts of events at the amphitheater. In any event, recognizing that the proximity of the Gorge Amphitheatre to the project shoreline has the potential to impact the Sunland Estates community, Grant PUD has agreed to work with local officials, law enforcement, and residents to address associated crowd management and unlawful behavior at its nearby recreation areas and shoreline.

21. We expect our licensees to be good neighbors and that Grant PUD will continue to work with the Sunland Estates community and local law enforcement to ensure that public access to Wanapum Reservoir has as little effect on the community as possible. At the same time, because the waters of the reservoir and the shoreline lands held by

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<sup>28</sup> Grant PUD's March 1, 2016 Supplemental Filing at 12. Specifically, Grant PUD indicates that it has agreed to: (i) provide private security resources at Rattlesnake Cove Day-Use Park and Frenchman Coulee Recreation Area; (ii) provide trash cleanup on Grant PUD-owned shoreline property; (iii) distribute information to concert-goers directing them to the Frenchman Coulee Recreation Area; (iv) schedule additional planning meetings; and (v) identify an issue notification protocol.

Grant PUD are public resources, we cannot allow the concerns of Sunland Estates residents to override the public's interest in recreation.<sup>29</sup>

### C. Other Matters

22. Sunland Estates HOA and other adjacent landowners argue that Grant PUD's request to bring Lot 51 within the project boundary amounts to a violation of the Sunland Estates development's plats and protective covenants.

23. As stated above, Grant PUD currently uses Lot 51 to access project lands along the shoreline adjacent to Sunland Estates for the purposes of vegetation management and shoreline monitoring, compliance, and restoration. Grant PUD's use will not change merely because Lot 51 is added to the project boundary.<sup>30</sup> In any event, any local restrictions that purport to restrict a licensee's ability to carry out project purposes are preempted by the Federal Power Act.<sup>31</sup>

24. In addition, several landowners with lots adjacent to Grant PUD's shoreline property express frustration that Grant PUD has revoked, and does not plan to renew, individual non-project use permits that previously authorized landowners to plant and maintain lawns and ornamental plantings on project lands. They argue that removal of the irrigated lawns on Grant PUD-owned property will restrict recreation on project lands and increase the risk of wildfire. These commenters also state that it is unfair that Grant PUD has issued non-project use permits allowing lawns and ornamental plantings in other locations within the project's boundary.

25. In response, Grant PUD explains that it denied permit applications for individual lawns, trails, and buffer zones between private property and Grant PUD-owned property because these applications did not meet Grant PUD's criteria for issuance of new land use

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<sup>29</sup> We have, in previous cases, stated that private use of project lands, while it may in many instances be compatible with public recreation, cannot be allowed to negate our general policy that the public be given the maximum practicable access to project lands and waters. Thus, as a general proposition, we will not allow the interests of private landowners to override the public's right to enjoy the recreational resources associated with licensed hydropower projects. *See, e.g., West Penn Power Company*, 81 FERC ¶ 61,362, at 62,736 (1997), *reh'g denied*, 83 FERC ¶ 61,225 (1998).

<sup>30</sup> *See* Grant PUD's December 23, 2015 Supplemental Filing at 2.

<sup>31</sup> *See, e.g., California v. FERC*, 495 U.S. 490 (1990).

authorizations for allowable non-project uses.<sup>32</sup> In addition, Grant PUD states that it will incorporate Firewise principles,<sup>33</sup> such as planting green, low-fuel vegetation and thinning existing vegetation within specific zones, in the shoreline restoration plan.<sup>34</sup>

26. Requests for non-project uses of project lands within the public recreation development classification are evaluated to ensure consistency with the license and the objectives set forth in the SMP. The SMP instructs that a Public Recreation Development Plan will be developed prior to implementing most uses and activities within the public recreation development classification.<sup>35</sup> On July 1, 2015, Grant PUD revoked all land-use permits within the Sunland Estates area issued under the original license in order to bring all non-project uses into compliance with Grant PUD's license requirements and management policies. Grant PUD finalized the Sunland Public Recreation Development Plan on July 14, 2015, and revised it on January 29, 2016.<sup>36</sup>

27. A licensee's management of any particular portion of project shoreline may vary depending on several factors, including, but not limited to, project operation, environmental considerations, public access, and recreational use. In this case, Grant PUD determined that issuance of permits allowing individual lawns and buffer zones would not provide a public or community-wide benefit, nor would issuance of such permits ensure reasonable public access. In addition, Grant PUD reasoned that individual lawns or buffer zones would further perpetuate the perception of private use of public lands. While we generally authorize licensees to allow certain non-projects uses of project lands that we have determined are not inconsistent with project purposes, we do

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<sup>32</sup> Grant PUD's March 1, 2016 Supplemental Filing at 13.

<sup>33</sup> The National Fire Protection Association's Firewise Communities Program seeks to educate homeowners about methods to reduce the risk of wildfire damage to homes and communities. The program is co-sponsored by the U.S. Department of Agriculture's Forest Service, the U.S. Department of the Interior, and the National Association of State Foresters. National Fire Protection Association, *About Firewise*, <http://www.firewise.org/about.aspx>.

<sup>34</sup> Grant PUD's March 1, 2016 Supplemental Filing at 13.

<sup>35</sup> Public Recreation Development Plans are site-specific comprehensive plans intended to guide issuance of non-project uses and inform the community of recreation improvement plans for the area.

<sup>36</sup> Grant PUD, *Final Sunland Public Recreation Development Plan* (Jan. 2016), <http://www.grantpud.org/environment/shoreline-management/land-use-authorization>.

not require licensees to permit such uses. The lands in question are owned by Grant PUD and it may determine, within the constraints of its license, whether, and to what extent, it will allow private use of its lands.

28. For the above reasons, we conclude that the proposed addition of Lot 51 to the project boundary is necessary for project purposes and is approved.

29. In order to reflect the changes in the project boundary due to the addition of Lot 51, ordering paragraph (B) requires Grant PUD to file, within 90 days, a revised Exhibit G drawing for Commission approval. The revised Exhibit G drawing must comply with sections 4.39 and 4.41 of the Commission's regulations.

The Commission orders:

(A) Public Utility District No. 2 of Grant County, Washington's application to amend the project boundary for the Priest Rapids Hydroelectric Project No. 2114, filed on October 7, 2015, as supplemented on December 23, 2015 and March 1, 2016, is approved.

(B) Within 90 days of the issuance date of this order, Public Utility District No. 2 of Grant County, Washington must file, for Commission approval, a revised Exhibit G drawing that includes the lands affected by the project boundary revision approved in ordering paragraph (A) of this order. The Exhibit G drawing must comply with sections 4.39 and 4.41 of the Commission's regulations.

(C) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2016). 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. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.