

139 FERC ¶ 61,118  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Public Utility District No. 1 of Chelan County,  
Washington

Project No. 2145-109

ORDER MODIFYING AND APPROVING  
NON-PROJECT USE OF PROJECT LANDS AND WATERS

(Issued May 17, 2012)

1. On September 3, 2010, Public Utility District No. 1 of Chelan County, Washington (Chelan PUD), licensee for the Rocky Reach Hydroelectric Project No. 2145, filed an application for non-project use of project lands and waters. The licensee requests Commission authorization to permit Beebe Ranch, LLC (Beebe Ranch) to construct boat dock facilities on the Columbia River, within the project boundary. The marina facilities would be located on the Columbia River in Douglas County, Washington, and would consist of a 40-slip community boat dock and an access area to be used by the residents of the Beebe residential community. As discussed below, we are granting the application with certain modifications and conditions.

**Background**

2. The project boundary for the 865.76-megawatt Rocky Reach Hydroelectric Project<sup>1</sup> includes an 8,235-acre reservoir and about 1,500 acres of land along the shore that is within the project boundary. The project reservoir extends upstream from the dam about 43 miles to the tailrace of the Wells Dam, Project No. 2149. The project boundary encompasses the reservoir and some shoreline lands and is defined by contour lines

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<sup>1</sup> The Commission issued Chelan PUD a new license for the project in February 2009. *Public Utility District No. 1 of Chelan County, Washington*, 126 FERC ¶ 61,138 (2009).

ranging from elevation 707 feet National Geodetic Vertical Datum (NGVD)<sup>2</sup> at the dam up to 732 feet at the upstream end of the reservoir. At some locations, the project boundary expands an average of 300 feet beyond the contour lines to enclose recreational sites.

3. Article 410 of the project license authorizes Chelan PUD to grant permission for certain types of non-project use and occupancy of project lands and waters without prior Commission approval.<sup>3</sup> Because the proposed marina would accommodate more than ten watercraft, it is outside the scope of license Article 410. Therefore, the Commission must approve the application.

4. On September 3, 2010, Chelan PUD filed an application for approval of a non-project use of project lands and waters to allow Beebe Ranch to construct a 40-slip community boat dock.

### **Beebe Ranch Proposal**

5. The proposed Beebe Ranch marina facilities would be located on the east bank of the Columbia River, north of the Beebe Bridge in Douglas County, Washington, and approximately 37 miles upstream of the project dam. The marina would provide a total of 40 slips and would increase overwater coverage by approximately 5,935 square feet (0.14 acres). The slips would be available for use by residents of the adjacent Beebe Ranch residential community, which is under development.

6. The area in the vicinity of the proposed facilities historically has been used as an orchard. The Beebe Ranch residential development, consisting of 106 lots, will convert approximately 30 percent of the orchard lands to residential development, with the rest remaining an orchard.

7. The shoreline in this area slopes steeply at the water's edge, but gradually becomes flat moving inland. Approximately 120 feet inland from the shore, the land is

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<sup>2</sup> All elevations in this document are referenced to the NGVD of 1929. To convert to the newer U.S. Coast and Geodetic Survey datum commonly used on the Columbia River, subtract 1.78 feet.

<sup>3</sup> *Pub. Utility Dist. No. 1 of Chelan County, Washington*, 126 FERC ¶ 61,138 at 61,801-03.

flat. In the area of the proposed facilities, the project boundary encompasses a strip of land approximately 50 feet in width from the ordinary high water mark inland to a contour line of approximately 726.65 feet. The total area within the project boundary affected by the proposal would be a piece of land approximately 50 feet in width by 200 feet in length. While Beebe Ranch owns the lands within the project boundary that would be affected by the proposal, Chelan PUD has easement rights over the property for flowage and has retained the right to restrict/permit the building of structures on these lands.

8. The marina facilities would consist of a parking area, restrooms, trash disposal, a small beach (shore access) area, an 8-foot-wide, approximately 500-foot-long paved access trail from the parking area to the dock facility and the beach, and the 40-slip docking facility. Only the shore access area, the docking facility, and a 150-foot-long portion of the access trail would be located within the project boundary (see Figure 1). There would be no fuel-dispensing or sewage-pumping facilities at the proposed site.

9. In the area of Beebe Ranch, there is no shoreline access to the water due to the steepness of the bank, which would make it difficult to access docks along the river. To make the slope more gradual and provide some bank access to the river to reach the proposed docks, Beebe Ranch would grade the existing shoreline within the proposed area in the project boundary. The grading would result in the removal of approximately 550 cubic yards of material, which would be used as fill for the proposed access trail or disposed of outside the project boundary area. The applicant proposes to re-vegetate the area down to within approximately 5-15 feet of the shore to mitigate the grading.

10. The dock facilities would consist of three piers, each 122 feet long and 6 feet wide, which would run perpendicular to the shore and would be connected by a head walk that is 180 feet long and 6 feet wide and runs parallel to the shore. The piers would have “fingers,” each 20 feet long and 3 feet wide, perpendicular to the piers, which would create the mooring slips. Both sides of the center pier have five fingers, which create 5 double-slips on each side of the pier for a total of 20 mooring locations. The outside piers would have one row of 5 fingers, which would create 10 double slips each, for a total of 10 mooring locations on each of the outside piers.<sup>4</sup>

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<sup>4</sup> This order is premised on Commission staff’s understanding that the slips will each accommodate a maximum of one watercraft.

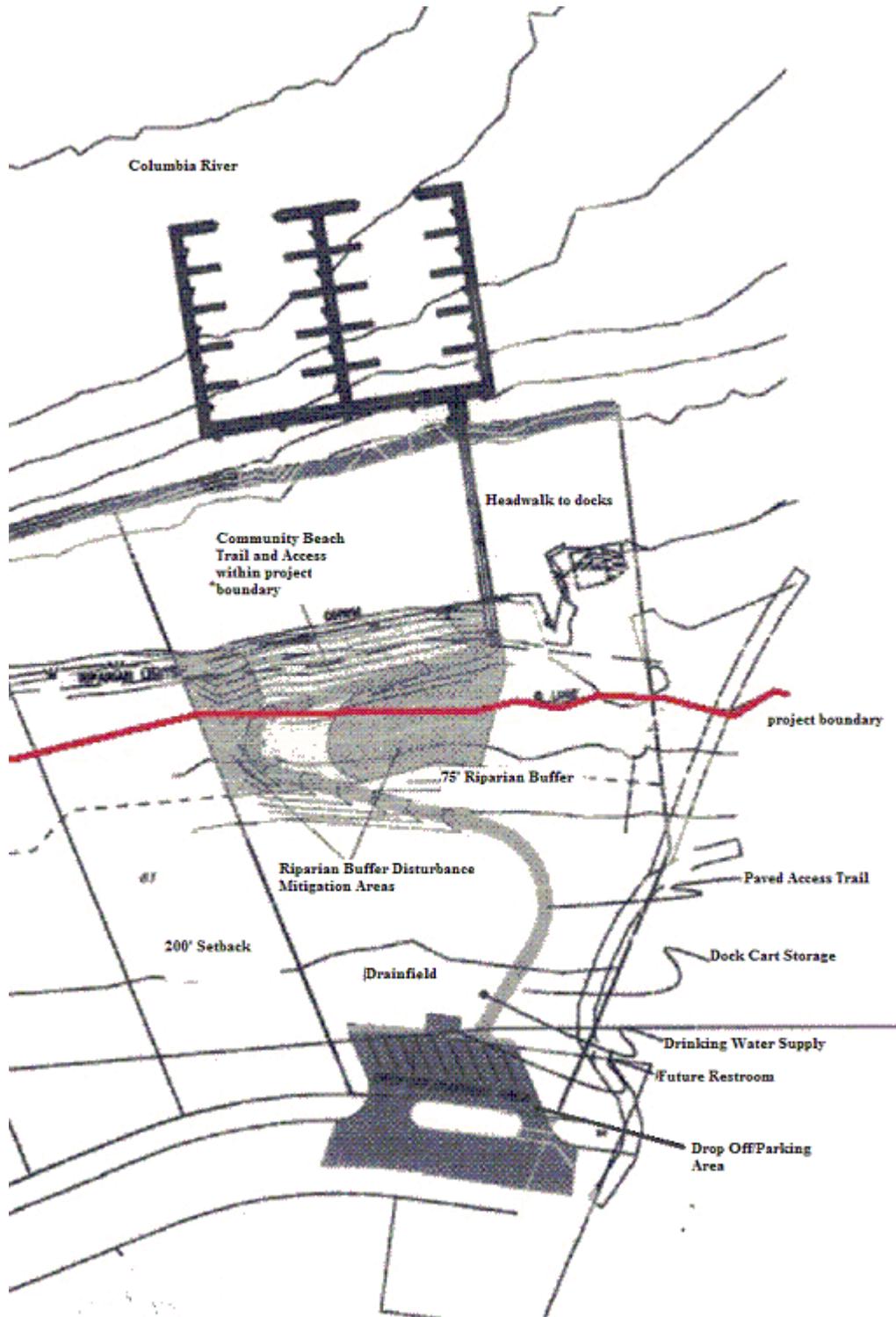


Figure 1. Beebe Ranch Proposed Community Dock Diagram (as modified by staff).

11. The head walk, which would be located approximately 120 feet from (and parallel to) shore, would be connected to the shore by a gangway and fixed pier that would run perpendicular to the shore and measure, respectively, 80 feet long by 4 feet wide and 64 feet long by 5 feet wide. The head walk and gangway would be made of aluminum, while the three piers would be made of steel with wood and fiberglass flooring, and foam-filled polyethylene flotation. Each pier would be constructed offsite and placed at the site by barge.

12. As part of its application process, Beebe Ranch consulted with, and received the necessary permits from, the relevant local and federal agencies, including Washington Department of Fish and Wildlife (Washington DFW) (Hydraulic Project Approval), Washington Department of Natural Resources (Washington DNR) (Land Use Lease), Washington Department of Ecology (Washington Ecology) (401 Water Quality Certification), and Douglas County (Joint Aquatic Resources Permit).

13. In addition, Beebe Ranch applied for a U.S. Army Corps of Engineers' (Corps) Section 10 permit,<sup>5</sup> which required consultation between the Corps, the U. S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act of 1973 (ESA).<sup>6</sup> On March 12, 2009, NMFS' Northwest Region Office issued a Biological Opinion determining that the Beebe Ranch project is not likely to jeopardize the continued existence of the threatened Upper Columbia River (UCR) spring-run Chinook salmon or UCR steelhead or their critical habitat.<sup>7</sup> As discussed in more detail below, the Biological Opinion includes an incidental take statement, with reasonable and prudent measures and terms and conditions to minimize incidental take of UCR spring Chinook salmon and UCR steelhead. These measures are included as requirements of the Corps' Section 10 permit. In addition to various reporting and monitoring requirements, the incidental take terms and conditions require Beebe Ranch: (1) to perform all in-water work from November 15 through

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<sup>5</sup> The permit is issued under section 10 of the River and Harbors Act, 33 U.S.C. § 403 (2006).

<sup>6</sup> 16 U.S.C. § 1536(a) (2000). ESA section 7(a)(2) requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

<sup>7</sup> The NMFS Biological Opinion was included in Chelan PUD's September 3, 2010 application.

February 28; (2) drive all pilings within a confined bubble curtain; and (3) implement the plan to plant 5,935 square feet of vegetation along the shore.

14. On April 20, 2009, the FWS issued a Biological Opinion determining that the Beebe Ranch project is not likely to jeopardize the continued existence of the Columbia River distinct population segment of endangered bull trout or their critical habitat.<sup>8</sup> The Biological Opinion includes an incidental take statement, with reasonable and prudent measures and terms and conditions to minimize incidental take of bull trout. These measures are included as requirements of the Section 10 permit. In addition to reporting requirements, the measures call for Beebe Ranch to drive all pilings within a confined bubble curtain.<sup>9</sup>

15. Beebe Ranch's proposal includes all the measures recommended by the agencies with which it consulted and all the conditions and requirements of the various federal, state, and local permits it has obtained.<sup>10</sup>

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

16. The Commission issued public notice of the application on November 5, 2010, which established December 6, 2010 as the deadline for submitting comments, protests, and motions and notices to intervene.<sup>11</sup>

17. The U.S. Department of the Interior timely filed a letter stating that it had no comment on the proposal. On December 6, 2010, the FERC and Water Diversions Branch of the Hydropower Division of NMFS' Northwest Region Office (NMFS Water

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<sup>8</sup> The FWS Biological Opinion was included in Chelan PUD's September 3, 2010 application.

<sup>9</sup> A bubble curtain is a ring of bubbles placed around the pile that dissolves the percussive waves created as the pile is hammered into the ground.

<sup>10</sup> See Chelan PUD's September 3, 2010 application at 3.

<sup>11</sup> The notice was published in the *Federal Register* on November 12, 2010. 75 Fed. Reg. 69,426.

Diversions Branch) filed a notice of intervention<sup>12</sup> in opposition to the proposal, arguing that additional overwater structures should not be added to the project reservoir until the survival standards required by the licensee's Anadromous Fish Agreement and Habitat Conservation Plan (HCP) have been achieved for each of the species addressed by the plan (Plan Species).<sup>13</sup> No other entities filed comments or interventions.

18. On May 5, 2011, at the request of Beebe Ranch, Chelan PUD asked that the Commission wait to take action on the application for 90 days. Chelan PUD stated that, during that time, it would attempt to facilitate discussion between Beebe Ranch and NMFS regarding NMFS' intervention in opposition to the application. By letter dated July 15, 2011, Chelan PUD notified the Commission that attempts to resolve issues regarding NMFS' opposition were unsuccessful and Beebe Ranch was requesting that the Commission move forward to consider the application on its merits.<sup>14</sup>

### **Discussion**

19. We have reviewed the application pursuant to the Federal Power Act's comprehensive development/public interest standard, as informed by agency comments. As discussed below, we conclude that the proposed non-project use of project lands and waters, as modified by this order, would have minor environmental impacts and would not interfere with licensed project purposes.

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<sup>12</sup> Under Rule 214(a) of the Commission's Rules of Practice and Procedure, upon the timely filing of a notice to intervene, the agency becomes a party to the proceeding. *See* 18 C.F.R. § 385.214(a) (2011).

<sup>13</sup> The HCP is a long-term programmatic approach developed by Chelan PUD, the fisheries agencies, and tribes to reduce the effects of the Rocky Reach Project on spring, summer, and fall Chinook salmon, sockeye salmon, coho salmon, and steelhead (Plan Species).

<sup>14</sup> Chelan PUD also stated that it would not bear any further costs associated with studies, conditions, or mitigation measures associated with the application and would not put at risk compliance with the license-required HCP.

### A. Fishery

20. There are more than 41 species of fish in the project area.<sup>15</sup> The Columbia River watershed upstream of the Rocky Reach dam supports UCR spring, summer, and fall Chinook salmon, sockeye salmon, coho salmon, UCR steelhead, bull trout, northern pikeminnow, walleye, and smallmouth bass. The UCR spring Chinook salmon and UCR steelhead are listed as endangered under the ESA,<sup>16</sup> and the bull trout is listed as threatened. Predatory fish species include northern pikeminnow, smallmouth bass, and walleye, which prey on these listed species, as well as on non-listed summer and fall Chinook, sockeye, and coho salmon.

21. The 2009 license order requires implementation of the HCP,<sup>17</sup> the goal of which is to aid in the recovery of salmonids listed as threatened or endangered and to prevent other Plan Species from being listed in the future.<sup>18</sup> The objective of the HCP is to achieve and maintain “no net impact” for each Plan Species. One component of “no net impact” is a combined adult and juvenile project survival standard where at least 91 percent of each Plan Species survives project effects when migrating through the project.<sup>19</sup> The licensee is responsible for achieving the 91 percent survival standard through project-specific improvement measures. If the survival rates for any of the Plan Species fall below 91 percent, the HCP requires the licensee to implement additional project-specific measures (e.g., changes to minimum flows, project operations) to bring survival rates back up to 91 percent.

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<sup>15</sup> Of these species, 15 are coldwater, 18 are coolwater, and 8 are warmwater. These species are native to the project area, introduced, or stocked. *See Pub. Utility Dist. No. 1 of Chelan County, Washington*, 126 FERC ¶ 61,138 at P 12.

<sup>16</sup> 15 U.S.C §§ 1531-1599 (2006).

<sup>17</sup> *See Pub. Utility Dist. No. 1 of Chelan County, Washington*, 126 FERC ¶ 61,138, Ordering Paragraph (F) at 61,795 and Appendix C at 61,825.

<sup>18</sup> The HCP was filed on November 24, 2003, and approved and made a condition of the prior license in 2004. *Pub. Utility Dist. No. 1 of Chelan County, Washington*, 107 FERC ¶¶ 61,280 and 61,281 (2004).

<sup>19</sup> The other component consists of hatchery programs and fish habitat enhancement work along tributary rivers and streams to mitigate for the 9 percent assumed unavoidable project mortality.

## 1. Endangered Species

22. As noted above, the UCR spring Chinook salmon and UCR steelhead are endangered, and the bull trout is listed as threatened. As part of its Section 10 permit process, the Corps consulted under section 7 of ESA with FWS on the effect of the Beebe Ranch marina proposal on threatened bull trout and with NMFS on the proposal's effect on endangered UCR spring Chinook salmon and UCR steelhead. The agencies issued Biological Opinions to the Corps that examined in detail the potential impacts (construction, operation, and maintenance) of the proposed Beebe Ranch marina project on the listed species.

23. Regarding the threatened bull trout, the FWS Biological Opinion explained that direct impacts to bull trout are expected to be minor. The action area primarily serves as a migratory corridor and overwintering habitat for bull trout. This function will continue, but prey base for bull trout in this area will be degraded for an indefinite period into the future. The FWS Biological Opinion concluded that, with implementation of the measures it prescribed, the proposed facilities are not likely to jeopardize the continued existence of bull trout or its critical habitat.

24. Regarding the endangered UCR spring Chinook salmon and UCR steelhead, the NMFS Biological Opinion explained that the proposed facilities could result in long- and short-term adverse impacts through permanent alteration of near-shore habitat by placement of in- and over-water structures. Placement of such structures could result in short-term sound pressure waves from pile driving, migration obstacles, and decreased ambient light (e.g., light attenuation and shading), which would favor fish that prey on young salmon and steelhead. The structures also could result in benthic habitat shading and increase exposure of juvenile salmon to predators by providing predator habitat, which could lead to an overall increase in the predator population in the action area.

25. However, the NMFS Biological Opinion concluded that the extent of these effects on fish is “difficult if not impossible to quantify” in terms of the number of affected fish.<sup>20</sup> It further concluded that “the effects of the proposed action will not influence population viability characteristics for the listed species, causing no appreciable change in the extant risks facing them.”<sup>21</sup> Therefore, “the proposed action will not jeopardize

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<sup>20</sup> NMFS Biological Opinion at 16.

<sup>21</sup> *Id.* at 24.

their continued existence,” nor will it result in the destruction or adverse modification of their critical habitat.<sup>22</sup>

## 2. Other Species of Concern

26. As discussed above, in addition to the species listed as threatened or endangered under ESA (i.e., UCR spring Chinook salmon, UCR steelhead, and bull trout), the HCP addresses the effects of the Rocky Reach Project on summer and fall Chinook, sockeye, and coho salmon, with the goal of preventing these species from being listed under ESA in the future. Since these species are so similar to the UCR spring Chinook salmon and UCR steelhead, we conclude that the analysis in the NMFS’ Biological Opinion for the listed species would be applicable to the other Plan Species and agree with the finding that “the effects of the proposed action will not influence population viability characteristics for the listed species, causing no appreciable change in the extant risks facing them.”<sup>23</sup>

## 3. NMFS’ Water Diversions Branch Intervention

27. NMFS’ Water Diversions Branch intervened in opposition to the application, arguing that, although the survival of HCP Plan Species has increased since implementation of the HCP, the HCP survival standards have not been achieved for each Plan Species. It asserts that adding more docks will create additional cover habitat that will likely be occupied by smallmouth bass and other predators, and potentially increase predation on salmonids. NMFS’ Water Diversions Branch states: “In sum, the proposed

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<sup>22</sup> *Id.* During consultation, NMFS reviewed critical habitat designated for the UCR steelhead and UCR spring-run Chinook salmon, as well as the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects. Based on this consultation, NMFS concluded, “the effects of the proposed action will not influence the function of the affected PCEs [Primary Constituent Element] in a manner discernible beyond the action area.” *Id.* Because “the proposed action’s effects on individual PCEs will not influence the conservation value of range-wide critical habitat, the action will not therefore destroy or adversely modify designated critical habitat.” *Id.*

<sup>23</sup> NMFS Biological Opinion at 23.

installation of a large dock facility in the Project reservoir will likely reduce reservoir survival of Plan Species.”<sup>24</sup>

28. We are not persuaded by NMFS Water Diversions Branch’s arguments. Significantly, it does not comment on, or even acknowledge, the detailed analysis and findings in the Biological Opinion prepared by the experts in the same agency. It does not question the accuracy of the analysis and findings, including the “no jeopardy” conclusion. Nor does it present any additional scientific information that would warrant changing the conclusion of the Biological Opinion.

29. Its argument focuses on the increase in cover habitat for predatory fish caused by the addition of overwater structures, which could potentially reduce survival of Plan Species. However, the proposed marina would only increase over-water coverage on the reservoir by approximately 5,935 square feet, or 0.14 acres.<sup>25</sup> On the 43-mile-long, 8,235-acre project reservoir, 0.14 acres of over-water coverage would represent an almost negligible increase of only 0.002 percent.

30. Moreover, research on the horizontal distribution of migrating juveniles indicates that the majority of salmon and steelhead migrate in the mainstream flow of the river, not in the slower-moving water on the shoreline (where the marina would be located). One report found that 99 percent of the acoustic-tagged yearling Chinook salmon that were studied used the main navigation channel in the center of the river, while only 1 percent used a smaller channel on the side of the river.<sup>26</sup> At the same location, 95 percent of juvenile steelhead were detected in the navigation channel while only 5 percent were

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<sup>24</sup> December 6, 2010 filing at 4.

<sup>25</sup> Originally, Beebe Ranch proposed building a total of 106 slips, but after two years of meetings and consultations with NMFS, FWS, and the Corps, it reduced the total number of slips to the 40 now proposed and designed the dock to be as fish-friendly as possible. *See* Beebe Ranch’s December 21, 2010 comments (submitted by Grette Associates) in response to NMFS’ Water Diversions Branch’s intervention, at 2.

<sup>26</sup> “Seasonal Juvenile Salmonid Presecence and Migratory Behavior in the Lower Columbia River,” Final Report, J.A. Carter, et al. (U.S. Army Corps of Engineers April 2009), at 2.8.

detected in the smaller channel.<sup>27</sup> Considering listed UCR juvenile spring Chinook salmon migrate as yearlings, their larger size, as with juvenile steelhead, supports the evidence that they would migrate in the mainstream flow of the river, thus avoiding predators in the slower-moving water near the shoreline.

31. In contrast, the primary predators to Plan Species, northern pikeminnow and smallmouth bass, tend to hold in relatively slow-moving water areas along the shoreline, rather than the middle of the river where higher velocity flows are concentrated. Further, residence time of listed juvenile spring Chinook salmon and steelhead is no more than a few days to a week due to the fact that these fish use the Columbia River only as a navigation route rather than rearing habitat. Because the overwhelming majority of salmon and steelhead migrate in the mainstream channel of the river, overwater structures in the slow-moving water near the shoreline will have a minimal effect, if any, on the Plan Species migrating through the project.

32. For the above reasons, we conclude that the marina is not likely to reduce the survival rates of the Plan Species. Moreover, the reasonable and prudent measures and incidental take terms and conditions in NMFS' and FWS' Biological Opinions will minimize any impact the 0.14 acre overwater coverage might have on the Plan Species. However, under the terms of the HCP, if there is an unforeseen impact and the survival rate of any of the Plan Species decreases as a result, the licensee must develop additional project-specific improvement measures.

## **B. Terrestrial Resources**

33. Beebe Ranch has obtained all agency permits needed to construct the proposed facilities. By adhering to all permitting requirements and state erosion and sedimentation control measures, including the implementation of the mitigation planting plan, best management practices, and suggestions and conditions submitted by state resource agencies (such as which seed mixtures to use in this area and how to re-establish natural features), potential effects from sedimentation and erosion will be minimal.

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<sup>27</sup> *Id.* See also T.W. Steig, P.A. Nealson, K.K. Kumagai, B.J. Rowdon, J.R. Selleck, and B.D. McFadden. 2009. "Route specific passage of juvenile Chinook, sockeye and steelhead salmon using acoustic tag methodologies at Rocky Reach and Rock Island Dams in 2008." Final report for Chelan County Public Utility District No. 1, Wenatchee, WA., by Hydroacoustic Technology, Inc., Seattle, WA, at 3.

34. Several mitigation measures will be put in place by Beebe Ranch to reduce potential erosion, rectify impacts to the shoreline, and re-establish natural habitat features.<sup>28</sup> In the period between grading and re-vegetating the site, sediment could potentially run off into the reservoir during rain events. Straw bales and silt fencing should be in place between the area to be graded and the shoreline prior to any project work activities, and will remain in place until the seeding has established itself as an effective means to prevent onsite erosion. A double net coconut blanket would be placed in steep slope sections and two drainage ponds will be added to catch any additional storm runoff.

35. In order to prevent future erosion and restore, reclaim, and/or enhance any disturbed on-site shorelines, Beebe Ranch will plant a minimum of 5,395 square feet of contiguous plantings on the downstream side of the dock area using two different seed mixtures (a riparian mixture and a shrub steppe mixture) to decrease erosion.

36. The proposed docks would be constructed off-site and placed by barge to minimize potential increases in sedimentation and erosion. Temporary minor effects on shoreline habitat and soil resources could occur during the installation of the proposed docks and piles. However, as outlined above, re-seeding of all graded areas, the addition of two drainage ponds, the silt fence, and the straw bales are additional precautionary measures to prevent undue erosion and contamination.

### **C. Wetlands**

37. Several wetlands have been identified along the Beebe Ranch Development shoreline. The licensee and Beebe Ranch consulted with Douglas County to implement a wetland management and mitigation plan.<sup>29</sup> The plan was developed to meet the

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<sup>28</sup> These measures are consistent with the final environmental impact statement for relicensing the Rocky Reach project, issued on August 4, 2006, as well as the Douglas County Shoreline Master Program, referenced within Attachment 1: Riparian Restoration Monitoring Report, of the September 3, 2010 application. In addition, Douglas County issued a Determination of Non-Significance on September 21, 2009 in accordance with WAC 197-11-340(2).

<sup>29</sup> See Wetland Management and Mitigation Plan, Beebe Ranch Community Dock Project, prepared by Grette Associates, revised August 10, 2009, included in Beebe Ranch's application, filed September 3, 2010.

requirements of all relevant agency codes for development within a wetland or wetland buffer, and describes potential impacts to the wetland and mitigation measures to be implemented at the proposed project. Mitigation for the proposed project would include planting a 10-foot-wide strip of native riparian and shrub-steppe vegetation along approximately 593 lineal feet of the shoreline, downstream of the marina area.

38. After the long- and short-term mitigation measures outlined above have been implemented, and upon completion of the proposed project, the bed, bank, and shoreline area should be fully restored to as close to its pre-project natural condition as possible.

#### **D. Water Quality**

39. Construction of the docks and grading the land along the shore could temporarily affect water quality. The in-water activity to install and secure the proposed docks could temporarily increase turbidity of the water and disturb sediment. Construction of the parking and restroom facilities adjacent to the project boundary could cause some erosion and construction run-off that may create short-term impacts on water quality. Finally, product release in the construction area, such as oil and gas from vehicles and equipment, has the potential to effect water quality if there is a spill or accident. The required local and federal agency permits contain extensive requirements detailing how and when all construction and mitigation must take place to minimize potential threats to water quality due to possible pollution and erosion from proposed construction at the site.<sup>30</sup>

#### **E. Cultural Resources**

40. Article 405 of the license requires the licensee to implement the Programmatic Agreement (PA), which in turn requires implementation of a Historical Properties Management Plan (HPMP).<sup>31</sup> Although no cultural resources have been previously

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<sup>30</sup>See Shoreline Substantial Development Permit, application number SP-06-05, Douglas County TLS, issued November 13, 2009; 401 Certification, Washington Department of Ecology, issued July 10, 2009; Hydraulic Project Approval, Washington Department of Fish and Wildlife, issued December 1, 2009; Joint Aquatic Resources Permit Application, Douglas County, revised August 10, 2009; Section 10 permit, Corps, issued June 30, 2009.

<sup>31</sup> *Pub. Utility Dist. No. 1 of Chelan County, Washington*, 126 FERC ¶ 61,138, at 61,800 (2009). The PA was executed on April 22, 2006. The HPMP is dated June 23, 2005.

identified in the vicinity of the area to be developed, the potential does exist for the discovery of cultural resources during the proposed construction, operation, and/or maintenance activities. Therefore, the licensee should include conditions to protect previously undiscovered historic properties in its intended construction permit. These conditions must require that Beebe Ranch immediately cease all work at the site and contact the licensee if a previously undiscovered cultural resource site is discovered during construction, operation, and/or maintenance of the facilities. The licensee must follow the provisions to protect historic properties set forth in the *Discovery Provisions* section of the Historical Properties Management Plan.

#### **F. Conclusion**

41. For the above reasons, we conclude that the proposed non-project use of project lands and waters, as modified by this order, would have minor environmental impacts and would not interfere with licensed project purposes.

#### **The Commission orders:**

(A) Public Utility District No. 1 of Chelan County, Washington's application, filed on September 3, 2010, requesting Commission approval to authorize Beebe Ranch, LLC to construct boat dock facilities on the Columbia River within the project boundary of the Rocky Reach Hydroelectric Project No. 2145 is approved, as modified below.

(B) Within 45 days of the date of this order the licensee shall file location point data representative of the marina. The location point must be positionally accurate to comply, at a minimum, with National Map Accuracy Standards for maps at a 1:24,000 scale. The location point must include latitude/longitude in decimal degrees based on the horizontal reference datum of the North American Datum of 1983 (NAD 83).

(C) To ensure that any non-project uses and occupancies of project lands and waters it authorizes are not inconsistent with the purposes of the project, including public recreation and resource protection, the licensee shall include in any permit issued for these facilities the following conditions: (1) the permittee's use and occupancy of project lands and waters shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) the permittee shall take all reasonable precautions so that the construction, operation, and maintenance of the permitted facilities will occur in a manner that protects the scenic, recreational, and other environmental values of the project; and (3) the permittee shall not unduly restrict public access to project waters.

(D) The licensee shall include a provision in the permit that if any historic properties, including archeological or historic remains, are discovered during construction of the docks, Beebe Ranch must immediately cease all work at the site and contact the licensee. The licensee must follow the provisions to protect historic properties set forth in the *Discovery Provisions* section of the Historical Properties Management Plan, in consultation with the Washington State Historic Preservation Office and any tribes that might attach religious or cultural significance to the discovered materials.

(E) The proposed facilities shall be constructed as approved in this order in a timely manner to ensure that they do not result in new or different impacts than anticipated, due to unauthorized changes to the facilities or changes in the surrounding environment over time. In order to keep the Commission apprised of the progress towards completing the proposed facilities and to ensure the facilities are built as approved, the licensee shall file within two years of the date of this order, documentation, including photographs, showing the type and location of the proposed facilities. The filing should also include verification that the licensee inspected the proposed facilities to ensure they have been constructed as approved in this order. If the facilities are partially completed or construction has not begun, the licensee shall include in its filing, for Commission approval, a schedule for completing construction of the proposed facilities and a description of the key factors considered in the development of the schedule.

(F) This order constitutes final agency action. Any party to this proceeding may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2011). The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.