

157 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Grand River Dam Authority

Project No. 1494-434

ORDER ON REHEARING

(Issued October 20, 2016)

1. On March 30, 2016 Commission staff issued an order modifying and approving shoreline management classification maps and management provisions for Grand River Dam Authority's (GRDA) 105.176-megawatt (MW) Pensacola Hydroelectric Project No. 1494 (Pensacola Project), located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.¹ On April 29, 2016, GRDA filed a request for rehearing. We grant GRDA's request for rehearing subject to the conditions described below.

Background

2. On April 24, 1992, Commission staff issued a new 30-year license to GRDA to continue to maintain and operate the Pensacola Project.² The project consists of, among other features, the 46,500-acre Grand Lake O' the Cherokees (Grand Lake) reservoir, which has a storage volume of 1,680,000 acre-feet at the maximum power pool of 745 feet Pensacola Datum. Grand Lake has 521.86 miles of shoreline that extends 66 miles upstream from the Pensacola Project dam. Most of the land surrounding Grand Lake and outside the project boundary is privately owned, and many areas along the shoreline have been developed with private homes, docks, condominiums, municipal and state parks, and commercial resorts and marinas.

¹ *Grand River Dam Authority*, 154 FERC ¶ 62,211 (2016) (March 2016 Order).

² *Grand River Dam Authority*, 59 FERC ¶ 62,073 (1992). The original license for the Pensacola Project was issued to GRDA in 1939.

3. In 2008, GRDA voluntarily filed a proposed shoreline management plan (SMP) for Commission approval. On October 17, 2013, Commission staff issued an order modifying and approving the SMP³. The October 2013 Order approved the following proposed six shoreline classifications, which define GRDA's management goals for specific project areas: (1) Project Operations; (2) Municipal/Public Use; (3) Stewardship; (4) Wildlife Management; (5) Responsible Growth; and (6) Responsible Growth-Wetlands.⁴

4. The table below lists the number of shoreline miles and percentage of shoreline for each shoreline classification.

Shoreline Classification	Area Miles of Shoreline	Percent (rounded) of Shoreline
Project Operations	1.88	0.36
Municipal/Public Use	7.61	1.45
Stewardship	150.25	28.79
Wildlife Management	15.47	2.96
Responsible Growth	319.07	61.14
Responsible Growth-Wetlands	27.58	5.28
Total	521.86	100

³ *Grand River Dam Authority*, 145 FERC ¶ 62,041 (2013) (October 2013 Order). An SMP is a comprehensive plan intended to manage the multiple resources and uses of an impoundment's shoreline, consistent with license requirements and project purposes. SMPs often set forth categories of shoreline lands and specify what types of activities are permissible in the various classifications.

⁴ Project Operations encompasses the lands necessary for project operation. Municipal/Public Use areas consist of lands that serve a public purpose or government function, such as parks, public beaches, and bridges. Stewardship Areas include project lands that contain important or "sensitive" resources requiring special protection so valuable resources are not threatened, diminished, or lost. The Wildlife Management shoreline classification areas are afforded the highest level of protection for lands managed exclusively for the preservation and enhancement of aquatic and terrestrial habitat. Responsible Growth contains project lands with existing residential and/or commercial uses and areas of limited or no development not otherwise classified in the SMP. Responsible Growth-Wetlands includes project lands containing palustrine wetlands (that is, wetlands lacking flowing water) not included in the Stewardship areas, but which may require greater scrutiny and specific protection, mitigation, and/or environmental enhancement. *Id.* PP 21-27.

5. During the development of the shoreline classifications, the U.S. Fish and Wildlife Service (FWS) and the Oklahoma Department of Wildlife Conservation (Oklahoma Wildlife) (collectively, resource agencies) identified approximately 215 miles of “sensitive”⁵ shoreline areas throughout the reservoir shoreline. GRDA estimates that about 165 miles of the reservoir shoreline identified as “sensitive” by the agencies are protected under the current Stewardship and Wildlife Management shoreline classifications, leaving an estimated 41 miles of “sensitive” shoreline area within the portion of the shoreline area that GRDA had classified as Responsible Growth.⁶ The resource agencies urged Commission staff to give these areas greater scrutiny. Commission staff, however, concluded that there was insufficient information to determine the level of sensitivity of the lands identified as “sensitive” by the resource agencies that GRDA had classified as Responsible Growth.⁷ Commission staff expressed concern that requiring greater scrutiny for the 41 miles of shoreline areas designated as “sensitive” within the Responsible Growth shoreline classification could preclude development in areas that do not require significant protection. At the same time, staff concluded that, in order for the Commission to exercise appropriate oversight over the disputed areas, GRDA would be required to revise its shoreline classification maps and develop provisions to manage the disputed lands.⁸

6. Accordingly, ordering paragraph (C) of the October 2013 Order required GRDA, following consultation with the resource agencies, to file revised maps identifying the project lands with the designated shoreline management classifications and overlaying the lands identified as “sensitive” by the resource agencies that the licensee classified as Responsible Growth.⁹ It also required GRDA to develop management provisions for the lands, including, at a minimum, measures to evaluate future development proposals and ensure protection of significant natural resources on the lands, identify allowable and

⁵ GRDA states that areas designated by the agencies as “sensitive” generally contain wetlands, steep slopes, shallow areas, or sensitive aquatic or terrestrial habitat.

⁶ October 2013 Order, 145 FERC ¶ 62,041 at PP 37-39.

⁷ The agencies provided only maps of the reservoir showing the location of these designated “sensitive” areas, with no supporting documentation for such designations. The current Stewardship and Wildlife Management classifications provide the recommended greater scrutiny of “sensitive” shoreline in these areas. As a result, only the 41 miles of “sensitive” shoreline areas within the Responsible Growth classification remain in dispute.

⁸ October 2013 Order, 145 FERC ¶ 62,041 at PP 41-42.

⁹ *Id.* at 64,087-88.

prohibited uses, evaluate the need to reclassify any of the lands, and propose any necessary reclassification.¹⁰ The October 2013 Order noted that until GRDA filed the revised maps and associated management provisions, the disputed 41 miles of shoreline would be protected through the requirements of Article 410 (the standard land use article).¹¹ No party sought rehearing of the order.

7. On July 1, 2014, and supplemented on October 31, 2014, and March 16, 2015, GRDA filed revised maps and management provisions pursuant to ordering paragraph (C) of the October 2013 Order.

8. On March 30, 2016, Commission staff issued an Order Modifying and Approving Shoreline Management Classification Maps and Management Provisions.¹² The March 2016 Order noted that despite a consultation process, the resource agencies had not provided site-specific details on GRDA's filings to clarify the characteristics and sensitivity of the "sensitive" designated lands within the Responsible Growth areas.¹³ Commission staff concluded that given the requirements of Article 410, as well as other measures required under the license (e.g., dredging management plan, bald eagle surveys, gray bat report, including impacts of vegetation management on potential gray bat foraging areas within responsible growth areas, required updates for wildlife and wetland habitats and mitigation measures), new non-project uses authorized by the licensee within the Responsible Growth classified areas would not have significant effects on areas identified as "sensitive" by the agencies.¹⁴ Therefore, the order approved GRDA's

¹⁰ *Id.*

¹¹ *Id.* P 44. Under Article 410 of the license (standard land use article), GRDA is able to authorize certain uses without prior Commission approval "if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values (especially federally listed species) of the project." *Grand River Dam Authority*, 59 FERC at 63,231.

¹² March 2016 Order, 154 FERC ¶ 62,211.

¹³ *Id.* P 22.

¹⁴ *Id.* PP 26-30. Under Article 410(b), GRDA may authorize certain non-project uses of project lands and waters for certain uses without prior Commission approval. Furthermore, the March 2016 Order noted that before GRDA authorizes leases and conveyances for proposed uses identified in Article 410(c) and (d), it must consult with appropriate agencies, and the proposed use must meet Article 410's requirements. If the proposed uses considered under Article 410 do not meet the article's requirements, the licensee must file the proposal for prior Commission approval.

proposal to retain the Responsible Growth shoreline classification for the lands identified by the agencies as “sensitive” and to apply the management provisions of the Responsible Growth classification. The order also approved a map that depicted the areas in which the “sensitive” lands are located.¹⁵

9. However, to keep the Commission informed of the number and types of uses permitted under Article 410(b) on lands in the Responsible Growth classification that are identified as “sensitive,” Commission staff required GRDA in ordering paragraph (C) of the March 2016 Order to file an annual report identifying any permits it authorized under Article 410(b) for the previous calendar year, beginning in February 2017, on lands identified as “sensitive” and classified as Responsible Growth. Commission staff ordered GRDA to include in the annual report: (1) a description of the permitted use; (2) geographic information system data identifying the location of the use; (3) a description of the environmental resources at the location of the use; and (4) an evaluation of any potential impacts to the environmental resources resulting from the permitted use. GRDA was also required to allow the resource agencies time to review and provide comments or recommendations on the report.

10. On April 29, 2016, GRDA filed a timely request for rehearing of the March 2016 Order.

Discussion

11. On rehearing, GRDA objects to the annual reporting requirement as overly burdensome because of the lack of detail from the agencies on the sensitive resources present along the shoreline. GRDA proposes instead to file a map to clarify the location of the lands at issue and to consult with the FWS and Oklahoma Wildlife at the time a permit is requested. We agree that this proposal would provide a reasonable degree of protection for the lands at issue without overly burdening GRDA. Therefore, in place of the annual reporting requirement, we will require GRDA to consult with the FWS and Oklahoma Wildlife before authorizing a proposed use under Article 410(b) on lands designated as “sensitive” by the agencies within the Responsible Growth shoreline classification.¹⁶

¹⁵ *Id.* P 33. The order required the revision and refiling of two maps, which are not at issue here, dealing with lands in the Stewardship category.

¹⁶ We note that for any non-project uses not governed by Article 410, GRDA is required by the license to seek Commission approval prior to authorizing such uses.

12. Additionally, we accept GRDA's proposal to submit a new map showing those areas within the Responsible Growth classification that have been designated as "sensitive" by the agencies. Specifically, GRDA proposes to modify the current FWS map (included as Appendix B in the rehearing request) that shows its "sensitive" designated areas throughout the project reservoir, to highlight only those "sensitive" areas on lands classified as Responsible Growth. We require that the new map be filed for Commission approval and show the perimeter of the entire reservoir and shoreline, along with all FWS "sensitive" designated areas that are located on lands classified as Responsible Growth. The map should clearly label the identified "sensitive" areas within the Responsible Growth classification. This new map, once approved, will replace the Comparison Map approved by the March 30, 2016 order.

13. In order to facilitate implementation of the SMP and Commission staff oversight of the SMP, including the new map, GRDA should include with the proposed new map GIS data representing the linear extent of the shoreline identified on the map as "sensitive."

The Commission orders:

(A) The request for rehearing filed April 29, 2016, by GRDA in this proceeding is granted, as described above.

(B) Within 90 days from the date of this order, GRDA must file, for Commission approval, a map of the entire reservoir and shoreline, and all U.S. Fish and Wildlife Service's and Oklahoma Department of Wildlife Conservation's "sensitive" designated areas that are located on lands classified as Responsible Growth within the approved shoreline management plan. The map must clearly label the identified "sensitive" areas and affected shoreline classified as Responsible Growth.

(C) The licensee must consult with the U.S. Fish and Wildlife Service and Oklahoma Department of Wildlife Conservation on any permit requests it receives for proposed uses allowed under paragraph (b) of Article 410 of the project license on land identified as "sensitive" and classified as Responsible Growth, as shown in the map filed under ordering paragraph (B) of this order. The licensee must allow the resource agencies sufficient time to review and provide comments to GRDA on a permit application.

(D) Within 90 days of this order, the licensee must file with the Secretary of the Commission, ATTN: OEP/DHAC, GIS data in a georeferenced electronic file format (such as ArcView shapefiles, GeoMedia files, MapInfo files, or a similar GIS format) representing the linear extent of the shoreline identified as "sensitive" within the portion of shoreline classified as Responsible Growth, as depicted on the map filed under ordering paragraph (B) of this order. The data must be filed on CD or diskette and

consist of polyline files that overlap the polyline files filed by the licensee pursuant to ordering paragraph (G) of the March 30, 2016 Order Modifying and Approving Shoreline Management Classification Maps and Management Provisions.

The GIS data must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-1494, sensitive resources data, MM-DD-YYYY.SHP]. The filing must be accompanied by a separate text file describing the spatial reference for the georeferenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees, etc.), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-1494, sensitive resources metadata, MM-DD-YYYY.TXT].

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.