

127 FERC ¶ 61,152  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Public Utility District No. 1 of Chelan County,  
Washington

Project No. 2145-092

ORDER ON REHEARING AND CLARIFICATION

(Issued May 21, 2009)

**I. Introduction**

1. Public Utility District No. 1 of Chelan County, Washington (Chelan PUD) has requested rehearing and clarification of the Commission's February 19, 2009 order issuing a new license for the 865.76-megawatt Rocky Reach Project No. 2145.<sup>1</sup> Chelan PUD seeks rehearing (1) of the Commission's decision to relicense the project for a 43-year term, rather than the 50-year term requested by Chelan PUD; and (2) of the Commission's statement that designated critical habitat of the bull trout occurs in the project area. Also, Chelan PUD seeks clarification (1) that Chelan PUD is free to convey certain lands that are outside of the project boundary without Commission approval; and (2) that the population of Ute Ladies' -tresses that occurs on private land at a location known as Howard Flats is within the project boundary.

2. For the reasons discussed below, we deny rehearing on the license term issue and grant rehearing and clarification on the other issues.

**II. Background**

3. The Commission issued an original license for the project in 1957, which expired in 2006.<sup>2</sup> The project, located in Chelan County, Washington, is one of six hydropower

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<sup>1</sup> *Public Utility District No. 1 of Chelan County Washington*, 126 FERC ¶ 61,138 (2009) (February 19 Order).

<sup>2</sup> 8 FPC 33 (1957). The original license was granted for 50 years, with an

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projects on a 200-mile stretch of the Columbia River (from river mile (RM) 597 to RM 397) (Mid-Columbia projects). The two upstream-most projects are federally owned and operated. The four downstream projects, stretching for more than 100 river miles, are under Commission license: (a) Public Utility District No. 1 of Douglas County's (Douglas PUD) Wells Project No. 2149; (b) Chelan PUD's Rocky Reach Project No. 2145; (c) Chelan PUD's Rock Island Project No. 943; and (d) Public Utility District No. 2 of Grant County's Priest Rapids Project No. 2114.

4. The Rocky Reach Project is an integral part of the Mid-Columbia hydroelectric system. The Mid-Columbia projects are operated in a highly coordinated manner to make best use of flows for generation and to meet fishery and other environmental resource needs.<sup>3</sup>

5. In 1979, over the objections of the licensees of the four Mid-Columbia projects, the Commission issued an order that initiated a proceeding (Mid-Columbia Proceeding) to consider whether to modify the operations and flows of the mid-Columbia project licenses to provide "certain minimum flows and spills . . . for the protection of the chinook, sockeye, and coho salmon and steelhead trout resources" and "to consider what fish measures should be required for the remainder of the license terms."<sup>4</sup>

6. In 2003, Chelan PUD filed the Rocky Reach Project Anadromous Fish Agreement and Habitat Conservation Plan (HCP) for the purpose of settling the Rocky Reach portion of the Mid-Columbia Proceeding.<sup>5</sup> The HCP was designed to implement a long-term, comprehensive management plan to protect certain anadromous fish species (spring and summer/fall Chinook salmon, sockeye salmon, coho salmon, and steelhead) and their habitat as affected by the project. The Commission approved and made the HCP a part of license in 2004.<sup>6</sup> The objectives of the HCP are to achieve no net impact for each

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effective date of July 1, 1956. Between 2006 and issuance of the February 19 Order, the project operated under annual licenses.

<sup>3</sup> See the February 19 Order for a more detailed description of project operations. 126 FERC ¶ 61,138 at P 19-25.

<sup>4</sup> *Public Utility District No. 2 of Grant County, Washington, et al.*, 6 FERC ¶ 61,210, at 61,534 and 61,537 (1979) (1979 Order).

<sup>5</sup> Project-specific HCPs were also filed for Chelan PUD's Rock Island Project and Douglas PUD's Wells Project.

<sup>6</sup> *Public Utility District No. 1 of Chelan County, WA*, 107 FERC ¶ 61,280 (2004)

(continued)

anadromous fish species and their habitat affected by each project through fish passage, hatchery programs, and fish habitat restoration work along tributary rivers and streams.

7. In 2004, Chelan PUD filed an application for a new license pursuant to sections 4(e) and 15 of the Federal Power Act (FPA)<sup>7</sup> for the continued operation and maintenance of the project. In 2006, Chelan PUD filed the Rocky Reach Comprehensive Settlement Agreement (Settlement Agreement) on behalf of itself and the following entities: U.S. Fish and Wildlife Service (FWS), U.S. National Park Service, Bureau of Land Management, Washington Department of Fish and Wildlife, Washington Department of Ecology, Washington State Parks and Recreation Commission, Confederated Tribes of the Colville Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation, City of Entiat, Entiat Coalition, and Alcoa Power Generating, Inc. The relicense application and Settlement Agreement proposed, among other things, to continue to implement the provisions of the HCP.

8. The February 19 Order is for the most part consistent with the terms of the Settlement Agreement, and requires continued implementation of the HCP. However, the February 19 Order established a relicense term of 43 years,<sup>8</sup> rather than the 50 years requested by Chelan PUD or 47 years as the Settlement Agreement signatories other than Chelan PUD agreed to support.<sup>9</sup> In determining that the license required only a moderate amount of protection, mitigation, and enhancement measures (which, as discussed below, would, under our established policy, dictate a 40-year license), we noted that the salmon and steelhead measures of the HCP are provisions of the original license, and therefore

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(master order approving HCP for Rocky Reach, Rock Island, and Wells Projects); and 107 FERC ¶ 61,281 (2004) (order incorporating HCP in license for Rocky Reach).

<sup>7</sup> 16 U.S.C. §§ 797(e) and 808 (2006), respectively.

<sup>8</sup> February 19 Order, 126 FERC ¶ 61,138 at P 148-54.

<sup>9</sup> As to license term, the agreement (at section 5) states:

Chelan PUD will seek a license term of 50 years. The Parties other than Chelan PUD agree to support a license term of 47 years, and to not oppose a license term longer than 47 years. The term of this Agreement shall be the same as the term of the New License (including any subsequent annual licenses), unless this Agreement is terminated sooner pursuant to Section 16.

should not be considered in determining the relicense term.<sup>10</sup> We considered Chelan PUD's contention that it is Commission policy to accept settlements without modification, and noted that we do not automatically accept all settlement terms, especially not when such terms are inconsistent with established Commission policy.<sup>11</sup> We discussed the Commission policy of coordinating to the maximum extent possible the license expiration dates of projects in the same river basin, and noted that the Rocky Reach Project is one of four Commission-licensed Mid-Columbia projects, which as discussed above are operated in a highly coordinated manner. The Commission chose a 43-year term for the Rocky Reach Project, which coincides with the expiration of the HCP and the expiration of the Priest Rapids relicense.<sup>12</sup>

9. Chelan PUD filed for rehearing of the February 19 Order, objecting to the 43-year license term and raising several other minor issues.

### III. Discussion

#### A. License Term

10. Section 15(e) of the FPA<sup>13</sup> provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. Our general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.<sup>14</sup> As discussed in the February 19 Order, when determining appropriate license terms, the Commission evaluates new measures to be included in the license, and does not consider requirements carried over from the prior license.<sup>15</sup> It is Commission policy to “coordinate the

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<sup>10</sup> February 19 Order, 126 FERC ¶ 61,138 at P 150.

<sup>11</sup> *Id.* P 151.

<sup>12</sup> *Id.* P 153-54.

<sup>13</sup> 16 U.S.C. § 808(e) (2006).

<sup>14</sup> *See Consumers Power Company*, 68 FERC ¶ 61,077, at 61,383-84 (1994).

<sup>15</sup> *See Ford Motor Company*, 110 FERC ¶ 61,236 (2005). *See also El Dorado Irrigation District*, 117 FERC ¶ 61,284 (2006); *Georgia Power Company*, 111 FERC ¶ 61,183 (2005).

expiration dates of licenses [in the same river basin] to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing.”<sup>16</sup>

11. As discussed above, the February 19 Order determined that a 43-year license term was appropriate.<sup>17</sup> On rehearing, Chelan PUD argues that the February 19 Order providing for a 43-year license term rather than a 50-year term violates the section 10(a) FPA public interest standard; is counter to Commission precedent; and is unreasonable, arbitrary, and capricious.<sup>18</sup>

**1. Cost of Measures Required by Prior License Not a Factor in Determining License Term**

12. First, Chelan PUD argues that the Commission improperly excluded the costs associated with the HCP in determining the appropriate relicense term. Chelan PUD asserts that, had the Commission included those costs, a 50-year license would have been justified. Chelan PUD argues that the Commission mistakenly relied on *Ford Motor Company*<sup>19</sup> for the proposition that requirements of the prior license should not be considered when determining the length of a license term, explaining that, unlike the licensee in *Ford Motor Company*, Chelan PUD does not seek to be credited for project rehabilitation, upgrades and relicensing costs, but rather seeks to be credited for the mitigation and enhancement measures of the HCP that protect endangered fish species. *Ford Motor Company* and other relevant cases, however, do not distinguish between those kinds of costs, and Chelan PUD does not provide a rationale why we should recognize such a distinction now.

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<sup>16</sup> 18 C.F.R. § 2.23 (2008).

<sup>17</sup> February 19 order, 126 FERC ¶ 61,138 at P 148-54.

<sup>18</sup> The Commission received letters expressing general support for Chelan PUD’s 50-year license term request from Alcoa Inc.; Avista Corporation; Douglas PUD; Puget Sound Energy, Inc.; the City of Entiat, Washington; and PacifiCorp Energy. Only Alcoa and the City of Entiat are parties to the relicensing proceeding and signatories to the Settlement Agreement. Avista and Puget Sound Energy, while parties to the relicensing proceeding, are not signatories to the settlement, and neither Douglas PUD nor PacifiCorp Energy were active in the relicensing or settlement proceedings.

<sup>19</sup> 110 FERC ¶ 61,236 (2005).

13. Chelan PUD further asserts that not including the cost of such environmental measures in determining appropriate relicense terms is bad regulatory policy because it will discourage licensees from taking proactive steps to mitigate environmental damage in advance of relicensing. Chelan PUD states that, rather than deferring HCP implementation until relicensing was complete, it took a proactive approach that should have been fully credited by the Commission on relicensing. Chelan PUD states that the message from the Commission's February 19 Order is that a licensee should not take action in advance of relicensing to resolve critical environmental issues, including protection of species listed as threatened or endangered under the ESA.

14. As explained above, Chelan PUD's obligations under the HCP are meant to address salmon and steelhead issues that arose in a process that began in 1978. In addition, Chelan PUD acted in order to bring itself into compliance with the ESA, not simply for the purpose of resolving relicensing issues early, as suggested in its rehearing request.<sup>20</sup> Chelan PUD was able to reap the monetary benefit of operating its project without these requirements for the more than 20 years that it took to develop appropriate protection measures for the fishery. Consequently, when it comes to determining the term under the relicense proceeding, the Commission properly adopted a forward-looking

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<sup>20</sup> The proceedings commenced in the 1979 Order continued while two species of fish, Upper Columbia River steelhead and spring-run Chinook salmon, were eventually listed as endangered under the Endangered Species Act (ESA). 42 U.S.C. § 4321 *et seq.* (2006). The steelhead was listed in 1997, and spring-run Chinook was listed in 1999. *See* 62 Fed. Reg. 43,937 (August 18, 1997) (steelhead); 64 Fed. Reg. 14,308 (March 24, 1999) (spring-run Chinook salmon). NMFS designated critical habitat for both species in 2005. *See* 70 Fed. Reg. 52,630 (September 2, 2005). Under ESA section 9, 16 U.S.C. § 1538 (2006), it is unlawful to "take" (kill, harm, harass, capture, etc.) listed endangered species, and ESA section 11, 16 U.S.C. § 1540 (2006), provides for penalties for knowing violations of the ESA or of permits issued thereunder.

As Chelan PUD noted in seeking approval of the HCP, the "filing [to approve the HCP] seeks to settle the Rocky Reach portion of the *Mid-Columbia Proceeding* and to incorporate the [HCP] ..." Chelan PUD Application for Commission approval of HCP, filed November 24, 2003, at 3. In response to an entity's request in that proceeding that the Commission defer consideration of the HCP until relicensing, Chelan PUD stated, in part, that "two of the species have been listed under the ESA, and thus Chelan PUD needs an ESA compliance plan *now*." Chelan PUD Answer to Motion to Intervene of American Rivers, filed January 26, 2004, at 4 (emphasis added).

approach that excluded measures adopted under the previous license, consistent with precedent.<sup>21</sup>

15. Considering the new measures included in Chelan PUD's relicense, it is clear that the license for Chelan PUD requires only a moderate amount of new protection, mitigation, and enhancement measures. Chelan PUD's citation of various relicense orders since 2003 granting 50-year license terms is not persuasive.<sup>22</sup> An overwhelming majority of the licenses referenced by Chelan PUD cite to extensive new construction or environmental measures, such as fish passage facilities, fish hatcheries, minimum flows, and construction of recreational facilities.<sup>23</sup> We note that the Commission, in one license order for a project involving only modest environmental measures, granted a 50-year license for purposes of achieving coordination among other projects, while the Commission in another order refused to grant a 32-year term in coordination with two other projects in light of the extensive expenditures relative to the project's annual net benefit.<sup>24</sup> Rather than supporting Chelan PUD's position, the Commission finds that each of these orders demonstrates the highly fact-sensitive nature of choosing an appropriate license term based on the record before the Commission.<sup>25</sup> Each project is unique and comparing projects can be difficult; therefore, the Commission will not engage in a lengthy discussion of each of the license orders cited by Chelan PUD.

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<sup>21</sup> *Ford Motor Company*, 110 FERC ¶ 61,236 (2005). Indeed, under Chelan PUD's reasoning that the Commission should consider measures undertaken towards the end of an original license term in establishing a relicense term, licensees would have an incentive to defer undertaking critical measures until the approach of relicensing.

<sup>22</sup> See Chelan PUD Request for Rehearing at 8.

<sup>23</sup> Two of the orders cited are original licenses, one for a project at a federal facility, thus meriting a 50-year license term per Commission policy, and the other involving substantial new construction.

<sup>24</sup> See *Public Utility District No. 1 of Cowlitz County, Washington*, 123 FERC ¶ 62,259 (2008); *PacifiCorp*, 104 FERC ¶ 62,059 (2003).

<sup>25</sup> We note that many of the orders cited by Chelan PUD are delegated orders and do not constitute precedent binding the Commission in future cases. See *Midwest Generation, LLC*, 95 FERC ¶ 61,231 (2001).

## 2. A Settlement Agreement Is Not Dispositive in Determining License Term

16. Citing the Commission's Policy Statement on settlements<sup>26</sup> and our regulations establishing processes for preparing relicense applications, Chelan PUD asserts that the Commission should look with great favor on settlements in licensing cases, and furthermore that it was erroneous not to adopt a 50-year license term when that term was an important element in the negotiations leading up to the settlement.<sup>27</sup>

17. While Chelan PUD is correct to point out that it is a goal of our relicensing processes to "narrow any areas of disagreement and reach agreement or settlement of the issues raised by the hydropower proposal,"<sup>28</sup> the Commission does not abandon its statutory obligations, but instead is aided by the procedure because it "[f]acilitate[s] an orderly and expeditious *review* of an agreement or offer of settlement of an application for a hydropower license ...."<sup>29</sup> Further, as we explained in the Settlement Policy Statement, "the Commission cannot automatically accept all settlements, or all provisions of settlements," and that "in reviewing settlements, the Commission looks not only to the wishes of the settling parties, but also at the greater public interest, and whether settlement proposals meet the comprehensive development/equal consideration standard."<sup>30</sup> Thus, neither the regulations for preparing a relicense application nor the Commission's settlement agreement policy compel the result advocated by Chelan PUD. Instead, as explained above, the Commission considers a number of factors in

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<sup>26</sup> *Settlements in Hydropower Licensing Proceedings under Part I of the Federal Power Act*, 116 FERC ¶ 61,270 (2006) (Settlement Policy Statement).

<sup>27</sup> Chelan PUD Request for Rehearing at 14-17. In fact, the parties to the Settlement Agreement did not, as Chelan PUD implies, support a 50-year term. Rather, the agreement states that the signatories other than Chelan PUD support a 47-year license term, but do not oppose Chelan PUD's efforts to seek a 50-year term. Settlement Agreement at section 5. Thus, it is somewhat difficult to reconcile Chelan PUD's rehearing arguments with its requested license term. On the one hand, Chelan PUD is critical of the Commission's failure to grant its requested 50-year license term, yet, on the other hand, Chelan PUD vigorously advocates a license term beyond that term agreed to by the other parties to the Settlement Agreement.

<sup>28</sup> 18 C.F.R. § 4.34(i)(2)(iv) (2008).

<sup>29</sup> 18 C.F.R. § 4.34(i)(2)(v) (2008) (emphasis added).

<sup>30</sup> *Settlement Policy Statement*, 116 FERC ¶ 61,270 at P 3-4.



establishing the term of a license, and for the reasons stated herein, has determined that a 43-year term is appropriate for the Rocky Reach Project.<sup>31</sup>

### **3. Coordination of License Terms Is Appropriate in this Case**

18. As noted, in the Priest Rapids relicensing proceeding, we concluded that the moderate amount of environmental measures required by the relicense would warrant a 40-year term. However, we chose a 44-year term, which coincides with the 2052 expiration date of the HCP,<sup>32</sup> reasoning that the additional time would provide for greater flexibility in any effort to coordinate the expiration of the Priest Rapids license with other licenses in the river basin.<sup>33</sup>

19. Chelan PUD objects to the Commission's decision to coordinate its license term with that of the Priest Rapids license, arguing that coordination with another one of the four Mid-Columbia projects, the Rock Island Project, is impossible, thus largely defeating the benefit of coordination.<sup>34</sup> Chelan PUD also argues that coordination is, in any event, not beneficial due to agency resource constraints. Chelan PUD argues that in weighing competing policy interests of achieving coordination among projects in the same river basin and approving settlement agreements as agreed by the parties, the Commission erred by giving a higher priority to coordination. Citing *PacifiCorp*,<sup>35</sup>

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<sup>31</sup> We reject Chelan PUD's suggestion that it should be rewarded with a 50-year license term merely because it was able to reach agreement with stakeholders that "narrow[ed] the range of contested issues, both on necessary studies and on mitigation measures." Chelan PUD Request for Rehearing at 12.

<sup>32</sup> *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049 at P 183-87.

<sup>33</sup> In addition to the pending Rocky Reach relicensing proceeding, the relicense order for the Priest Rapids Project noted that the licensee for the Wells Project No. 2149 (also a participant in the HCP) is in the process of preparing its relicense application, which is due to be filed by June 2010. The order further noted that the expiration of the Priest Rapids relicense could not be coordinated with the license for the Rock Island Project No. 943, which expires in 2028. *Id.* P 185.

<sup>34</sup> Under the FPA, we cannot issue a new license with a term of less than 30 years; therefore, we cannot coordinate the Rocky Reach Project license term with that for the Rock Island Project because the Rock Island license expires in 2028, less than 20 years from now.

<sup>35</sup> 104 FERC ¶ 62,059 (2003).

Chelan PUD argues that in the past, the Commission has deferred instead to the license term contemplated by the settlement rather than a coordinated term.

20. As explained above, while we encourage settlements, we cannot blindly accept all their provisions. Rather, we must ensure that any license we issue meets the public interest/comprehensive development standard of section 10(a)(1) of the FPA.<sup>36</sup> When deciding on a license term, it is the Commission's policy to coordinate to the maximum extent possible the license expiration dates of projects in a river basin in order that subsequent relicensing proceedings can also be coordinated.<sup>37</sup>

21. Chelan PUD's citation to *PacifiCorp* is not persuasive.<sup>38</sup> The difference between the settlement and coordinated license terms in the case of *PacifiCorp* was 18 years, compared to a difference of 4 years between the 47 years contemplated by all the signatories to the Settlement Agreement except Chelan PUD and the coordinated license term of 43 years authorized in this case. In the case of the Rocky Reach Project, the

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<sup>36</sup> 16 U.S.C. § 803(a)(1) (2006). That section requires that the Commission determine that any licensed project is "best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e)."

<sup>37</sup> See 18 C.F.R. § 2.23 (2008) ("In issuing both new and original licenses, the Commission will coordinate the expiration dates of the licenses to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing.").

Chelan PUD asserts that, by establishing a relicensing term for the Priest Rapids Project in 2008 for 44 years in a proceeding to which Chelan PUD was not a party, the Commission prejudged the license term for Chelan PUD's project. Chelan PUD Request for Rehearing at 20-21. Chelan PUD's assertion is unfounded. What Chelan PUD characterizes as prejudgment is no more than applying settled legal principles and settled Commission precedent. Chelan PUD has had the right to have the issue of the license term decided in this proceeding based upon the record presented, and, for the reasons stated above, the Commission has determined that a 43-year term is appropriate.

<sup>38</sup> *PacifiCorp* is a delegated order and, as we noted above, does not bind the Commission. See note 25, *supra*.

Commission can coordinate the license term while staying close to the 47-year term set out in the Settlement Agreement. That a different factual scenario was presented and such compromise could not be achieved in *PacifiCorp* does not establish precedent requiring the Commission to adhere to the settlement term over a coordinated license.

22. Moreover, we reject Chelan PUD's argument that, if perfect coordination cannot be achieved, no coordination should be attempted. Our policy does not require "perfect" coordination, but rather coordination "to the maximum extent possible."<sup>39</sup> We find that benefits of coordinated license term expiration - at least as to the Priest Rapids and Rocky Reach Projects - will serve to facilitate Commission consideration of the projects in any future relicensing proceedings. Finally, we note that, were we to not coordinate Chelan PUD's license term with that of the Priest Rapids Project, there is no guarantee that we would choose a term longer than the 40 years warranted by the moderate amount of new protection, mitigation, and enhancement measures required by Chelan PUD's license.

#### **4. Expiration of the HCP**

23. As noted, the 43-year term of Chelan PUD's license reflects an expiration date of 2052 for the HCP. Chelan PUD argues that the expiration of the HCP is actually 2054, not 2052; and it asks the Commission to, at a minimum, modify its license term to reflect the later expiration date (i.e., 2054 instead of 2052). We decline to do so. We cannot accept Chelan PUD's argument because the HCP is not clear on its face as to its expiration date.<sup>40</sup> Moreover, even assuming that the HCP expires in 2054, given that the two-year difference is relatively small, and for the reasons discussed above, we conclude that, under the facts of this case, timing the license expiration date so as to coordinate with the expiration of the Priest Rapids project is appropriate.

#### **B. Other Issues**

24. On rehearing, Chelan PUD seeks correction of the statement in the relicense order that bull trout and its designated critical habitat occur in the project area. Chelan PUD states that the critical habitat for bull trout does not occur in the project area, which is

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<sup>39</sup> 18 C.F.R. § 2.23 (2008).

<sup>40</sup> See HCP sections 1.1 and 1.2. Chelan PUD now reasons that the later of the staggered effective dates contemplated in HCP section 1.2 controls the term of the agreement. However, during the relicensing proceeding, it and FWS stated that the HCP expired in 2052 – a position that it now says was the result of confusion on their parts. Chelan PUD Request for Rehearing at 23. Conversely, throughout the relicensing proceeding, NMFS stated that the HCP expires in 2054.

confirmed by the FWS letter and Biological Opinion filed on December 8, 2008. Chelan PUD is correct. Critical habitat for bull trout does not occur in the project area.

25. In the February 19 Order, the Commission addressed Chelan PUD's proposal to lease (with an option to sell) a 9.32 acre parcel of land to the City of Entiat. Believing that the parcel was part of Entiat Park, which is a project recreation facility, the Commission declined to authorize the lease (and possible sale), explaining that it would be contrary to Commission policy for a licensee to sell fee title to project recreation lands.<sup>41</sup> Chelan PUD explains that the parcel is some distance from Entiat Park and only a small portion of this land is within the project boundary, and it asks us to clarify that it is free to sell the land outside of the project boundary to the City of Entiat without Commission approval.<sup>42</sup> We so clarify.

26. The February 19 Order requires Chelan PUD to protect and monitor specified populations of Ute Ladies' -tresses, one of which occurs on lands at a location known as Howard Flats.<sup>43</sup> Believing that Howard Flats was outside the project boundary, the order stated that Chelan PUD must bring the Howard Flats area into the project boundary. Chelan PUD states that Howard Flats is in fact already within the project boundary, and it asks us to clarify that it will not have to revise its project boundary in this area. We grant the requested clarification; if Howard Flats is already within the project boundary, Chelan PUD will not have to revise its project boundary in this area.<sup>44</sup>

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<sup>41</sup> February 19 Order, 126 FERC ¶ 61,138 at P 119.

<sup>42</sup> Chelan PUD Request for Rehearing at 25-26.

<sup>43</sup> 126 FERC ¶ 61,138 at P 88.

<sup>44</sup> Indeed, Article 404 (Ute Ladies' -Tresses Management Plan) requires revisions to the project boundary only where the affected lands are not enclosed within the current project boundary.

The Commission orders:

Chelan PUD's request for rehearing is denied in part and granted in part, and Chelan PUD's request for clarification is granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.