

142 FERC ¶ 62,083  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

United Water Conservation District

Project No. 2153-037

ORDER MODIFYING AND APPROVING WATER RELEASE AND RAMPING  
RATE IMPLEMENTATION PLAN UNDER LICENSE ARTICLE 401(A)

(Issued February 4, 2013)

1. On July 5, 2012, and supplemented October 23, 2012, United Water Conservation District (licensee) filed its Water Release and Ramping Rate Implementation Plan with the Federal Energy Regulatory Commission (Commission), pursuant to Article 401(a) of its project license.<sup>1</sup> The project is located on Piru Creek, a tributary of the Santa Clara River, in Ventura County, California, and occupies 174.5 acres of federal lands administered by the U.S. Forest Service (FS).

BACKGROUND AND LICENSE REQUIREMENTS

2. Article 401(a) of the project license requires that various plans found in the FS's Section 4(e) conditions and the National Marine Fisheries Service's (NMFS) biological opinion be filed with the Commission for approval. Among the requirements of Article 401(a) and Reasonable and Prudent Alternative (RPA) 2(b) of the biological opinion, the licensee is required to file a Final Water Release Implementation and Effectiveness Monitoring Plan (Plan) with the Commission within five months of license issuance.

3. The Plan should include the details for implementation of the Water Release Plan under RPA 2(a)<sup>2</sup> and the field monitoring that will be conducted to assess the

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<sup>1</sup> See 124 FERC ¶ 62,193. Order Issuing New License (issued September 12, 2008).

<sup>2</sup> The Water Release Plan details the water releases necessary to support unimpeded migration of adult and juvenile steelhead, and sites of rearing and spawning of steelhead in lower Piru Creek. The plan is being implemented on a temporary basis, and is currently under review for a water quality certification by the California State Water Resources Control Board. The plan will be implemented on a permanent basis, pending a future application for an amendment of the project license. See 141 FERC ¶ 62,082.

Order Denying License Amendment, Modifying and Approving Extension of Time, and Granting Temporary Waiver of Minimum Flow Requirements Under Article 403 (issued

(continued)

effectiveness of the water releases for migration of adult and juvenile steelhead, and steelhead spawning and rearing. In particular, the plan should include descriptions of the following: (1) specific methods that operators of Santa Felicia Dam will follow to ensure the water-release schedules are maintained; (2) specific precautionary measures that operators will undertake to ensure that no water-release lapse occurs; (3) contingency measures that operators and the licensee will implement should an accidental lapse in water release occur; (4) specific triggers and procedures that will be used to transition from one type of water release to another (e.g., water releases for steelhead migration versus water releases for steelhead rearing); (5) specific ramping rates and procedures that operators will institute to minimize stranding and related effects on steelhead; (6) biological goals and objectives (including criteria) of the effectiveness monitoring; (7) specific hypotheses that will be evaluated as part of the effectiveness monitoring; (8) biological, physical, and physicochemical response variables that will be quantified to assess the effectiveness of the water releases for providing essential habitat functions to support migration of adult and juvenile steelhead, and steelhead spawning and rearing; (9) specific field methods that will be used to quantify the response variables and evaluate the identified hypotheses; (10) field sampling schedules for each of the response variables and specific hypotheses; and (11) the analytical methods and inferential models that will be used to evaluate or test specific hypotheses. The licensee should also prepare and submit to NMFS, annual reports that detail the findings from the effectiveness monitoring.

#### LICENSEE'S PLAN

4. In a letter dated August 26, 2011, the licensee stated that because the elements for implementation of the Water Release Plan involve different monitoring tasks, and require different departments to implement, it would develop two separate plans: one for implementation and one for monitoring. Further, in NMFS' July 3, 2012 approval of the licensee's Water Release and Ramping Rate Implementation Plan, they acknowledged that the plan only pertains to the implementation aspect of the Water Release Plan, and that the effectiveness monitoring aspect of the RPA requirement would be addressed in a separate plan. Consequently, the licensee's Plan only includes the details of how it would implement its Water Release Plan.

5. The licensee proposes to implement elements 1 through 5 of RPA 2(b), with the plan functioning as internal standard operating procedures for guiding operational activities related to implementation of the water release schedules and ramping rates established in the Water Release Plan. Two staff members would be assigned to monitor

environmental conditions that dictate seasonal flow requirements, and to implement and monitor the corresponding required water releases. The licensee's Plan also contains detailed protocol describing the procedures for staff members to ensure that the habitat flow, migration flow, and ramping rate requirements of the Water Release Plan are being met. Additionally, the licensee's Plan describes how water releases would be made during spill conditions, maintenance and repair activities, and dam safety inspections.

6. The licensee also proposes to implement measures to ensure that required flow releases are met, including daily flow verification with the downstream gage (U.S. Geological Survey (USGS) no. 11109800). In the event of an inaccuracy in the downstream gage, the licensee proposes to manually verify flows against staff gages and flow meters, and inform the USGS that the station requires calibration. The licensee would also make any necessary flow adjustments, based on the outcome of its research. Because the gage is located on private property, the licensee proposes to obtain an access agreement to the gaging site within 60 days of the date of this order. In the event that the licensee is unable to obtain landowner access to the gaging site, the licensee would propose an alternate method for addressing gage malfunction that does not require accessing private property.

7. Finally, in the event that the licensee deviates from any of the requirements of the Water Release Plan, it would work to restore the required flows as soon as possible. The licensee would also notify the Commission within 24 hours of the discovery of a flow deviation, including the reason for the deviation, steps taken to correct it, and a description of any known and expected effects to steelhead in lower Piru Creek.

#### AGENCY CONSULTATION

8. The licensee developed its plan in consultation with NMFS, and submitted various drafts of the plan for its review. By letter dated July 3, 2012, NMFS filed a letter with the Commission, stating its agreement with the plan.

#### DISCUSSION AND CONCLUSIONS

9. The licensee is proposing to implement a framework to ensure that the flow and ramping rate requirements of the Water Release Plan are being satisfied. The licensee's Plan includes specific details for designating staff to monitor environmental conditions, which dictate flow release requirements, and to then implement the releases. The Plan also includes detailed plans for responding to unanticipated operating conditions or flow deviations.

10. Review of the licensee's plan indicates that it anticipates several changes to its operating system during the life of the project license. In particular, the licensee

anticipates installing automatic flow control equipment at some point in the future, which would alter the roles of staff assigned to implement required flow releases and thus, alter the structure of the Plan. In addition, the licensee is currently implementing its Water Release Plan on a temporary basis.<sup>3</sup> The Water Release Plan, which outlines the flow and ramping rate requirements of the project license, is currently under review by the California State Water Resources Control Board for a water quality certification, and will not be implemented on a permanent basis until the Commission approves it via a license amendment. Therefore, should the final Water Release Plan be modified in such a way as to significantly modify the Water Release and Ramping Rate Implementation Plan, the licensee should file the modified Plan with the Commission. Under either scenario, the licensee should be required to file a request with the Commission to amend its Water Release and Ramping Rate Implementation Plan.

11. The licensee also proposes to file an updated Plan with the Commission every five years, which would reflect any regular changes made to the Plan. The licensee should not delay formalizing any significant revisions to the Plan through a license amendment until a reoccurring 5-year deadline arrives. Alternatively, any minor modifications not substantially affecting the Plan need not be filed with the Commission for approval.

12. Finally, the licensee's Plan includes a stipulation that in the event of a gage malfunction, it would manually monitor streamflows in the vicinity of the gage. This additional monitoring is dependent on the licensee obtaining an agreement with the landowner within 60 days of the date of this order, to access the site. According, the licensee should be required to confirm that it obtained the requisite access to the monitoring location in order to conduct additional monitoring should the normal gage malfunction. The licensee should file a report with the Commission within 75 days of the date of this order indicating whether it was successful or not in obtaining the access agreement. If the licensee is unable to acquire the necessary access rights, it should file a revised plan with the Commission indicating how and where it would conduct flow monitoring in the event of a gage outage or malfunction.

13. In conclusion, the licensee's Water Release and Ramping Rate Implementation Plan satisfies the conditions of license Article 401(a) and the implementation requirements of RPA 2(b) of NMFS' biological opinion and, as modified, should be approved.

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<sup>3</sup> See 141 FERC ¶ 62,082 (issued November 1, 2012).

The Director orders:

(A) United Water Conservation District's (licensee) Water Release and Ramping Rate Implementation Plan (Plan), filed July 5 and supplemented October 23, 2012, pursuant to Article 401(a) of the project license and Reasonable and Prudent Alternative 2(b) of the National Marine Fisheries Service's biological opinion for the Santa Felicia Project No. 2153, as modified in ordering paragraphs (B) and (C), is approved.

(B) The licensee shall file, for Federal Energy Regulatory Commission (Commission) approval, any substantial changes to its Plan resulting from, but not limited to: significant changes to operational equipment; changes in operational and/or monitoring staff responsibilities; modifications to the Plan resulting from the issuance of a water quality certification for the Water Release Plan; and any other changes significantly affecting the structure of the Plan.

(C) Within 75 days of the date of this order, the licensee shall file, with the Commission, documentation of its permission to access private lands adjacent to USGS stream gage no. 11109800. In the event that the licensee is unable to secure the requisite access rights, it should file a revised Plan with the Commission for approval, which includes a description of how and where it would conduct manual flow monitoring in the event of a gage outage or malfunction.

(D) 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 (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.

Thomas J. LoVullo  
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and Compliance