



FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

Quarterly Agency Performance Report

Fiscal Q1 2023 (October-December)

March 31, 2023

Acknowledgements

The Executive Director of the Federal Permitting Improvement Steering Council (Permitting Council) submits this quarterly report to Congress pursuant to 42 U.S.C. § 4370m-7(a)(2).

The Permitting Council is a unique Federal agency charged with improving the transparency and predictability of the Federal environmental review and authorization process for certain infrastructure projects. The Permitting Council comprises the Executive Director, who serves as the Permitting Council Chair, and 15 members, including the Deputy Secretary (or equivalent) from 13 Federal agencies, the Chair of the Council on Environmental Quality, and the Director of the Office of Management and Budget.



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Department of the Army



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Federal Energy Regulatory Commission



Department of Homeland Security



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Office of Management and Budget



Council on Environmental Quality



Environmental Protection Agency



Department of the Interior

Quarterly Agency Performance Report, Fiscal Q1 October-December 2022

Message from the Executive Director

Pursuant to the 2021 Infrastructure Investment and Jobs Act (IIJA) amendments to Title 41 of the Fixing America's Surface Transportation Act (FAST-41), each quarter the Executive Director must submit to Congress a report evaluating Federal agency compliance with the provisions of FAST-41, including the implementation and adherence of each agency to the coordinated project plan and permitting timetable management requirements of 42 U.S.C. 4370m-(2).

Performance highlights include:

- All three of the projects with CPP establishment deadlines in this reporting quarter were established timely, and in compliance with FAST-41 requirements.
- All agencies met coordinated project plan review and update requirements for all twenty-seven projects on the Dashboard.
- Agencies modified sixty-three of sixty-four completion dates in compliance with FAST-41 requirements.
- Agencies met twenty-seven of twenty-eight completion dates that were posted on the Permitting Dashboard during this quarter.

There was only one instance in which an agency did not complete an action by the posted completion date or modify that completion date in compliance with FAST-41, and this instance occurred due to interagency consultation taking longer than anticipated. Other challenges remain, such as ensuring agencies are posting certain project-related information to the Dashboard as required by FAST-41.

To address these issues, we will continue to offer Dashboard and permitting timetable management training opportunities to Federal agencies, socialize FAST-41 requirements with agencies, and identify Dashboard operation enhancements to support transparent permitting timetable management and improve permitting timetable data quality in accordance with FAST-41.

Turning to project specific highlights, the Permitting Council is excited to announce the completion of the environmental review and authorization process for the [Mid-Barataria Sediment Diversion project](#) in December 2022. This FAST-41 covered project, sponsored by the Louisiana Coastal Protection and Restoration Authority, is a proposed, large-scale sediment diversion that would reconnect the Mississippi River to Louisiana's Barataria Basin estuary, which is experiencing some of the highest levels of land loss in the country. This area is also one of the most affected by the 2010 *Deepwater Horizon* oil spill. On February 1, 2023, the [Louisiana Trustee Implementation Group](#), the agencies charged with restoring Louisiana's natural resources after the oil spill, [approved \\$2.26 billion in funding](#) for the project. The funding decision is the final step in the Louisiana Trustees' evaluation of the project under the Oil Pollution Act. This is the culmination of six years of work focused on the Barataria Basin that

began in May of 2017 after the project was approved to be a covered project on the Permitting Dashboard in January of 2017.

This proposed project is a great example of enhanced coordination and collaboration across multiple federal agencies and programs to find efficiencies in the permitting process for a large-scale, complex project. The process also included robust public engagement, including communities with environmental justice concerns. Communities and groups engaged included fishers, navigation and other industry representatives, local communities, and Tribes.

Introduction and Background

The Permitting Council was established in 2015 by Title 41 of the Fixing America's Surface Transportation Act (FAST-41).¹ On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (IIJA), which permanently reauthorized the Permitting Council and made significant amendments to FAST-41.² As amended by IIJA, FAST-41 requires the Permitting Council Executive Director to submit to Congress:

a quarterly report evaluating agency compliance with the provisions of [FAST-41], which shall include a description of the implementation and adherence of each agency to the coordinated project plan and permitting timetable requirements under [42 U.S.C. § 4370m-2(c)].³

The above-referenced coordinated project plan (CPP) is required to be prepared by the lead agency for a FAST-41 covered project within 60 days of project coverage. Among other things, a CPP coordinates agency participation in, and completion of, any Federal environmental review and authorization processes for a FAST-41 covered project.⁴ The project permitting timetable, which is posted and managed on the Federal Permitting Dashboard,⁵ is a key component of a CPP and includes intermediate and final completion dates for agency actions on environmental reviews or authorizations that are required for the project.⁶ The requirements for CPPs and permitting timetables are discussed in greater detail below.

To assist agencies in FAST-41 implementation, the Permitting Council created a FAST-41 [Data Management Guide](#) (DMG). The DMG provides a standard operating procedure for implementing FAST-41 requirements, including requirements related to establishing, maintaining, modifying, and completing permitting timetables and maintaining certain CPP information on the Permitting Dashboard. The most recent update to the DMG, which

¹ 42 U.S.C. §§ 4370m *et seq.*

² Pub. L. No. 117-58, § 70801, 135 Stat. 429, 1287-1294 (Nov. 15, 2021).

³ *Id.* § 70801(f), 135 Stat. at 1293, codified at 42 U.S.C. § 4370m-7(a)(2).

⁴ 42 U.S.C. § 4370m-2(c)(1).

⁵ The Permitting Dashboard is administered by the Department of Transportation (DOT) and is used as a transparency and compliance tool for many types of infrastructure projects in which the Federal government is involved. A small percentage of the projects on the Permitting Dashboard are FAST-41 covered projects. The Permitting Dashboard is accessible at <https://www.permits.performance.gov/projects>.

⁶ 42 U.S.C. § 4370m-2(c)(2).

incorporates the IJA amendments to FAST-41, was finalized in January 2022 and became effective on July 1, 2022. Agency implementation of the DMG is essential to facilitating the Executive Director's evaluation of agency implementation of FAST-41.

This Quarterly Agency Performance Report, which covers the first quarter of Fiscal Year 2023, summarizes agency compliance with FAST-41 requirements. The report also discusses assistance that the Office of the Executive Director (OED) provides to agencies to support FAST-41 compliance. The report highlights agency successes and challenges, serves as an accountability mechanism for agencies, and supports continuous improvement of the Federal environmental review and authorization process.

Specifically, this report provides an overview of:

- The FAST-41 covered project portfolio;
- Agency implementation of the FAST-41 initiation process, including the requirements for CPPs;
- Agency completion of the required CPP quarterly updates;
- Agency management of permitting timetables; and
- Agency postings of required information to the Dashboard.

FAST-41 Project Portfolio

In the first quarter of Fiscal Year 2023, the FAST-41 project portfolio contained twenty-five projects undergoing active Federal environmental review and authorization and two paused projects (the Liberty Development and Production Plan Project as well as the Plains Pipeline, L.P. Lines 901 and 903 Replacement Project). The Department of the Interior is the lead agency for nineteen projects; the Department of the Army is the lead agency for three projects; and the Department of Energy, Department of Agriculture, and Federal Energy Regulatory Commission are each lead/facilitating agency for one project.⁷



Figure 1: List of covered projects undergoing active Federal review in Q1 2023.

The appendix section of this report includes further description of the FAST-41 covered project portfolio for the first quarter of Fiscal Year 2023.

⁷ Because a project can become a FAST-41 covered project before the NEPA process begins, FAST-41 requires the identification of a “facilitating” agency for each FAST-41 project sector that will be responsible for implementing most of the FAST-41 requirements for a pre-NEPA project until a NEPA lead agency is identified. See 42 U.S.C. §§ 4370m-1(c)(1)(B); 4370m-2(a)(5).

Agency Implementation of FAST-41 Initiation and Coordinated Project Plan Establishment Requirements

FAST-41 Initiation Notice. The FAST-41 process begins when a project sponsor⁸ submits a notice of the initiation of a FAST-41 covered project (a.k.a., FAST-41 Initiation Notice, or “FIN”) to the Executive Director and the appropriate facilitating agency.⁹ The Executive Director must make a project entry on the Permitting Dashboard within 14 days of receiving a FIN unless the facilitating or lead agency, or the Executive Director, determines that the project is not a covered project.¹⁰ In the first quarter of Fiscal Year 2023, there were no FINs submitted for covered projects.

Coordinated Project Plan Establishment. The facilitating/lead agency must establish a CPP “not later than 60 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard.”¹¹ The CPP must include a list of all entities with an environmental review or authorization responsibility for a project; their respective roles and responsibilities; a discussion of potential avoidance, minimization, and mitigation strategies; plans and a schedule for public and tribal outreach and coordination; and the project permitting timetable.¹² The Executive Director posts the permitting timetable on the Permitting Dashboard.¹³

The CPP is central to the management of the environmental review and authorization process for a FAST-41 covered project. The permitting timetable, which is posted and managed publicly on the Permitting Dashboard according to the requirements of FAST-41, provides transparency, predictability, and a comprehensive view of all the steps that are necessary for completion of the Federal environmental review and authorization process.

OED Assessment of Agency Performance. All three of the projects with CPP establishment deadlines in this reporting quarter were established timely, and in compliance with FAST-41 requirements:

- 1) Atlantic Shores North (The U.S. Department of the Interior (DOI) - Bureau of Ocean Energy Management (BOEM) is the lead agency);
- 2) Beacon Wind (BOEM is the lead agency); and
- 3) Mountain Valley Pipeline (the Federal Energy Regulatory Commission (FERC) is the facilitating agency).

⁸ Under FAST-41, a “project sponsor” means an entity, including any private, public, or public-private entity, seeking an authorization for a covered project. 42 U.S.C. § 4370m(18).

⁹ 42 U.S.C. § 4370m-2(a)(1)(A). Under FAST-41, a “facilitating agency” is responsible for carrying out most Federal agency responsibilities with respect to prospective and actual covered projects until a “lead agency” is identified pursuant to the National Environmental Policy Act. *See id.* §§ 4370m(13), 4370m-2(a)(5).

¹⁰ 42 U.S.C. § 4370m-2(b)(2)(A)(ii).

¹¹ 42 U.S.C. § 4370m-2(c)(1)(A).

¹² 42 U.S.C. § 4370m-2(c)(1)(B).

¹³ 42 U.S.C. § 4370m-2(b)(4)(A), (C), & (D).

OED Compliance Assistance. The Executive Director will continue to work with agencies to refine the initial CPP development process. The Executive Director's objective is to ensure that the initial CPP meets FAST-41 requirements by including a permitting timetable setting forth a comprehensive schedule of dates by which all environmental reviews and authorizations must be made so as to guide the entire Federal review and authorizations for each covered project.

Agency Completion of Coordinated Project Plan Quarterly Updates

FAST-41 requires the facilitating/lead agency to review and update the CPP at least once per quarter.¹⁴ While an agency's updates to the permitting timetable are integral to updating the CPP, the other aspects of the CPP additionally need to be reviewed and, if necessary, updated. In the first quarter of Fiscal Year 2023, this statutory requirement was accomplished through one of two methods:

- A two-step process for agencies to certify their CPP review on the Dashboard and, if updates occurred, an upload of the updated CPP document to MAX.gov.
- A one-step submission process for agencies to certify their CPP review and updates on the Dashboard.

Certification of compliance with this FAST-41 requirement is an important metric because it provides the Executive Director with confirmation that agencies are actively managing their permitting timetables and updating project CPPs as required by FAST-41.

OED Assessment of Agency Performance. In the first quarter of Fiscal Year 2023, agencies met CPP review and update requirements for all twenty-seven FAST-41 covered projects.

OED Compliance Assistance. The Executive Director has simplified the submission process for agencies to certify their CPP reviews and updates. This new one-step process was operational on the Dashboard by the end of the first quarter of Fiscal Year 2023. The Executive Director encouraged agencies to use the new method and provided training to agency staff. The Executive Director will continue to advise agencies to ensure that CPP review and update certifications are submitted timely.

Agency Management of Permitting Timetables

FAST-41 requires agencies to manage and maintain accurate permitting timetables and to meet or modify completion dates set forth in permitting timetables according to FAST-41 statutory requirements. Various FAST-41 mechanisms help agencies accomplish these goals, including requirements governing how completion dates may be modified and what agencies must do if they do not meet the completion dates in their publicly-posted timetables.

¹⁴ 42 U.S.C. § 4370m-2(c)(1)(B).

Timetable Modification. Once a permitting timetable has been established, the facilitating/lead agency may modify completion dates in the permitting timetable if the agency meets certain statutory prerequisites, including:

- Consulting with the Executive Director, affected cooperating agencies, participating agencies, and the project sponsor before making the modification;
- Providing a written, publicly-posted justification for the modification;
- Obtaining Executive Director authorization for changes that would necessitate an extension of a final completion date by more than 30 days after the originally established final completion date.¹⁵

Additionally, a permitting timetable completion date may not be modified within 30 days of the completion date.¹⁶

Conformance with Established Timetables. Each Federal agency is required to meet the intermediate and final completion dates in the permitting timetable that currently is posted on the Permitting Dashboard.¹⁷ If an agency does not conform to the established timetable—*i.e.*, if an agency does not meet the completion dates set forth in the permitting timetable—FAST-41 requires the agency that is responsible for the delayed action to submit an explanation of the delay to the Executive Director for posting on the Permitting Dashboard, establish an alternative completion date in consultation with the facilitating or lead agency, and submit monthly reports to the Executive Director for posting on the Dashboard describing all agency actions relating to the project until the agency has taken final action on the delayed authorization or review.¹⁸

OED Assessment of Agency Performance. The Executive Director tracks agencies' compliance with the FAST-41 permitting timetable modification procedures and conformance with posted completion dates on the Dashboard.

During the first quarter of Fiscal Year 2023, agencies modified sixty-three completion dates in compliance with FAST-41 requirements.¹⁹ These agencies are proactively managing permitting timetables, including following the statutory requirements for engaging in consultation and providing an explanation for modification of completion dates. Agencies' effective management of permitting timetables not only achieves FAST-41's goals of enhancing permitting transparency and predictability but also provides reliable information that, over time, may be used to identify bottlenecks in the Federal permitting process. The table on the following page identifies the number of completion dates modified organized by environmental review or authorization.

¹⁵ 42 U.S.C. § 4370m-2(c)(2)(D).

¹⁶ 42 U.S.C. § 4370m-2(c)(2)(D)(ii).

¹⁷ 42 U.S.C. § 4370m-2(c)(2)(F)(i).

¹⁸ 42 U.S.C. § 4370m-2(c)(2)(F)(ii).

¹⁹ Per 42 U.S.C. § 4370m-2(c)(2)(D)(ii), a completion date may not be modified within 30 days of the completion date, which means that agencies must modify completion dates at least 31 days in advance.

<i>Environmental Review or Authorization</i>	<i>Number of Completion Dates Modified During Fiscal Q1 2023</i>
Endangered Species Act Consultation (DOI-FWS)	6
Endangered Species Act Consultation (NOAA-NMFS)	2
Environmental Impact Statement (EIS) or Supplemental EIS	13
Magnuson-Stevens Fishery Conservation and Management Act, Section 305 Essential Fish Habitat (EFH) Consultation	5
Marine Mammal Protection Act (MMPA) Incidental Take Authorization (DOC - NOAA/NMFS)	4
Outer Continental Shelf (OCS) Air Permit	5
Section 106 Review	2
Section 404 Clean Water Act, Section 10 Rivers and Harbors Act of 1899, and/or Section 103 Marine Protection, Research, and Sanctuaries Act	15
Section 408 Permit (USACE)	9
Use Authorization (DOI-BOR)	2
Wind Energy Evaluation Lease --Indian Lands (USACE)	1

Agencies met twenty-seven of the twenty-eight completion dates in the first quarter of Fiscal Year 2023. This shows the high level to which Federal agencies are actively engaged in managing their permitting timetables in compliance with FAST-41. During the reporting period, there was only one instance in which an agency did not complete an action by the posted completion date or modify that completion date in compliance with FAST-41. The instance at issue involved BOEM missing a posted Endangered Species Act (ESA) consultation completion date for the Revolution Wind Farm Project. Accordingly, BOEM has been following the procedures set forth at 42 U.S.C. § 4370m-2(c)(2)(F), and has complied with those requirements by providing a [written explanation](#) for the missed completion date, establishing an alternative completion date, and providing the required monthly reports.

OED Compliance Assistance. The Executive Director will continue to work with agencies to ensure that they proactively manage their permitting timetable completion dates, and make timely modifications as needed.

Agency Postings of Required Information

For each covered project added to the Permitting Dashboard, FAST-41 requires the facilitating/lead agency, and each cooperating and participating agency, to post a hyperlink to the Permitting Dashboard that directs the public to a website containing certain project information.²⁰ Specifically, and where consistent with applicable law, agencies must post:

- 1) The project FIN;
- 2) Either the application and supporting documents that have been submitted by a project sponsor for any required environmental review or authorization, or a notice explaining how the public may obtain access to such documents;
- 3) A description of any Federal agency action taken or decision made that materially

²⁰ 42 U.S.C. § 4370m-2(b)(3)(A).

- affects the status of a covered project, and any significant supporting documentation;
- 4) Information on the status of mitigation measures that were agreed to as part of the environmental review and permitting process, including whether and when the mitigation measures have been fully implemented;
 - 5) A description of the status of any litigation to which the agency is a party that is directly related to the project, including, if practicable, any judicial document made available on an electronic docket maintained by a Federal, State, or local court;
 - 6) Any document described above that is not available by hyperlink on another website.²¹

Agencies additionally must post directly to the Permitting Dashboard information about project-related public meetings, public hearings, and public comment periods, as that information becomes available.

Agencies must make the information described above available not later than 5 business days after the date on which the Federal agency receives the information.²²

The Dashboard functionality implementing this FAST-41 provision requires that, if an agency posts one element of the required information, the agency must post some information pertaining to all elements.

The degree to which agencies comply with the contents of the postings that are required by this section of FAST-41 is challenging for the Executive Director to independently verify, as much of the required information is only available to the agencies, and the responsiveness of the information to the statutory directive is initially determined by the agencies. Therefore, to track agency compliance with this FAST-41 requirement, the Executive Director focuses on whether agencies have posted any of the basic required information.

OED Assessment of Agency Performance. In the first quarter of Fiscal Year 2023, agencies met posting requirements approximately sixty percent of the time. In the remaining forty percent of cases, agencies did not post any of the required information.

OED Compliance Assistance. In the second quarter of FY 2022, the Executive Director implemented functionality on the Dashboard providing structure for agencies to post the required information. The Executive Director is considering more granular reporting of individual agency performance on this metric in future quarterly reports. The Executive Director will continue to offer training to agencies and will communicate with agencies regarding missing information, and to socialize with the agencies the need to post the required information on the Dashboard.

²¹ 42 U.S.C. § 4370m-2(b)(3)(A)(i)-(ii).

²² 42 U.S.C. § 4370m-2(b)(3)(B).

Appendix: Description of Project Portfolio

FAST-41 is a voluntary program for qualifying infrastructure projects; project sponsors must apply for and obtain FAST-41 coverage for their projects.²³ The FAST-41 program provides oversight, strengthens cooperation and communication among agencies, enhances transparency, and emphasizes efficient processing of environmental reviews and authorizations. FAST-41 does not modify any underlying Federal statute, regulation, or mandatory environmental reviews.

The FAST-41 project portfolio consists of “covered projects,” as defined at 42 U.S.C. § 4370m(6). This report focuses on a subset of covered projects, those undergoing active Federal review during Q1 2023. Projects undergoing active review are projects that were, at any time in Q1 2023, not canceled, complete, or paused.²⁴ There were 25 active FAST-41 covered projects in Q1 2023, organized by sector in Figure 2.²⁵



Figure 2: List of covered projects undergoing active Federal review in Q1 2023.

²³ See 42 U.S.C. §§ 4370m-2(a)(1), (b)(2)(A)(ii).

²⁴ The set of projects undergoing active Federal review was derived from analysis of the Dashboard’s non-public revision history dataset.

²⁵ The Renewable Energy Production sector is depicted as three sub-sectors: offshore wind, solar, and other renewable energy.

Figure 3 summarizes the status, as of December 31, 2022 (the end of Q1 2023), of FAST-41 covered projects undergoing active Federal review.²⁶

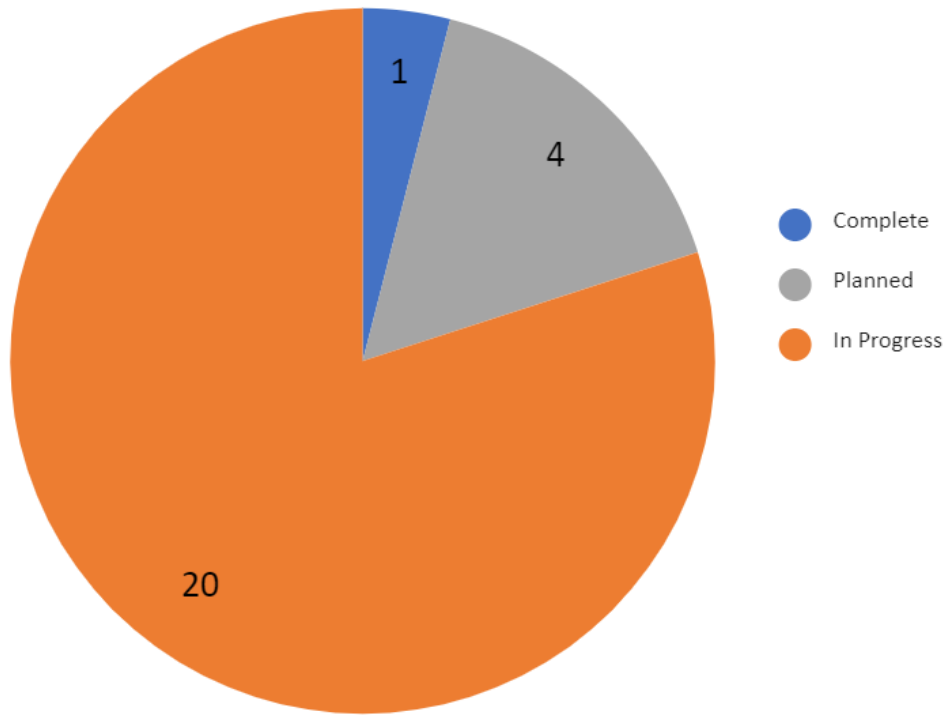


Figure 3: Graph showing the status of each project in the Permitting Council portfolio as of the end of Q1 2023.

During Q1 2023, no new projects joined the portfolio. One project, Ten West Link, was completed during Q4 of 2022, and is thus no longer under active review. Another project, Mid-Barataria Sediment Diversion, was completed during the Q1 2023. Two projects, Liberty Development and Production Plan, and Plains Pipeline, L.P. Lines 901 and 903 Replacement Project, were paused for the entirety of Q1 2023 and are therefore not under active review. No projects were newly paused or cancelled during the first quarter.

²⁶ Project status was derived from analysis of the Dashboard's non-public revision history dataset.

Figure 4 shows the location of FAST-41 covered projects undergoing active Federal review in Q1 2023. The labels correspond to those in Figure 2.

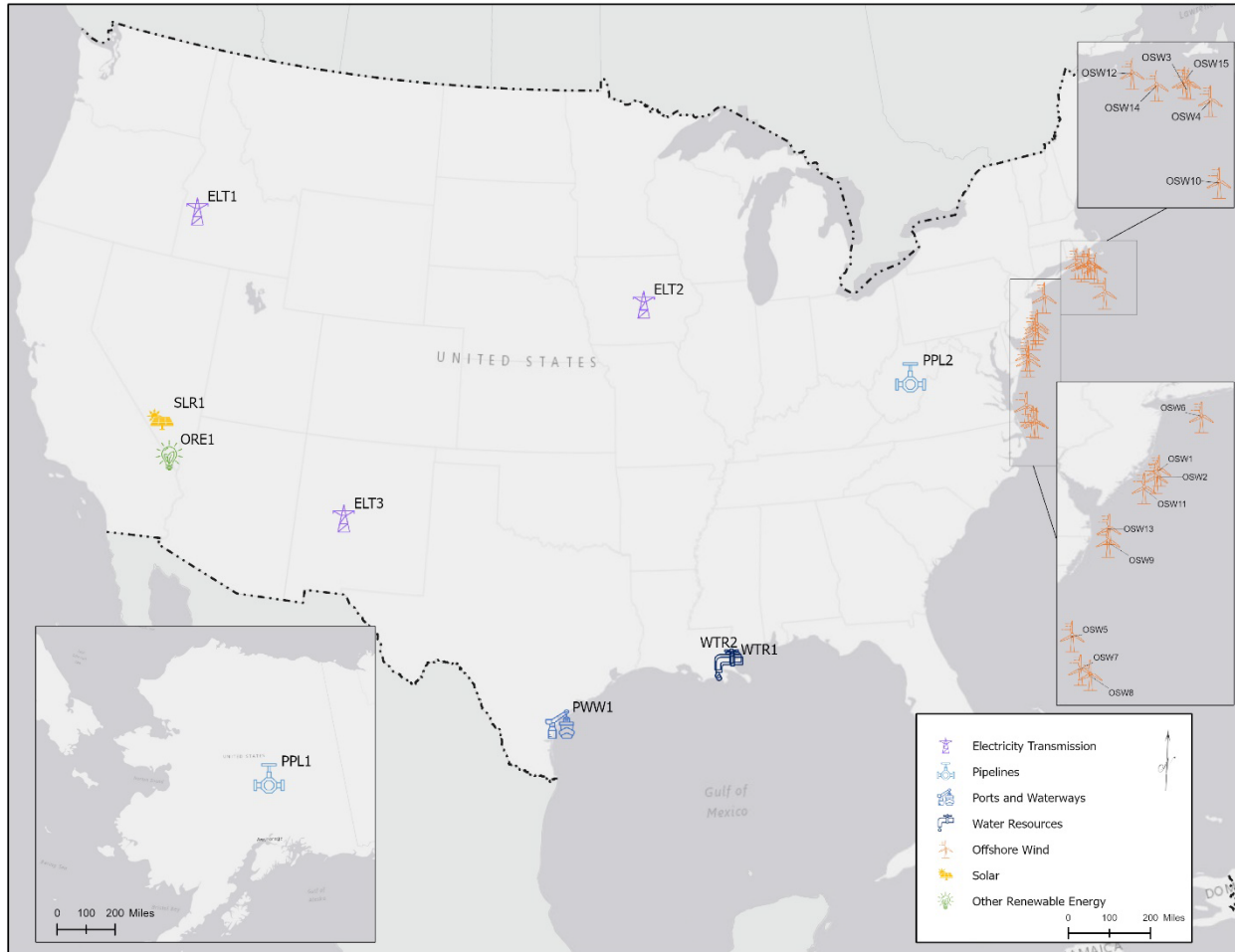


Figure 4: Map of covered projects undergoing active Federal review in Q1 2023.