

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Wisconsin River Power Company

Project No. 1984-092

ORDER APPROVING CHANGE IN PROJECT BOUNDARY

(Issued June 22, 2004)

1. Wisconsin River Power Company, licensee for the 35-megawatt Petenwell and Castle Rock Hydroelectric Project No. 1984, requests approval to remove from the project boundary a 4.37-acre parcel of land that the licensee intends to sell to an adjacent landowner. We are granting the request, subject to retaining within the project boundary a one-tenth-acre portion of the parcel that lies within a 200-foot buffer zone around the project's reservoirs.¹

I. Background

2. The project, which was relicensed in 2001,² is located on the Wisconsin River in Wood, Juneau, and Adams Counties, Wisconsin, and consists of two developments, Petenwell and Castle Rock. Of the roughly 19,000 acres of non-inundated land within the project boundary, about 14,000 acres are open to the public: 10,600 acres owned by

¹ In Appendix E of its January 31, 2003 supplemental filing, the licensee submitted a revision to the project boundary map in license Exhibit G (Sheet 3) that excludes the 4.37-acre parcel and corrects an error in depicting the exclusion of an adjacent 2.5-acre parcel, as approved on June 21, 1999, 87 FERC ¶ 62,308 (1999). The revised exhibit map does not comply with the minimum-size requirements of 18 C.F.R. § 4.39(a) (2004), which require such maps to be drawn on sheets no smaller than 24 by 36 inches. Moreover, a new Sheet 3 drawing will be needed to reflect this order's retention in the boundary of that portion of the parcel lying within the 200-foot reservoir buffer zone. Accordingly, we are requiring the licensee to submit a new Sheet 3.

² 97 FERC ¶ 62,205 (2001).

the licensee, and nearly 4,000 in public ownership. The remaining 5,000 or so acres are privately owned, and include lands on which the licensee has a flowage easement, and lands with privately-owned recreation facilities that are open to the public.³

3. Project lands not used for generating facilities are devoted to public recreation, wildlife habitat, and sustained-yield forestry.⁴ More than 85 percent of project land is devoted to open space (undeveloped lands) and recreation use.⁵ On behalf of habitat protection and aesthetics, the license required a 200-foot-wide buffer zone on licensee-owned lands adjacent to the project reservoirs.

4. The project's approved Land Management Plan has four classifications for licensee lands and publicly owned lands within the project boundary: (1) Protected Open Space; (2) Managed Open Space Likely to Remain; (3) Managed Open Space Likely Conversion to General Recreation; and (4) General Recreation. The 4.37-acre parcel at issue is located in an area classified as General Recreation, which allows for development of public recreation sites and facilities.⁶

³ See the January 7, 2003 supplement to the application, at p. 1. See also the licensee's Land Management Plan (at pp. 4-7), filed December 5, 2002, and approved April 7, 2004, 106 FERC ¶ 62,008; and the licensee's Recreation Plan (at p. 27), filed November 26, 2002, and approved July 23, 2003, 104 FERC ¶ 62,052.

⁴ See Recreation Plan at p. 7. About 500 acres of project land are dedicated to project works.

⁵ See Land Management Plan at p. 10. Within the project boundary are 55 bank-fishing sites, 29 improved boat launch sites, 17 beach areas, 10 hiking trail areas, 21 day-use picnic areas, and 11 scenic overlook sites. See order approving the Recreation Plan, 104 FERC ¶ 62,052 at 64,118.

⁶ See Recreation Plan at p. 20, and Management Category Map, Figure LMP 2, sheet 1.

5. The licensee has applied to remove a 4.37-acre parcel of land located near the upstream end of the 26,000-acre Petenwell reservoir. The reservoir has about 100 miles of shoreline, of which the licensee owns 60 miles.⁷ The parcel in question is located about 200 feet from the shoreline, in an area the project's Land Management Plan designates as licensee-owned land for recreational use.⁸
6. The licensee consulted with the U.S. Fish and Wildlife Service (FWS), Wisconsin Department of Natural Resources (Wisconsin DNR), and Wisconsin Historical Society's state historic preservation office (SHPO).⁹ FWS submitted no comments. The SHPO stated that no archeological sites eligible for listing in the National Register of Historic Places have been identified in the project area. Wisconsin DNR stated it would not oppose removal of the parcel, if a suitable parcel of equivalent or larger size and habitat value were added to the project.
7. The licensee filed its amendment application on December 5, 2002, and supplemented it on January 7, 2003. In response to the January 30, 2003 public notice of the application, Wisconsin DNR and the Petenwell-Castle Rock Property Owners Association (Owners Association) filed timely motions to intervene in opposition to the application,¹⁰ asserting that removing the parcel from the project is contrary to

⁷ See Recreation Plan at pp. 4-7. The parcel is located near a reach of the Petenwell Reservoir upstream from Petenwell Lake, on a narrow channel formed by the Wisconsin River's west bank and a large forested island in the main river channel. See the Subject Property Map, Appendix 1 of licensee's December 5, 2003 filing.

⁸ See sheet 1 of figure LMP-1 (Landowners Maps) attached to the licensee's Land Management Plan.

⁹ See correspondence in Appendix 2 of the licensee's December 5, 2003 filing and in Appendix C of its January 7, 2003 supplemental filing.

¹⁰ Because the motions to intervene were timely and unopposed, they were automatically granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c)(1) (2004).

maintaining full public use of project lands. The Owners Association also argues that the parcel must be retained in the project to comply with the requirement for a 200-foot buffer zone along licensee-owned shoreland.¹¹

8. Commission staff prepared an Environmental Assessment (EA) analyzing the licensee's proposal. The EA is attached as an appendix to this order.

II. Discussion

9. Part I of the Federal Power Act (FPA) directs the Commission to require each licensee to undertake appropriate measures on behalf of public interest uses of the relevant waterway, including fish, wildlife, and recreation. These public interest uses constitute the "project purposes." Standard license Article 5 requires the licensee to acquire and retain all interests in non-federal lands and other property necessary or appropriate to carry out project purposes. However, the Commission will approve a licensee's request to remove a parcel of land from the project boundary, if the Commission determines that the land is no longer necessary or appropriate for project purposes, and if so, the licensee is then free to sell or otherwise dispose of the land without Commission involvement.¹²

¹¹ 97 FERC ¶ 62,205 at 64,382. The Owners Association argues in addition that the Commission should deny all licensee requests to remove lands from the project until the licensee complies with Article 410 by including in the project boundary all licensee-owned non-project lands within 200 feet of the reservoir. However, the Commission has approved the licensee's Land Management Plan as complying with Article 410, and has accepted the licensee's inclusion in the project boundary of only a 100-foot buffer on the licensee's non-project lands. The April 7, 2004 order approving the Plan affirmed, based on an agreement between the licensee and Wisconsin DNR, that the project boundary need not be expanded to include "non-project lands," unless, while planning the development of such non-project lands and after consulting with Wisconsin WDR, the licensee finds that the existing area is insufficient for fulfilling project purposes.

¹² See Wisconsin Public Service Corp., 104 FERC ¶ 61,295 at P 14-18 (2003).

10. Wisconsin DNR and the Owners Association argue that all the project lands are needed for public purposes, and that removing any land will reduce recreational use, wildlife habitat, and shoreline buffering.¹³ However, as the Commission has stated:

[T]he Commission does not intend, in approving an exhibit showing project boundaries, that the boundaries must remain as indicated throughout the license term, but rather that they should be subject to alteration to reflect changing circumstances and developments with the passage of time.

Alabama Power Company, 55 FPC 1563, 1564-65 (1976). In the circumstances of this case, we conclude that a 4.37-acre reduction in project land classified as General Recreation will not constitute a material impact to the public interest in ensuring recreational opportunities at the project.¹⁴ As described in the EA,¹⁵ there are no existing or planned recreation facilities within the parcel or its immediate vicinity. The parcel's usefulness for public recreation and reservoir access is limited by the fact that it is bordered on three sides by privately-owned parcels that are outside the project boundary. Nor is there anything unique about the parcel's habitat, which is comprised of upland red pine plantation, scrub oak, and interspersed jackpine, all of which are prevalent in the area.

¹³ Wisconsin DNR adds that it would have fewer objections to removing the 4.37-acre parcel from the project if the licensee added to the project a parcel of equal or greater size and function. However, the FPA does not impose a "no net loss" standard for hydropower projects. See, e.g., City of Tacoma, Washington, 86 FERC ¶ 61,311 at 62,093 and n.146.

¹⁴ Removing the 4.37-acre parcel will reduce the 14,000 acres of project land available for public use by only 0.03 percent.

¹⁵ EA, section V.B.

11. About 0.1 acre in the southeast corner of the 4.37-acre parcel lies within the 200-foot buffer zone around the reservoir.¹⁶ We are therefore requiring the licensee to keep that corner within the project boundary.¹⁷

The Commission orders:

(A) Wisconsin River Power Company's application to remove the 4.37-acre parcel of land from the boundary of Project No. 1984 is granted, subject to the condition that it determine the exact extent to which the parcel lies within the 200-foot buffer zone; keep that portion of the parcel within the project boundary; and maintain rights in that portion of the parcel adequate to fulfill the buffer-zone requirements of Article 410 and any other license requirements that pertain to that portion of land.

(B) Within 45 days from the date of issuance of this order, Wisconsin River Power Company shall file for Commission approval a revised exhibit G drawing, prepared in accordance with 18 C.F.R. §§ 4.39 and 4.41(h) (2004)¹⁸ and showing the project boundary as approved in this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹⁶ Id., section V.B.2.

¹⁷ The licensee may be able to comply with this condition and still convey property interests in the corner that will remain in the project boundary, by use of its delegated authority under the license's standard land use article (Article 413).

¹⁸ See the recent amendments to these regulations in Order No. 2002, 68 Fed. Reg. 51,070 (August 25, 2003), FERC Stats. & Regs. ¶ 31,150 at 30,759-60 (2003), Order No. 2002-A (rehearing), 69 Fed. Reg. 5,268 (February 4, 2004), 106 FERC ¶ 61,037 (2004).

APPENDIX

ENVIRONMENTAL ASSESSMENT FOR REMOVAL OF LAND FROM PROJECT BOUNDARY

Petenwell-Castle Rock Hydroelectric Project FERC Project No. 1984-092

I. Application and Background

On December 5, 2002, and supplemented on January 7, 2003, and January 31, 2003, Wisconsin River Power Company (WRPCO), licensee for the Petenwell and Castle Rock Hydroelectric Project, FERC Project No. 1984, filed an application requesting Commission approval to remove a parcel of property from the project boundary. The project is located on the Wisconsin River in Wood, Juneau, and Adams Counties, Wisconsin.

Section 4.41(h)(2) of the Commission's regulations requires that project boundaries enclose all project works and lands necessary for project operation and maintenance and for other project purposes, such as recreation, shoreline control, and protection of environmental resources. Land may be removed from project boundaries only if it is not needed for project purposes.

II. Purpose and Need for Action

The licensee requests Commission authorization to remove approximately 4.37 acres of property from the project boundary. The licensee intends to sell the parcel to an adjacent landowner who wishes to construct a home on the property.

III. Proposed Action and Alternatives

A. Proposed Action

The application proposes to remove a 4.37-acre parcel of property from the project boundary and to revise the project's Exhibit G drawings filed with the Commission on January 18, 2002. Following removal from the project boundary, the licensee intends to sell the property to Mr. Richard Skibba, an adjacent land owner, who wishes to construct a home on the property, which contains remnants of his family homestead. The

application and supplements include a description of the parcel, the General Recreation Use section of the recreation plan, and comments received from the agencies the licensee consulted prior to filing of the application.

B. Action Alternative

This environmental assessment (EA) considers the following alternative which is not part of the licensee's proposal. Commission staff proposes that the land be reviewed and only the portion of the 4.37-acre parcel that lies outside the Aesthetic Management Area classification in the licensee's approved land management plan (106 FERC ¶ 62,008 (2004)) be removed from the project boundary. Aesthetic Management Areas are landward shoreline areas adjoining licensee-owned lands that are in the project boundary, where project land ownership allows. These areas are usually 200 feet in width, and vary in character but are generally undeveloped, rural, and wooded with a predominance of natural vegetation. Aesthetic Management Areas are designated as protected open space. This alternative has been included in our assessment because it would protect certain project related resources.

C. No-action Alternative

Under the no-action alternative, the application would be denied. Without Commission approval, the licensee could not sell the parcel of project land to Mr. Skibba or remove the land parcel from the project boundary.

IV. Consultation and Comments

The licensee requested comments from the appropriate agencies and interest groups. Comments were received from the Wisconsin Historical Society (WHS) and Wisconsin Department of Natural Resources (WDNR). WHS reviewed the archaeological survey for the sale; no archaeological sites eligible for listing in the National Register of Historic Places were identified in the project area. WDNR responded in an email to the licensee that it opposes the transfer because it represents a net loss of lands accessible to the public in the project boundary. If a parcel of equivalent or larger size and habitat value would be added to the project boundary to offset the loss, WDNR would have no objection.

The Commission public-noticed the application on January 30, 2003. The Petenwell-Castle Rock Property Owners Association, Inc. (PCPOA) and WDNR filed motions to intervene. The PCPOA's intervention in opposition is based on six reasons:

1. Removing the parcel from the project boundary is contrary to license Article 410 (Land Management Plan); further, it has always been FERC's position that the public be granted full utilization of all project lands.
2. The license dictates "full public utilization of all project lands," but the boundary change will preclude public access to this land forever.
3. The licensee has plans for new subdivisions on the reservoirs, without consideration of license Article 410.
4. Article 410 directs the licensee to provide a 200-foot-wide set-back for aesthetics, wildlife, and full public utilization of project lands. PCPOA believes that this property lies within the 200-foot-wide buffer strip.
5. The licensee's Land Management Plan gave no consideration to the license order's clear mandate to establish an additional 100-foot-wide buffer zone abutting the original 100-foot strip, for aesthetics, wildlife, and public use. The 4.37 acres was set aside for public use; the request to withdraw these 4.37 acres, and any future requests for land withdrawals, will deny the public the use of those project lands.

WDNR's intervention includes comments and a protest. The licensee has asserted that the sale will stop illegal all-terrain vehicle (ATV) use at the site. WDNR agrees that the ATV issue is real, but asserts that selling the land is not the answer; rather, the sale will only exacerbate the problem, which WDNR asserts is the licensee's responsibility to resolve. WDNR asserts that the loss of over four acres of project land will reduce public recreational use, wildlife habitat, and buffering of private land uses. WDNR reiterates that adding a parcel of land equal or greater in size and function would offset the objection to removing the land.

V. Environmental Analysis

A. General Setting

The Petenwell and Castle Rock Project area is located in a large, basin-like area that was once part of the ancient glacial Lake Wisconsin. The topography of the project area is flat to gently rolling and primarily wooded in character. The parcel that is proposed to be removed from the project boundary is bordered by privately-owned land on three sides. The parcel itself is comprised of pine and oak trees.

B. Environmental Impacts**1. Project Boundary Change Proposal**

Minimal impacts to the environment can be expected due to the construction of a home on the parcel. Minor land disturbance during construction, clearing for and maintenance of a lawn area, a paved drive, and installation of a septic system can be expected.

Aquatic and Terrestrial Resources

There is nothing unique about the habitat in the parcel, which is comprised of upland red pine plantation, scrub oak, and interspersed jack pine, which are all characteristic of the area. Construction of a residence and maintenance of the surrounding lands would likely have a minimal adverse affect on terrestrial habitat.

Threatened and Endangered Species

Management plans for bald eagles and Karner blue butterflies, both federally-listed, are in place at the project. No bald eagle or Karner blue butterfly habitat will be affected by removing the parcel from the project boundary. Osprey (state-listed) are present in the project area. Osprey habitat is protected in accordance with WDNR's Wisconsin Osprey Recovery Plan. The proposed removal of the parcel of land will not affect threatened or endangered species, or habitat, at the project.

Recreation and other Land and Water Uses

No recreation facilities are located in the vicinity of the parcel to be removed from the project boundary. The licensee reserved approximately 3,500 acres of land for current and future recreation development, and provided approximately 5,000 acres of land to WDNR for development of public recreation facilities for the Yellow River Bottoms and Buckhorn State Park. None of this land is included in the parcel to be removed from the project boundary. However, this parcel does fall within the General Recreation category, and potentially part of the Aesthetic Management Area category, of the licensee's approved land management plan. The General Recreation category provides land to meet the projected public recreation needs for the period from 2002 through 2010.

The approved recreation plan also lists existing recreation sites that can be substantially expanded to provide more recreation opportunities as the need develops. The proposed removal of the parcel of land will preclude public access to this parcel for

informal recreational use. This would have a minimal effect on recreation opportunities at the project. There are 14,000 acres of project land available for public recreational use; removing 4.37 acres would result in a loss of 0.03 percent of project land accessible to the public.

Aesthetic Resources

The general aesthetic character of the project is that of an undeveloped, rural and wooded shoreline. The predominant native woodland species in the area are pine and oak. Scattered pockets of vacation and lake home development, rural residences, and small commercial areas characterize the types of developed land uses; these developments are generally small in size and separated by large tracts of open space.

The proposed removal of the parcel of land and associated residential construction would result in a minor change in the natural visual character of the shoreline at this location. As mentioned in section III. B., a small portion of the parcel may lie within the Aesthetic Management Area. Aesthetic resources at the project could be impacted to some extent if this portion of the parcel is cleared.

Cultural Resources

As addressed in the consultation and comments section of this EA, no archaeological sites eligible for listing in the National Register of Historic Places were identified in the project area.

2. Action Alternative

In this section, we examine the staff alternative identified in section III. B. Under this alternative, all the land in the Aesthetic Management Area classification of the licensee's land management plan would remain within the project boundary. The Aesthetic Management Area is 200-feet at the location of the parcel; the portion of the parcel that would not be removed from the project boundary as a result of adopting this alternative would be about 0.1 acre. This would require the licensee to review the parcel of land to determine if any portion of it lies within the approved land management plan's Aesthetic Management Area classification. Implementing the action alternative as a condition of the order approving the application would minimize the impacts to aesthetic resources; this condition would not significantly change the impacts to other resources.

3. No-action alternative

Under the no-action alternative, there would be no change to the existing environmental conditions.

VI. Conclusion

Approving the proposed action would have minor adverse impacts on terrestrial habitat, public access, and shoreline aesthetics. No biologically significant or archeological or historical sites been identified at the parcel to be removed. No recreation facilities are located on the land. Staff concludes that the proposed project boundary change, with the inclusion of the action alternative which keeps land that is within the 200-foot-wide Aesthetic Management Area classification inside the project boundary, may be approved.

Based on the information, analyses, and evaluations contained in this EA, we find that approval of the project boundary change, with staff's recommended alternative, would not constitute a major federal action significantly affecting the quality of the human environment. We also find that approval of the project boundary change, with staff's recommended measure, would not be inconsistent with the operation and maintenance of the project or with the project's public-recreation and resource-protection purposes.

VII. List of Preparers

Shana High, Outdoor Recreation Planner
Steven Naugle, Environmental Protection Specialist