

140 FERC ¶ 62,112
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

United Water Conservation District

Project No. 2153-035

ORDER APPROVING REVISED LOWER PIRU CREEK
HERPETOLOGICAL MONITORING PLAN PURSUANT TO ARTICLE 404

(Issued August 9, 2012)

1. On June 6, 2012, United Water Conservation District (licensee), filed a revised Lower Piru Creek herpetological monitoring plan (revised plan) pursuant to article 404 of the license for the Santa Felicia Project.¹ The filing was supplemented on July 30, 2012. The project is located on Piru Creek, a tributary of the Santa Clara River, in Ventura County, California. The project occupies federal lands, administered by the U.S. Forest Service (Forest Service).

BACKGROUND

2. On October 8, 2009, the licensee filed a Lower Piru Creek herpetological monitoring plan (2009 plan) pursuant to article 404 of the license for the Santa Felicia Project. On January 19, 2011, the Commission issued an Order Modifying and Approving Lower Piru Creek Herpetological Monitoring Plan Pursuant to Article 404.² However, following the issuance of that order, the licensee has been denied access to the private property that encompassed a majority of the area that was delineated for management activities within the 2009 plan, making it impossible for the licensee to comply with the plan. Therefore, the licensee filed a revised plan which the licensee can implement without accessing private property.

3. Article 404 requires the licensee file, for Commission approval, a herpetological monitoring plan. In addition to incorporating the provisions of final Forest Service 4(e) condition 16 (arroyo toad protection plan), the plan must at a minimum, include the following: (a) provisions for annual monitoring for arroyo toad, California red-legged frog, and southwest pond turtle, and mapping of their habitats in lower Piru Creek, for an initial 5-year period, followed by monitoring at 3-year intervals (unless a species is

¹124 FERC ¶62,193 Order Issuing New License, issued September 12, 2008.

²134 FERC ¶62,053.

found, in which case monitoring shall continue on an annual basis); (b) an aquatic exotic species management program for the removal or eradication of aquatic exotic species (i.e., bullfrog) in the Santa Felicia dam spillway pool and in the upper 1 mile of lower Piru Creek; (c) a protocol for measuring the abundance of bullfrogs and other non-gamefish aquatic exotic species; (d) effectiveness evaluation and report of the aquatic exotic species management program after 3 years of its implementation; and (e) a detailed schedule for implementation of the plan's components, and for reporting monitoring results and the effectiveness evaluation. All monitoring results, reports, and the effectiveness evaluation shall be provided to the U.S. Fish and Wildlife Service (FWS), California Department of Fish and Game (California Fish and Game), the Forest Service, the National Marine Fisheries Service (NMFS), and the Commission.

4. Forest Service 4(e) condition 16 requires the licensee file, for Commission approval, an arroyo toad protection plan that is approved by the Forest Service. This plan was filed with the Commission on October 8, 2009, and approved by Commission order on January 5, 2011.³ The approved arroyo toad protection plan has been incorporated into the revised plan.

5. The licensee incorporated the entire content of the approved 2009 plan into the revised plan as Appendix A. This allows the revised plan to completely replace the approved 2009 plan.

LICENSEE'S REVISED PLAN

6. Because the licensee can not access private lands, the licensee will not be able to conduct the monitoring surveys for target native species or conduct habitat suitability mapping as described in the 2009 plan. The licensee will continue to maintain the operational mitigation and minimization measures for arroyo toads because these tasks only apply to Forest Service lands. The licensee will continue to implement the aquatic exotic species management program as described in the 2009 plan; however, they will only implement the exotic species plan for the spillway pools.

7. The revised plan also amends the annual reporting requirements. Under the revised plan the licensee will prepare an annual report that will include: the effectiveness of aquatic exotic species eradication management efforts; an assessment of the effectiveness of the revised plan; any recommended changes; update status of access to private property; documentation of consultation; and California Natural Diversity Database forms. This report will be filed with the FWS, California Fish and Game,

³ Order Approving Arroyo Toad Protection Plan Pursuant to Article 401 and U.S. Forest Service 4(e) Condition Number 16 (134 FERC ¶ 62,101).

Forest Service, NMFS, and the Commission by December 31 of each year. The licensee will also host a meeting to discuss the aquatic exotic species management program and any operational mitigation or minimization measures performed during the year.

8. The licensee will continue negotiating to gain access to private lands. The licensee will provide an update on the access situation in the annual report. If the licensee is able to gain access to private lands it will consult with the resource agencies to determine which portions of the 2009 plan (included in the revised plan as Appendix A) should be implemented. The licensee will prepare an access plan report, for Commission approval, that describes how the revised plan will be implemented in those areas. The access plan report will document consultation with the resource agencies.

AGENCY CONSULTATION

9. The licensee met with the FWS, California Fish and Game, and NMFS on January 6, 2012 to discuss revising the 2009 plan. The licensee also discussed the proposed revised plan with the Forest Service at its annual meeting on February 2, 2012. The revised plan was sent to the resource agencies on June 6, 2012 for review and comment. No comments were received on the plan except for an email to the licensee from NMFS stating no coordination with NMFS was required for the revised plan.

DISCUSSION

10. The licensee's revised plan provides for the protection of herpetological species at the Santa Felecia Project for those areas where the licensee has access, while allowing the licensee to continue to negotiate for access to private lands. The revised plan satisfies the requirements of article 404, and should be approved.

The Director orders:

(A) United Water Conservation District's proposed revised Lower Piru Creek herpetological monitoring plan, filed June 6, 2012, and supplemented July 30, 2012, pursuant to article 404 of the license for the Santa Felicia Project, is approved.

Project No. 2153-035

- 4 -

(B) This order constitutes final agency action. Any party 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 FPA, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2012). 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. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Steve Hocking
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and Compliance

Document Content(s)

P-2153-035.DOC.....1-4