

160 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Public Utility District No. 2 of Grant County,
Washington

Project Nos. 2114-286
2114-287

ORDER DENYING REHEARING

(Issued September 20, 2017)

1. In orders issued on September 21, 2016 and November 17, 2016, Commission staff and the Commission, respectively, approved a Recreation Resources Management Plan amendment and authorized a non-project use on Crescent Bar Island, related to Public Utility District No. 2 of Grant County, Washington's (Grant PUD or licensee) Priest Rapids Hydroelectric Project No. 2114.¹
2. Pat Kelleher and Danna Dal Porto filed timely requests for rehearing of the Recreation and Non-Project Use Orders. This order denies the rehearing requests for the reasons discussed below.

I. Background

3. The Priest Rapids Project, which includes both the Priest Rapids and Wanapum dams and associated reservoirs, is located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington. The project was originally licensed in 1955 for a 50-year term,² and the Commission issued a new 44-year license on April 17, 2008.³

¹ *Public Utility District No. 2 of Grant County, Washington*, 156 FERC ¶ 62,205 (2016) (Recreation Order); *Public Utility District No. 2 of Grant County, Washington*, 157 FERC ¶ 61,112 (2016) (Non-Project Use Order).

² *Public Utility District No. 2 of Grant County, Washington*, 14 FPC 1067 (1955).

³ *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049 (2008) (Relicense Order).

4. Project lands include Crescent Bar Island, a man-made island formed by the construction of the Wanapum Dam and situated along the shore of the Wanapum reservoir, approximately 20 miles upstream from the Wanapum Dam. The licensee owns Crescent Bar Island and a portion of the reservoir shoreline directly north of the island, which total approximately 218 acres (collectively known as the Crescent Bar Recreation Area).

5. In 1962, Grant PUD leased 194 acres of project lands, comprising Crescent Bar Island and a portion of the mainland shoreline, to the Port of Quincy, Washington (Port of Quincy) for a 50-year lease term. The Port of Quincy installed water and sewer facilities, and developed a nine-hole golf course, restaurant, boat moorage, and a trailer park and campground. The Port of Quincy subsequently subleased the land to a private developer, which sold its interest to individuals, homeowners associations, and commercial enterprises. In 2010, Grant PUD's Board of Commissioners voted to not renew the Port of Quincy's lease, which was set to expire in June 2012. As a result, Grant PUD was involved in multi-year litigation with the three on-island homeowners associations, which represented the interests of the condominium building and two recreational vehicle (RV) parks located on Crescent Bar Island and sought to maintain the existing residential areas on the island. The lawsuit was dismissed in August 2015, following approval of a settlement agreement between Grant PUD and the homeowners associations that provides for the three existing residential areas, with a total footprint of 38.5 acres, to remain.

A. Recreation and Non-Project Use Orders

6. In an effort to provide a comprehensive plan for developing recreation facilities at Crescent Bar Island, as required by the license,⁴ Grant PUD requested Commission approval to amend its Recreation Resource Management Plan (Recreation Plan).⁵ In addition, in accordance with the terms of the settlement agreement, Grant PUD filed a separate non-project use request seeking Commission approval to allow continued residential use of 38.5 acres of project lands on Crescent Bar Island.⁶

⁴ The Relicense Order approved Grant PUD's Recreation Plan and required implementation of various recreation measures within one year of license issuance. Relicense Order, 123 FERC ¶ 61,049 at Article 418.

⁵ Grant PUD's March 8, 2016, supplemented on May 12, 2016, Request to Amend Recreation Plan (Recreation Application).

⁶ Grant PUD's March 10, 2016, supplemented on March 29, 2016, Application for Non-Project Use (Non-Project Use Application).

7. The Recreation Order approved Grant PUD's application to amend its Recreation Plan to modify and add certain recreation improvements within the Crescent Bar Recreation Area. Specifically, the Recreation Order authorized Grant PUD to:

- (i) relocate an existing off-island 55-site campground to the northwest end of the island;
- (ii) replace an existing off-island campground site with a day use area, including picnic tables, a swim area and barrier, restrooms, parking, and connector trails;
- (iii) add one additional mile of non-motorized, multi-purpose trail on the south end of Crescent Bar Island;
- (iv) renovate an existing on-island two-lane boat launch, and provide a formalized parking area with up to 70 spaces and an accessible restroom;
- (v) enhance the existing on-island day use area, including renovations and enhancements to the existing playground, sports court, picnic area, parking area, multipurpose lawn, and addition of an accessible bathroom;
- (iv) retain an existing nine-hole golf course as a project recreation facility; and
- (vii) construct necessary support facilities.⁷

Commission staff denied Grant PUD's proposal to construct a 61-slip marina along the northern shoreline of Crescent Bar Island because Grant PUD had not demonstrated that it engaged in necessary consultation with the U.S. Department of Commerce's National Marine Fisheries Service and the U.S. Department of the Interior's Fish and Wildlife Service (FWS).⁸

8. The Non-Project Use Order approved Grant PUD's request to allow residential use to continue in three designated lease areas, totaling 38.5 acres of project lands on Crescent Bar Island, by the Crescent Bar Condominium Master Association, the Crescent Bar Recreation Vehicle Homeowners Association, and the Crescent Bar South RV Park Owners Associations (collectively, HOAs). The three on-island lease areas contain many pre-existing facilities, including 110 condominium units, 305 RV residences, three swimming pools, lawn and patio areas, driveways, access roads, and parking areas.⁹

B. Requests for Rehearing

9. On October 17, 2016, and October 18, 2016, Mr. Kelleher and Ms. Dal Porto filed requests for rehearing of the Recreation Order. They argue that Commission staff erred by approving the nine-hole golf course as a project recreation facility, and question the cost of the recreation improvements. In addition, Mr. Kelleher challenges Commission staff's approval of the campground relocation and seeks clarification regarding certain Commission-approved recreation amenities. Ms. Dal Porto argues that more free recreation opportunities are needed and seeks clarification regarding the location of bald eagle roost trees on Crescent Bar Island.

⁷ Recreation Order, 156 FERC ¶ 62,205 at ordering para. (A).

⁸ *Id.* at ordering para. (D).

⁹ Non-Project Use Order, 157 FERC ¶ 61,112 at P 10.

10. On December 14, 2016, and December 15, 2016, Mr. Kelleher and Ms. Dal Porto filed requests for rehearing of the Non-Project Use Order. Mr. Kelleher argues that the Commission erred by including lands in the non-project use authorization that are below the Columbia River's ordinary high water mark. Ms. Dal Porto asserts that the non-project use authorization allowing residential use to continue on 38.5 acres of project lands on Crescent Bar Island is inconsistent with Commission policy.

11. Mr. Kelleher's and Ms. Dal Porto's rehearing requests raise various arguments related to the Commission's authorizations for specific project and non-project uses of project lands on Crescent Bar Island and within the Priest Rapids Project. We address their concerns below.

II. Discussion

A. Recreation Order

1. Retention of Golf Course

12. Commission staff approved Grant PUD's proposal to retain the golf course in its current nine-hole configuration and to eliminate the driving range to accommodate the relocated campground.¹⁰ In their rehearing requests, both Mr. Kelleher and Ms. Dal Porto challenge Commission staff's approval of the existing nine-hole golf course on Crescent Bar Island as a project recreation facility.

13. First, Mr. Kelleher argues that since the Commission did not authorize the golf course prior to its construction, it is not appropriate to consider the golf course as an existing condition. Generally, the Commission considers existing conditions, rather than pre-project conditions, as the baseline for evaluating environmental impacts. As explained in the Recreation Order, Grant PUD's former lessee, the Port of Quincy, developed the golf course in the 1960s without Commission approval, several decades prior to the 2008 relicensing. Therefore, it is appropriate to consider the preexisting golf course as an existing condition. Second, Mr. Kelleher asserts that Commission staff's

¹⁰ Recreation Order, 156 FERC ¶ 62,205 at P 39.

decision was not supported by the record.¹¹ As explained in the Recreation Order, the golf course on Crescent Bar Island has been in operation for over fifty years, is one of the more used recreation amenities at the Wanapum development,¹² and enjoys strong public support.¹³ For these reasons, Commission staff agreed with Grant PUD's conclusion that the strong showing of public support and historical usage data justified retaining the golf course as a project recreation facility.¹⁴ Moreover, Grant PUD concluded that the design and construction costs of removing the golf course would exceed the costs required to maintain it.¹⁵ Third, Mr. Kelleher asserts that the existence of the golf course provides no protection for wetlands and wetland buffer areas. Since the golf course has been in existence for more than fifty years, any construction-related environmental impacts to existing wetlands have already occurred. Except for the removal of the driving range to make way for the campground relocation, the footprint of the golf course will remain the same. Commission staff does not anticipate additional course-related impacts to the existing wetlands. We agree with Commission staff's determination to approve the golf course as a project recreation facility.

14. Ms. Dal Porto questions the long-term profitability of the golf course.¹⁶ The use of project property for recreational purposes may cause a licensee to incur expenses that

¹¹ To support this claim, Mr. Kelleher argues that the golf course is not sufficiently linked to project purposes or effects. Pat Kelleher's October 17, 2016 Request for Rehearing and Clarification at 8 (Kelleher Recreation Rehearing) (citing the Commission's *Settlements in Hydropower Licensing Proceedings Under Part I of the Federal Power Act*, 116 FERC ¶ 61,270, at PP 17-20 (2006)).

¹² Recreation Order, 156 FERC ¶ 62,205 at P 39 (according to the Form 80 report filed on March 5, 2016, golf received the second highest usage rate of the recreational activities monitored at the Wanapum development).

¹³ During a 30-day public comment period in spring 2015, Grant PUD received 506 comments in support of retaining the golf course, while only 122 comments favored removal of the course. *Id.* P 34.

¹⁴ *Id.* P 39.

¹⁵ Recreation Application at 15.

¹⁶ Ms. Dal Porto also requests clarification on the revenue sources that will offset the cost of operating and maintaining the Crescent Bar Recreation Area. Danna Dal Porto's October 18, 2016 Request for Rehearing at 5 (Dal Porto Recreation Rehearing). While the Recreation Order states that potential revenue from greens fees and other future fee-based amenities, such as overnight moorage, could help offset the cost of operating the Crescent Bar Recreation Area, Ms. Dal Porto correctly notes that

it may be able to recover. Accordingly, under section 2.7 of the Commission's regulations we allow licensees "to charge reasonable user fees to defray the costs they incur in constructing, operating, and maintaining recreational facilities."¹⁷ However, the Commission generally does not set recreation user fees in project licenses or recreation plans, nor does it, except in rare instances where a stakeholder raises the issue, review the reasonableness of such fees.¹⁸ Likewise, the Commission does not evaluate the profitability of particular recreation facilities (although it might take the cost of a proposed facility into account in deciding whether to require it), but rather considers whether facilities are consistent with the public interest. In any event, Grant PUD has committed to a continuing evaluation of usage data, operations and maintenance costs, and revenue associated with the golf course, which will inform future decisions regarding the course.¹⁹

2. Relocation of Campground

15. Mr. Kelleher challenges Commission staff's approval of Grant PUD's proposal to relocate the existing campground on the mainland shoreline directly north of the island to an on-island location.²⁰

Commission staff denied Grant PUD's proposal to construct the 61-slip marina. Recreation Order, 156 FERC ¶ 62,205 at ordering para. (D). Accordingly, we clarify that moorage fees from the 61-slip marina will not be an available source of revenue to Grant PUD at this time. Ms. Dal Porto also requested rehearing of the "introduction of this marina to the Priest Rapids Recreation Plan." Dal Porto Recreation Rehearing at 2. Since the Recreation Order did not approve the 61-slip marina, it did not become part of the Recreation Plan. Therefore, Ms. Dal Porto's rehearing request on this issue is moot.

¹⁷ 18 C.F.R. § 2.7 (2017).

¹⁸ *Brookfield White Pine Hydro LLC*, 157 FERC ¶ 61,040, at P 9 (2016) (citations omitted) (denying licensee's request to increase user fees for a commercial campground in rare instance where the recreation plan identified specific user fees and thus any change to such fees required Commission approval).

¹⁹ Recreation Application at 15.

²⁰ Among Mr. Kelleher's arguments is that the campground relocation at the Crescent Bar Recreation Area is not in the public interest because 20 campsites at the Priest Rapids Recreation Area – a separate project recreation site located on the Priest Rapids reservoir – have been unavailable to the public since 2008. Mr. Kelleher contends that the Commission should direct Grant PUD to restore 20 campsites at the Priest Rapids Recreation Area prior to relocating any of the existing campsites at the Crescent Bar

16. Commission staff authorized Grant PUD to relocate the existing 55-site campground from the mainland location to the northwest corner of Crescent Bar Island, finding that the relocated campground will continue to provide the required 55 campsites and that the expanded total footprint of just over 10 acres will provide greater separation and privacy between campsites, resulting in an improved camping experience.²¹ Commission staff also found that relocation of the campground to an on-island location will improve public access to Crescent Bar Island, as well as to a variety of recreation opportunities, such as on- and off-island day use areas, boat launches, walking trails, and wildlife viewing opportunities. We find Commission staff's conclusion that relocation of the campground to an on-island location will improve public access to and use of Crescent Bar Island reasonable and in the public interest.

17. Ms. Dal Porto seeks clarification regarding the length of stay requirement at the overnight campground on Crescent Bar Island, and asks whether the campground will be open year-round. Pursuant to the Recreation Order, Grant PUD must operate the overnight campground on Crescent Bar Island with a maximum length of stay of 10 or 20 days.²² The length of stay requirement is intended to facilitate campsite turnover and discourage long-term occupancy of the campsites, ensuring that the campground on Crescent Bar Island remains fully accessible to the public. Unless a licensee explicitly states in its recreation plan or amendment that a project recreation facility will be closed for a certain portion of the year, we expect that the approved recreation site will be open to the public year-round.

3. Cost of Improvements

18. Mr. Kelleher and Ms. Dal Porto assert that the capital costs for the recreation improvements at the Crescent Bar Recreation Area are not supported by substantial evidence.

Recreation Area. Kelleher Recreation Rehearing at 6. Commission staff is currently evaluating, in a separate proceeding, Grant PUD's April 28, 2017 request that the Commission remove the requirement that 20 campsites be constructed at the Priest Rapids Recreation Area. In any event, the campsites at the Priest Rapids Recreation Area are unrelated to the Crescent Bar Recreation Area and are outside the scope of these proceedings.

²¹ Recreation Order, 156 FERC ¶ 62,205 at 10.

²² *Id.* at ordering para. (C). Between April 1 and September 30, the maximum length of stay at a campsite is 10 days; between October 1 and March 31, the maximum length of stay is extended to 20 days.

19. It is the Commission's policy as set forth in section 2.7 of the Commission's regulations regarding recreational development at licensed projects, to "seek, within its authority, the ultimate development of [recreational] resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project."²³ To this end, the Commission requires licensees to make reasonable expenditures to develop and maintain suitable recreational facilities and to provide for adequate public access to project facilities and waters.²⁴

20. In its application to amend its Recreation Plan, Grant PUD estimated that design and construction of the proposed recreation facilities would total \$41,516,398. This total capital cost includes an estimated \$12,330,193 for off-island improvements, and \$29,186,205 for on-island improvements.²⁵ The total estimated cost for on-island improvements includes the full costs for upgrading the on-island wastewater treatment and water systems, which will be covered primarily by the residents of the on-island condominium and RV units. Pursuant to the settlement agreement, the three on-island HOAs will be responsible for paying 90 percent of the costs of the wastewater treatment and water system upgrades, while Grant PUD will pay the remaining 10 percent.²⁶ In addition, the total estimated cost for on-island improvements also includes the cost to design and construct the 61-slip marina, which, as previously noted, Commission staff denied. As Commission staff explained in the underlying order, generally the potential cost to the licensee is not determinative, but rather is often a factor the Commission considers when analyzing proposed measures.²⁷ In this case, Grant PUD has provided sufficient evidence to enable Commission staff to consider cost as a component of its analysis of the extensive recreation improvements required within the Crescent Bar Recreation Area.

21. In any event, we require licensees to implement those recreation measures that we find to be consistent with the public interest. Whether the licensee has accurately stated

²³ 18 C.F.R. § 2.7 (2017) (promulgated by *Recreational Development at Licensed Projects*, Order No. 313, 34 FPC 1546 (1965)).

²⁴ *Id.* § 2.7(b).

²⁵ Recreation Application at 19 (Table 1).

²⁶ Non-Project Use Order, 157 FERC ¶ 61,112 at P 13. Grant PUD's share accounts for public use of the water and wastewater systems, including full sewer hookups at the campground and other recreational facilities at Crescent Bar Recreation Area. *Id.* at note 19.

²⁷ Recreation Order, 156 FERC ¶ 62,205 at n.18.

the costs of measures that it proposes to undertake is not relevant to our decision whether to require them.

4. Recreation Fees

22. In her rehearing request, Ms. Dal Porto contends that the majority of the recreation facilities available at Crescent Bar Recreation Area require a fee to access. Ms. Dal Porto states that only 44.5 acres of the 179-acre Crescent Bar Island are available for free public access, while the remaining 134.5 acres are dedicated to private residences and fee-based recreation. Ms. Dal Porto asserts that by requiring a fee to access most of the recreation facilities available at the Crescent Bar Island – such as the campground, golf course, and any future mooring facilities – Grant PUD is not making an effort to serve the low-income and minority residents of Grant County.²⁸

23. With the exception of the overnight campground and the golf course, all of the recreation amenities at the Crescent Bar Recreation Area are available to the public free of cost. Notwithstanding the 38.5 acres of land that underlie the existing residential structures, the public has access to approximately 105.5 acres on Crescent Bar Island that offer a variety of free and fee-based recreational opportunities. In addition, this estimate does not include the 35 acres of undeveloped project lands located at the south end of Crescent Bar Island, a portion of which the public will be able to access in the future via a two-way trail. As Commission staff noted in the Recreation Order, the free recreation amenities include day use areas, boat launches, picnic facilities, swimming areas, multi-purpose lawns, and a network of walking trails offering wildlife viewing stops and informational kiosks. In addition, once the overnight campground is relocated to the on-island location, the former campground footprint will be converted into another free day use area. Nevertheless, section 2.7 of the Commission's regulations allows a licensee to charge reasonable fees to help defray the cost of constructing, operating, and maintaining recreation facilities.²⁹ As previously noted, typically, the Commission does not review or approve the reasonableness of such fees.³⁰ The Commission is satisfied that sufficient recreation opportunities (both free and fee-based) are available to the public at the Crescent Bar Recreation Area.

²⁸ Dal Porto Recreation Rehearing at 7.

²⁹ 18 C.F.R. § 2.7 (2017).

³⁰ Recreation Order, 156 FERC ¶ 62,205 at n.35; *see supra* P 14.

5. Requests for Clarification

24. Mr. Kelleher asked the Commission to clarify: (i) “the number of picnic tables and tennis courts required by the order on Crescent Bar Island;” and (ii) whether the “‘existing’ upland docks” are Commission-authorized recreation facilities.³¹

25. Typically, Commission staff does not require a licensee to provide an exact number of picnic tables at a project recreation site unless the licensee has identified such a number in its recreation plan. Rather, Commission staff expects the licensee to provide recreation facilities that sufficiently respond to a particular recreation need identified at the project. Here, while Grant PUD did not specify an exact number of picnic tables in its recreation plan, recent Form 80 recreation use data suggests that the existing picnic areas at the Wanapum development are utilized to only 30 percent of capacity.³² Moreover, Commission staff recently approved a new, off-island day use area, as well as improvements to the existing on-island day use area, both of which will increase the picnic opportunities at the Crescent Bar Recreation Area. For these reasons, we are satisfied that Grant PUD has provided a sufficient amount of picnic tables to accommodate the public’s demonstrated need for picnic facilities at the Crescent Bar Recreation Area. The existing on-island day-use area appears to include two tennis courts in poor condition. As part of the Commission-approved Recreation Plan, Grant PUD will replace these courts with two multipurpose sports courts.³³

26. Also, the existing day-use marina, to which we assume Mr. Kelleher refers, is located on the mainland shoreline directly north of Crescent Bar Island, adjacent to the existing off-island two-lane boat launch. This public day-use marina is a project recreation facility that provides free daytime moorage for visitors to the Crescent Bar Recreation Area.

27. Ms. Dal Porto requests clarification regarding the location of the bald eagle roost trees on Crescent Bar Island. She states that one bald eagle roost site is located along the northwest end of Crescent Bar Island in the area designated as the new campground, while another is located along the inside channel on the east side of the island.

³¹ Kelleher Recreation Rehearing at 6.

³² See Grant PUD, Wanapum Development Form 80, Project No. 2114-209 (filed March 25, 2016).

³³ Grant PUD did not specify in its application what type of sport courts, nor have we required Grant PUD to maintain a certain type of sport court at the day-use area.

28. Pursuant to its Bald Eagle Perch and Roosting Protection Plan,³⁴ Grant PUD is required to monitor bald eagle perch and roosting trees throughout the year, and take corrective action at the earliest possible time if damage to an existing perch or roosting tree is observed.³⁵ Grant PUD is required to file annual progress reports with the Commission, FWS, and the Washington Department of Fish and Wildlife describing the results of daytime eagle-use surveys, communal roost site surveys, nest occupancy and productivity surveys, perch/roost tree protection efforts, and riparian planting efforts. Grant PUD's 2016 Bald Eagle Perch/Roosting Protection Plan annual report states that two new potential bald eagle nests were documented in the vicinity of Crescent Bar Island during surveys conducted in March 2015.³⁶ One new nest is located northeast of Crescent Bar Island in a ponderosa pine tree above a basalt cliff face on the right bank of the Columbia River (A-6 nest), while another is located on the west bank of Crescent Bar Island, adjacent to the golf course.³⁷ However, Grant PUD reports that although the nest adjacent to the golf course was monitored extensively for occupancy after the initial sighting on March 4, 2015, no further bald eagle activity was observed.³⁸ Grant PUD's 2017 Bald Eagle Perch/Roosting Protection Plan reports three active bald eagle nests, including the A-6 nest, which produced a juvenile bald eagle that fledged on June 30, 2016.³⁹ The 2017 annual report does not report any bald eagle activity near the Crescent Bar golf course. Based on these ongoing monitoring and protection efforts, we conclude that Grant PUD is taking appropriate measures to ensure that existing bald eagle perch and roosting trees are protected at Crescent Bar Island, and will continue to do so during

³⁴ License Article 414 required Grant PUD to submit for Commission approval a plan to implement a bald eagle perching and roosting tree protection and enhancement program (Bald Eagle Perch/Roosting Protection Plan). Relicense Order, 123 FERC at 61,333. Grant PUD submitted its Bald Eagle Perch/Roosting Protection Plan on April 10, 2009, and Commission staff approved it on January 19, 2010. *Public Utility District No. 2 of Grant County*, 130 FERC ¶ 62,054 (2010).

³⁵ Grant PUD, Bald Eagle Perch/Roosting Protection Plan, Project No. 2114-182, at 6-7 (filed April 10, 2009).

³⁶ Grant PUD, 2016 Bald Eagle Perch/Roosting Protection Plan Annual Report, Project 2114-182, at 7 (filed April 27, 2016). We note that the cover letter incorrectly refers to the report as the 2015 annual report.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Grant PUD, 2017 Bald Eagle Perch/Roosting Protection Plan Annual Report, Project 2114-182, at 7 (filed April 14, 2017).

the construction of additional recreation improvements at the Crescent Bar Recreation Area.

B. Non-Project Use Order

1. Residential Use

29. Ms. Dal Porto alleges that approval of the non-project use authorization allowing Grant PUD to lease 38.5 acres of project lands for continued residential use is inconsistent with Commission policy, which she asserts requires the removal of the existing private residences from Crescent Bar Island. To support her argument, Ms. Dal Porto points to the Commission's longstanding policy of maximizing public recreational development,⁴⁰ and to a 2010 letter from Commission staff requesting additional information about Grant PUD's plans for improving public recreation access and use, wildlife habitat, and the aesthetics of Crescent Bar Island.⁴¹

30. While Ms. Dal Porto correctly observes that the Commission's general policy is that private development should take place outside of project boundaries, she misinterprets the extent to which this policy requires the physical removal of preexisting structures. As we stated in earlier orders addressing Crescent Bar Island, the "[l]ong-term leasing of project lands to private parties is at odds with our policy of maximizing public recreation at licensed projects," and that the Commission's "longstanding policy is to eliminate private residences from within a project's boundary, but only upon a

⁴⁰ In her rehearing request of the Non-Project Use Order, Ms. Dal Porto again raises several issues related to the recreational amenities at Crescent Bar Island. *See* Danna Dal Porto's December 15, 2016 Request for Rehearing at 3-8. To the extent they overlap with issues raised in the rehearing requests of the Recreation Order and addressed above, we will not revisit those arguments here. To the extent Ms. Dal Porto raises new recreation issues not identified in her rehearing on the Recreation Order, these issues, which were first raised more than 30 days after the Recreation Order was issued, are untimely and we will not address them.

⁴¹ Letter from Robert J. Fletcher (Commission staff) to Ms. Kelly Larimer (Grant County), dated March 10, 2010:

. . . please note that the Commission does not condone residential development and occupancy of project lands, since such residential use is inconsistent with the Commission's policy of maximizing public recreational development. Consequently, your plan [for Crescent Bar Island] must demonstrate compliance with the Commission's policies on this issue.

showing that the underlying lands are unneeded for project purposes.”⁴² By using the phrase “eliminate private residences” the Commission meant that it will seek to draw project boundaries so as to exclude private residences, not that it requires preexisting structures to be physically torn down.⁴³ Therefore, while the Commission’s policy is to avoid bringing preexisting structures within project boundaries, we have not established a general policy concerning the removal of structures from project lands.⁴⁴

31. Here, it is undisputed that the lands underlying the preexisting residences at Crescent Bar Island are needed for project purposes.⁴⁵ Therefore, Crescent Bar Island is properly contained within the project boundary. As we explained in the Non-Project Use Order, while the non-project use authorizes Grant PUD to lease 38.5 acres of project lands underlying the preexisting structures for continued residential use, the public will continue to have access to 145 developed acres at the Crescent Bar Recreation Area, which provides a variety of public access and recreation opportunities.⁴⁶ In addition, as described earlier, the Commission recently authorized Grant PUD to proceed with several

⁴² *Public Utility District No. 2 of Grant County, Washington*, 144 FERC ¶ 61,210, at P 14 (2013).

⁴³ *Id.* n.24.

⁴⁴ *Id.* P 23 (citing 18 C.F.R. § 4.41(h)(2) (2017) (stating that “[e]xisting residential, commercial, or other structures may be included within the [project] boundary only to the extent that the underlying lands are needed for project purposes (e.g., for flowage, public recreation, shoreline control, or protection of environmental resources).”)).

⁴⁵ *Public Utility District No. 2 of Grant County, Washington*, 88 FERC ¶ 61,012, at 61,032, *reh’g denied*, 89 FERC ¶ 61,177 (1999); *aff’d sub nom. Crescent Bar Homeowners Association v. FERC*, No. 00-70035, 2 F. App’x 722 (9th Cir. 2001) (dismissing complaints seeking to exclude Crescent Bar Island from the project boundary, finding that all the lands in question are needed for project purposes, including protection of flowage, recreation, and aesthetic values). The Commission reaffirmed this holding when it relicensed the Priest Rapids Project in 2008. Relicense Order, 123 FERC ¶ 61,049 at P 127.

⁴⁶ This 145-acre estimate of developed acreage at the Crescent Bar Recreation Area does not include the 35 undeveloped acres at the southern end of Crescent Bar Island. However, following construction of the additional recreational improvements authorized by the Recreation Order, the public will also have access to a portion of this acreage through the use of a two-way trail, which will offer wildlife viewing stops, informational kiosks, and views of riparian vegetation and basalt cliffs.

public access and recreation improvements within the Crescent Bar Recreation Area.⁴⁷ Commission staff determined that these recreation improvements will improve the general public's access to and use of Crescent Bar Island. Therefore, we are satisfied that the approved non-project use of 38.5 acres of project lands at Crescent Bar Island is not inconsistent with project purposes, and that, upon completion of the approved recreational improvements, the project will provide sufficient public recreation on Crescent Bar Island.

2. Ordinary High Water Mark

32. For the first time in this proceeding, Mr. Kelleher asserts that the non-project use authorization includes lands that are located below the ordinary high water mark of the Columbia River. Aside from the fact that parties are not permitted to raise issues for the first time on rehearing so that this argument is waived,⁴⁸ Mr. Kelleher's assertion is inaccurate. As Grant PUD emphasized in its application, all facilities and development associated with the non-project use of 38.5 acres on Crescent Bar Island are preexisting and located above the ordinary high water mark of the Columbia River and within the existing disturbed areas on Crescent Bar Island.⁴⁹ We deny rehearing on this issue.

The Commission orders:

The rehearing requests filed by Mr. Kelleher and Ms. Dal Porto are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁷ See *supra* P 7.

⁴⁸ *Marseilles Land and Water Co.*, 138 FERC ¶ 61,120, at n.29 (2012) (finding untimely the suggestion, raised for the first time on rehearing, that the licensee did not hold the requisite water rights, and explaining that "such issues must be raised in the course of a licensing proceeding and not for the first time on rehearing, when our fact finding is essentially over and the record is complete.").

⁴⁹ Non-Project Use Application at 18, 19.