

158 FERC ¶ 62,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

United Water Conservation District

Project No. 2153-041

ORDER APPROVING RECREATION TRAIL PLAN

(Issued January 6, 2017)

1. On November 6, 2013, as supplemented on December 31, 2015, February 17, 2016, and April 1, 2016, United Water Conservation District (United Water), licensee for the Santa Felicia Hydroelectric Project No. 2153, filed a recreation trail plan pursuant to article 411 of the project license.¹ The project is located on Piru Creek, a tributary of the Santa Clara River, in Ventura County, California. The project occupies, in part, federal lands administered by the United States Forest Service (Forest Service).

Background

2. Article 411 of the license specifies a recreation trail plan be filed for Commission approval within five years of license issuance, to include the following: (1) identify the location of the existing trail sections to be formalized along the east side of the lake; (2) the location and route for providing the missing 1.5-mile trail link between the Forest Service roads and other existing trails; and (3) a schedule for implementing and completing trail construction within 10 years of license issuance.

3. Article 411 further requires the licensee to prepare the plan after consultation with the Forest Service and the California Department of Parks and Recreation (California DPR). 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 Forest Service and California DPR, and specific descriptions of how the entities' comments are accommodated by the plan.

Licensee's Proposed Plan

4. The recreation trail plan indicates that the proposed trail linkage on the east side of Lake Piru is not feasible because the Forest Service does not have any existing trails or roadways on that side of the reservoir, thus no trail linkage can be developed.

¹ Order Issuing New License issued September 12, 2008 (124 FERC ¶ 62,193).

5. In a March 24, 2014 letter, Commission staff requested additional information regarding alternative hiking opportunities at the project that could be developed in lieu of the article 411 requirements.
6. In its December 31, 2015 supplemental filing, United Water suggests the development of a trailhead as an alternative trail opportunity. In consultation with the Forest Service, California DPR and interested stakeholders, United Water proposes to enhance trail related recreation opportunities through the development of a trailhead to facilitate access to the Pot Hole and Agua Blanca trails.
7. United Water states that it will finalize trailhead and access road designs in collaboration with Forest Service as the entities move through the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requirements respectively. The preferred location, preliminary design of the trailhead parking lot, and trigger criteria for the installation of toilet facilities at the parking lot (Phase 2 development) will be filed for Commission approval by March 9, 2017, with completion of the parking lot anticipated by December 31, 2017.
8. United Water will maintain responsibility for operation and maintenance of the trailhead facilities over the term of the license, including maintenance of the toilet facilities once installed.

Consultation and Public Notice

9. United Water distributed a draft recreation trail plan to the Forest Service, California DPR, and other interested stakeholders on December 31, 2015. By letter dated January 21, 2016, Jack and Marilyn Griffin, and family provided comments on the draft recreation trail plan. The Griffin family indicated concern that vandalism, trespassing, and poaching would intensify with increased public access to national forest lands near their property. If the proposed trailhead project moves forward, the Griffin family would prefer that it be moved closer to the Agua Blanca trail, all gates along Piru Canyon Road be removed, a toilet and trash receptacle be provided, and signage be improved to reduce trespassing, littering, poaching, and illegal parking.
10. Los Padres ForestWatch (ForestWatch) submitted the following comments via letter dated February 1, 2016: (1) prefer the trailhead be located at the intersection of Piru Canyon Road and Rickenbacker Ranch Road; (2) include restrooms and trash receptacles at the trailhead; (3) reduce or eliminate the entrance fee for trail users; (4) provide a more detailed implementation schedule. ForestWatch stated that an interim trailhead should be provided until the Forest Service can complete a detailed environmental analysis of the Pot Hole trail alignment and to ensure that environmental resources near the former Blue Point Campground be protected.

11. Forest Service commented, by letter dated February 9, 2016, that Piru Canyon Road was engineered to accommodate vehicles with trailers and that the Pot Hole trail will be reestablished and maintained for equestrian use, thus the trailhead should accommodate vehicles with trailers and horses. Forest Service also clarifies that Piru Canyon Road and the Blue Point Campground were closed to protect an endangered species and recommends that a toilet and trash receptacle be included in the trailhead design.

12. Ventura County also provided comments on the recreation trail plan. Ventura County Resource Management Agency noted, by letter dated January 27, 2016, that if any development would occur on lands outside of the National Forest boundary that any CEQA analysis performed use thresholds established by Ventura County for such analysis. Ventura County Watershed Protection District indicated, via letter dated January 25, 2016, that a rain gage owned by the district is located near the proposed trailhead and that care should be taken to ensure that the gage remains operational. United Water addressed the comments provided by all respondents in the recreation trail plan.

13. Commission staff issued a public notice for the recreation trail plan on May 12, 2016, with a comment period ending June 13, 2016. A timely motion to intervene and comments were filed by ForestWatch on behalf of several conservation organizations.² ForestWatch advocates for the following modifications to the recreation trail plan: 1) reduce/eliminate entrance fees; 2) pave trailhead parking lot; 3) close trailhead at night; and 4) delay trailhead development until after the Forest Service identifies the preferred Pot Hole trail route. United Water responded to the comments via letter filed June 21, 2016, that fees were needed to support operation and maintenance of recreation facilities, paving the trailhead will be considered during the CEQA assessment, night closure would be examined in conjunction with the Forest Service, and that trailhead development will be delayed until a preferred Pot Hole trail alignment is determined by the Forest Service. By letter filed August 8, 2016, ForestWatch clarifies that the organization represents the views of multiple stakeholders in the proceedings, reiterates their request to reduce entrance fees, and advocates for a paved parking lot at the trailhead.

Discussion

14. The recreation trail plan provides an alternative method for addressing hiking needs at the project since the trail required by article 411 was found to be infeasible by

² Conservation organizations include: California Trout; Condor Trail Association; Friends of the Santa Clara River; Friends of the River; Keep the Sespe Wild Committee; Los Padres Forest Association; Santa Clara River Watershed Conservancy; and chapters of the Sierra Club.

United Water and the Forest Service. Establishing a trailhead to facilitate access to Forest Service trails nearby the project is a reasonable alternative to the initial requirement required by article 411.

15. While most of the concerns identified by stakeholders were addressed in the plan, the specific location and site amenities have yet to be identified. The preferred alternative for site development as well as specific features such as paving the parking lot or installing vault toilets will be identified as part of the environmental review process, CEQA and NEPA analysis, which itself is dependent upon the final Pot Hole trail alignment selected by the Forest Service. United Water plans to file the preferred location and preliminary design for Commission approval, at which time consulting parties can comment on the filing. Since the Forest Service, ForestWatch, and the Griffin family all commented on the need for a toilet and trash receptacle at the trailhead, both should be incorporated into the phase one design.

16. Additionally, entrance fees were raised as an issue by ForestWatch. United Water stated that entrance fees have historically been charged to enter the Lake Piru Recreation Area to help recover some of the costs associated with development, operation, and maintenance of the recreation facilities. The Commission encourages recreational use of project property if such use is consistent with other project purposes. 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."³ 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.⁴

17. The Commission has also long recognized that the use of project property for recreational purposes will likely cause a licensee to incur expenses that it should be able to recover. Accordingly, under section 2.7 of the Commission's regulations licensees are allowed "to charge reasonable user fees to defray the costs they incur in constructing, operating, and maintaining recreational facilities."⁵ However, the Commission generally does not include in its licenses requirements for specific recreation user fees, and it thus

³ 18 C.F.R. § 2.7 (2016) (promulgated by Order No. 313, 34 FPC. 1546 (1965)).

⁴ *Id.* § 2.7(b).

⁵ *Lake of the Ozarks*, 297 F.3d at 778 (citing 18 C.F.R. § 2.7).

does not typically review and approve the reasonableness of such fees (and subsequent increases or decreases) for each project.⁶

18. For the above reasons, the recreation trail plan should be approved. In order to allow sufficient time for CEQA and NEPA analysis, United Water must file the preferred location and preliminary design of the trailhead for Commission approval by June 1, 2017, with trailhead development to be completed by March 31, 2018. The phase one design must incorporate a trash receptacle and toilet facility into the trailhead. United Water must also identify the landowner for the preferred location, provide a description of the environmental and historical/cultural analysis conducted at the site and any mitigation measures that will be implemented during construction, and include a detailed implementation schedule in the preliminary design filing.

The Director orders:

(A) United Water Conservation District's recreation trail plan, filed November 6, 2013, as supplemented on December 31, 2015, February 17, 2016, and April 1, 2016, pursuant to article 411 of the license for the Santa Felicia Hydroelectric Project No. 2153, is approved.

(B) United Water Conservation District must file the preferred location and preliminary design of the trailhead (trailhead plan), including a toilet and trash receptacle, for Commission approval by June 1, 2017, with trailhead development to be completed by March 31, 2018. The filing must include the following at a minimum: (1) identify the landowner for the preferred location; (2) provide a description of the environmental and historical/cultural analysis conducted at the site and any mitigation measures that will be implemented during construction; (3) detailed implementation schedule; and (4) documentation of consultation.

The trailhead plan must be developed after consultation with United States Forest Service, California Department of Parks and Recreation, Los Padres ForestWatch, and other interested stakeholders. United Water Conservation District must include with the trailhead plan documentation of consultation, copies of recommendations on the completed plan after it has been prepared and provided to the entities above, and specific descriptions of how the entities' comments are accommodated by the plan. United Water Conservation District must allow a minimum of 30 days for the entities to comment and to make recommendations before filing the trailhead plan with the Commission. If United Water Conservation District does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information. The Commission

⁶ See Order on Request to Raise Fees and Amend Recreation Plan issued October 20, 2016 (157 FERC ¶ 61,040).

reserves the right to require changes to the schedule. Upon Commission approval United Water Conservation District must conform to the schedule, including any changes required by the Commission.

(C) 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 Federal Power Act, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2016). 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.

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and Compliance