



July 6, 2021

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

*RE: American Whitewater and Vermont Paddlers Club Comments on  
Final License for the Morrisville Hydroelectric Project (FERC No. P-2629),  
Green River Development*

Dear Secretary Bose:

American Whitewater submits the following comments to the Federal Energy Regulatory Commission as part of the ongoing relicensing of the Morrisville Hydroelectric Project (FERC No. P-2629). American Whitewater has long been involved with the relicensing of this project to secure whitewater boating flows and access below the Green River Development. Our organization has requested and participated in the implementation of the whitewater boating study; commented on study reports, license application, and environmental assessment; and litigated conditions contained in the Vermont Section 401 Water Quality Certification. While litigation continues with the licensee's appeal of FERC's denial of Morrisville's Petition for Declaratory Order seeking waiver of Vermont's Section 401 authority, we file these comments to provide information that the Commission should consider in the development of license articles for the project license.

American Whitewater, its affiliate clubs including Vermont Paddlers Club, and its members have an ongoing interest in securing whitewater boating opportunity on the Green River below the Green River Development. The Green River drops about 400 feet over 2.75 miles from Garfield Road to Route 15 and into the Lamoille River. This stretch of the river is one of exceptional aesthetic beauty and contains several gorges, falls and drops before converging with the Lamoille River. In conjunction with American Whitewater and the Vermont Paddlers Club, the licensee performed a whitewater boating controlled flow study In October of 2011 to assess the quality of the Green River as a whitewater paddling resource. Based on the results of the controlled flow study, we know that this stretch of the Green River contains numerous, high quality Class III, Class IV, and Class V rapids that can provide whitewater paddlers with a unique and challenging paddling experience in the region.

Based on the whitewater boating study report and comments filed by American Whitewater and Vermont Paddlers Club, FERC's Environmental Assessment recommended that the project license include a Recreation Plan (Article 006) and Whitewater Operation Plan (Article 007) as follows:

Article 006. Recreation Plan. Within six months of the effective date of this license, the licensee must file a recreation plan for Commission approval. The plan must include, but not necessarily be limited to, the following: (1) plans for constructing and enhancing new and existing project facilities within the project boundary, including the: (a) Green River Development's new Garfield Road river access site; (b) Morrisville Development's portage route (from take-out to put-in) improvements, parking area designation, Clark Park walking trail improvements and fence repairs; and (c) Cadys Falls Development's portage route (from take-out to put-in) improvements; (2) provisions to limit erosion and sedimentation during construction and enhancement activities; (3) plans for installing signage at all project facilities; and (4) a provision to operate and maintain all the facilities over the term of any new license.

The licensee must prepare the plan after consultation with the Vermont Department of Forest, Parks and Recreation (Vermont FPR). The licensee must include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to Vermont FPR, and specific descriptions of how Vermont FPR's comments are accommodated by the plan. The licensee must allow for a minimum of 30 days for Vermont FPR to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan according to the approved schedule, including any changes required by the Commission.

Article 007. Whitewater Operation Plan. Within six months of the effective date of the license, the licensee must file with the Commission, for approval, a Whitewater Operation Plan that describes procedures for scheduled and anticipated whitewater releases on the Green River at the Green River Development. The plan must establish five annual scheduled 6-hour releases, between 140 cfs and 283 cfs, for whitewater boating on the Green River downstream of the dam. The five planned releases must be scheduled annually, in consultation with American Whitewater (AW) and Vermont Paddlers Club (VPC), as follows: (1) One 2-day weekend scheduled release in April; (2) one scheduled release during the annual ISO New England mandated summer capability test (required between July 1 and September 15); and (3) one 2-day weekend scheduled release in October. The plan must also describe procedures for gradually ramping up whitewater flows, providing advance notification to AW and VPC of the five annual scheduled releases, and providing short-term public notification at [www.mwlv.com](http://www.mwlv.com) for releases in excess of 140 cfs at the Green River Development.

The licensee must prepare the plan after consultation with AW, VPC, Lamoille River Anglers Association, MadDog Chapter of Vermont Trout Unlimited, Vermont Agency of Natural Resources (Vermont ANR), and Vermont ANR's Department of Forest, Parks and Recreation (collectively, whitewater parties). The licensee must include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the whitewater parties, and specific descriptions of how the whitewater parties' comments are accommodated by the plan. The licensee must allow for a minimum of 30 days for the whitewater parties to comment and

to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan according to the approved schedule, including any changes required by the Commission.

Similarly, Vermont Department of Environmental Conservation issued its final Water Quality Certification under Section 401 of the Clean Water Act for the Morrisville Project following extended litigation consistent with the Vermont Supreme Court decision in *In re Morrisville Hydroelectric Project Water Quality*, 2019 VT 84. The final Water Quality Certification mandated, among other provisions, the following:

J. Recreational Facilities. The Applicant shall develop a recreation management plan within 180 days of the effective date of the FERC license. The plan shall be subject to approval by the Department of Forest, Parks, and Recreation and the Department prior to implementation. The plan shall include an implementation schedule and recreational facilities shall be constructed and maintained consistent with the plan. The issues addressed in the plan shall include provisions for improving the portage trails around the Morrisville and Cadys Falls facilities, proper signage for trails and formal parking at all facilities, evaluation of primitive camping sites at Cadys Falls and Morrisville facility to be used by through paddlers, a notification system to provide flow information at Green River facility to recreational users, measures to provide access to the river below Garfield Road, and sanitation at all project facilities. The plan shall provide for three scheduled whitewater boating releases per year, each lasting at least six hours, to support whitewater boating as an existing use and comply with other provisions of this Certification in accordance with the VWQS. Where appropriate, the recreation plan shall include details on erosion control. The Applicant shall update the plan at intervals not exceeding ten years unless the Department approves a written statement that indicates the basis why there is no need to upgrade the facilities or otherwise modify the plan. Modifications to the recreation plan shall also be subject to Department approval over the term of the license. The Department approved recreation plan and all amendments thereto as approved by the Department shall be incorporated by reference as conditions of this Certification.

After extended litigation in Vermont courts over the validity of the Section 401 Water Quality Certification, Morrisville filed a Petition for Declaratory Order with FERC seeking a determination that Vermont waived its Section 401 authority by failing to act within one year of its certification application under *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019). FERC rejected Morrisville's Petition finding that waiver was not warranted under the *Hoopa* decision. While Morrisville has appealed FERC's decision to the Court of Appeals, D.C. Circuit, that case is currently in abeyance pending the decision in unrelated litigation. While litigation is ongoing, Morrisville has not sought relief from the Court of Appeals restraining FERC from issuing a final license for the Morrisville project. Additionally, FERC has the statutory and regulatory authority to incorporate Vermont's Water Quality Certification conditions voluntarily, potentially mooted the pending appeal.

More than eight years have passed since Morrisville filed its final application for a new license in April of 2013 following three years of pre-application process under the Integrated Licensing Process. The extensive delays in the relicensing of the project have delayed the implementation of Protection, Mitigation & Enhancement (PM&E) measures to minimize project impacts on environmental quality including whitewater boating opportunity below the Green River Development. Accordingly, we recommend that FERC issue a final license for the Morrisville Hydroelectric Project consistent with FERC's final Environmental Assessment and Vermont's final Water Quality Certification. At a minimum, the license should include the following PM&E measures to protect whitewater boating opportunities on the Green River:

1. *Flow*: Require the licensee to develop a Whitewater Operation Plan in consultation with whitewater parties. The plan must provide whitewater boating opportunities consistent with the Environmental Assessment and Water Quality Certification and require the scheduling of 6-hour weekend boating releases during daytime boating hours at optimal boating levels (between 140-283 cfs). Scheduled whitewater boating releases must be provided free of charge.
2. *Access*: Provide access to the river below Garfield Road. Access to the river at Garfield Road and at other project facilities must be provided free of charge.
3. *Flow information*: Provide advance notification to AW and VPC of scheduled releases, and provide short-term public notification at [www.mwlvvt.com](http://www.mwlvvt.com) for releases in excess of 140 cfs at the Green River Development.
4. *Sanitation*: Provide sanitation at all project facilities.

We appreciate the opportunity to provide FERC with information regarding the inclusion of conditions in the final license for the Morrisville Hydroelectric Project to protect whitewater boating opportunity on the Green River as well as other designated and existing uses affected by project operations.

Very truly yours,

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