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## Executive Director Determination on Request to Extend FAST-41 Final Completion Date by More Than 30 Days

March 29, 2024

### White Pine Pumped Storage Project—Right-of-Way Authorization (BLM)

#### I. SUMMARY

The White Pine Pumped Storage (Project), sponsored by rPlus Hydro, LLLP d/b/a White Pine Waterpower, LLC (Project Sponsor), is a covered project under Title 41 of the Fixing America's Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m. The Federal Energy Regulatory Commission (FERC) has principal responsibility for environmental review of the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, which makes FERC the lead agency for both NEPA and FAST-41.

FERC submitted a request to the Permitting Council Executive Director (Executive Director) to extend the final completion date for the right-of-way authorization issued by the Department of the Interior, Bureau of Land Management (BLM).<sup>1</sup>

For the following reasons, FERC's extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

#### II. LEGAL STANDARD

Pursuant to 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(II) & (IV), a lead agency may extend a final completion date in a FAST-41 covered project permitting timetable by more than 30 days beyond the original final completion date only after consulting with the project sponsor and obtaining Executive Director approval. After receiving an extension request, the Executive Director consults with the project sponsor to make a determination on the record whether to grant the requested date change. The Executive Director's determination is based on consideration of

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<sup>1</sup> Pursuant to the FAST-41 savings and limitations clauses at 42 U.S.C. §§ 4370m-6(d)(1) and 4370m-6(e)(2), respectively, in light of FERC's regulations preventing disclosure of the nature and timing of proposed actions by the Commission (18 C.F.R. § 3c.2(b)), FERC is not required to obtain Executive Director authorization to modify its own completion dates on a FAST-41 permitting timetable. However, cooperating agency completion dates that are affected by FERC's permitting timetable changes remain subject to the FAST-41 completion date modification provisions. Accordingly, pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(iv), FERC requests Executive Director authorization of proposed modifications to cooperating agencies' completion dates on projects for which FERC is the facilitating or lead agency.

“relevant factors,” including, but not limited to:

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

42 U.S.C. §§ 4370m-2(c)(2)(B) and 4370m-2(c)(2)(D)(i)(IV). Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV) are not subject to judicial review.  
42 U.S.C. § 4370m-2(c)(2)(D)(iv)(I).

### **III. BACKGROUND**

The original permitting timetable assumed the Project Sponsor would submit all required studies no later than November 1, 2023. After the permitting timetable was published, however, the Project Sponsor informed FERC that its hydrogeologic study, which will provide data on local aquifer stratigraphy, groundwater elevation, and water quality needed to support the design of the Project’s water supply wellfield, would be completed at the end of November 2024.

To account for the Project Sponsor’s additional time to complete the study and subsequently file the results with BLM and FERC, on November 20, 2023, FERC extended the completion dates for the Non-Federal Hydropower License, Section 106, and NEPA actions on the permitting timetable.<sup>2</sup>

The final completion date for BLM’s right-of-way authorization action is dependent on FERC’s completion of a NEPA environmental review document and Record of Decision (ROD). The original milestone target date for FERC’s ROD was extended from June 19, 2025, to November 19, 2026; therefore, FERC is requesting a proportionate extension to the final completion date for BLM’s right-of-way authorization—from July 30, 2025 to January 19, 2027.

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<sup>2</sup> Notice of Revised Schedule for White Pine Pumped Storage Project, 88 Fed. Reg. 81074 (Nov. 20, 2023).  
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## Consultation with Project Sponsor on Extension Request

Prior to submitting its extension request to the Executive Director, FERC consulted with the Project Sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I), and represents that the Project Sponsor has no objection to the proposed permitting timetable extension.

The Executive Director also has consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), and the Executive Director has confirmed the Project Sponsor does not object to the requested permitting timetable modifications.

### IV. DISCUSSION

The permitting timetable modification is based on the Project Sponsor's need for additional time to complete required studies. Given that the requested modification is a result of Project Sponsor activities and also will maintain a consistent and coordinated permitting timetable in response to FERC's previous changes, which are not subject to Executive Director review and approval, the requested extension is warranted.

### V. DETERMINATION

FERC's request to modify the cooperating agency's completion date on the permitting timetable is **GRANTED**, and the permitting timetable shall be revised accordingly.



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Eric B. Beightel  
Executive Director, Permitting Council