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

September 4, 2024

Seminole Pumped Storage Project—Lease of Power Privilege (BOR), Right-of-Way Authorization (BLM), ESA (FWS), Section 404 (USACE)

I. SUMMARY

The Seminole Pumped Storage (Project), sponsored by rPlus Hydro (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 an environmental review for 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.

On January 10, 2024, FERC issued a notice revising the permitting timetable completion dates for its own actions related to the Project,¹ and in its role as lead agency, FERC recently submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend completion dates for the Federal cooperating agencies' actions on the Project's permitting timetable.² FERC's request includes an extension for the Department of the Interior (DOI), Bureau of Reclamation (BOR) Lease of Power Privilege and the DOI, Bureau of Land Management (BLM) Right-of-Way Authorization. FERC also requests an extension for consultation with the DOI, Fish and Wildlife Service (FWS) pursuant to the Endangered Species Act (ESA), 16 U.S.C. §§ 1531. Finally, FERC requests an extension for the United States Army Corps of Engineers (USACE) permit decision under Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (Section 404).

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

¹ <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=0844BFB1-F4F0-C4B1-97EB-8CF518700000>.

² 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.

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.³ 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 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).

³ See note 2, *supra*.

III. BACKGROUND

After FERC established the original permitting timetable for the Project, the Project Sponsor agreed to conduct additional studies requested by other Federal and state agencies reviewing the Project. The Project Sponsor initially targeted November 2023 for submission of the additional studies but subsequently sought an extension to September 2024. Accordingly, on January 10, 2024, FERC issued a notice revising the schedule for the Project to account for the additional time for the Project Sponsor to complete the studies and file the study reports. FERC’s revised completion dates for its NEPA, licensing, and Section 106 consultation actions are shown in Table 1.

Table 1

Action Agency	Action	Milestone	Original Date	Current Date
FERC	NEPA	Issuance of Notice of Intent to Prepare Environmental Impact Statement (EIS)	11/12/2023	2/25/2025
		Scoping	11/12/2023	2/25/2025
		Official Notice of Availability of a Draft EIS published in the Federal Register	5/15/2024	8/29/2025
		Official Notice of Availability of a Final EIS published in the Federal Register	11/22/2024	3/13/2026
		Issuance of Lead Agency Record of Decision (ROD)	2/20/2025	6/18/2026
FERC	Non-Federal Hydropower Licenses	Application Deemed Complete	8/30/2023	12/13/2024
		Final Decision/Agency Action	2/20/2025	6/18/2026
FERC	Section 106	Section 106 Consultation Concluded	2/20/2025	6/18/2026

After revising its own schedule, FERC submitted a request to modify the cooperating agencies’ interim and final completion dates, as shown in Table 2.

Table 2

Action Agency	Action	Milestone	Original Date	Current Date	Requested Date
BOR	Lease of Power Privilege	Issuance of the Lease of Power Privilege Contract	8/20/2025	3/18/2026	12/18/2026
BLM	Right-of- Way	Final decision/agency action	7/21/2025	2/18/2026	11/18/2026
FWS	ESA	ESA Consultation Request Package Submitted	5/15/2024	10/25/2024	8/29/2025
		FWS determines ESA Consultation Package is Complete - Formal	7/1/2024	1/24/2025	12/2/2025
		ESA Consultation Concludes	9/27/2024	3/24/2025	1/26/2026
USACE	Section 404	Final Verification/Permit Decision Rendered	12/23/2024	10/20/2025	7/20/2026

The timing of the completion dates for the Lease of Power Privilege, Right-of-Way Authorization, ESA, and Section 404 actions are each dependent on the timing of FERC’s actions. The authorizations from BOR and BLM are dependent on issuance of a final environmental impact statement (EIS) and record of decision (ROD) that adequately address those agencies’ actions, and BOR and BLM are seeking extensions that correlate proportionately with the date changes FERC already has implemented for its own actions.

With respect to the ESA, FWS typically asks consulting agencies to submit a consultation request package when the Draft EIS is published. This is true here, with the ESA consultation request package date proposed to be extended to August 29, 2025—the same date FERC intends to issue the Draft EIS. The remaining ESA dates are proposed to be moved proportionately with the modified date for submission of the consultation request package.

The timing of USACE's Section 404 permit decision hinges on the conclusion of Section 106 consultation, ESA consultation, and FERC's issuance of a ROD. Thus, USACE is proposing to extend the date for issuing its permit decision to 1 month after FERC's ROD is issued and Section 106 consultation is concluded and 6 months after the conclusion of ESA consultation.

Consultation with Project Sponsor on Extension Requests

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 modifications are based on the Project Sponsor's need for additional time to complete studies and study reports. 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 extensions are warranted.

V. DETERMINATION

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



Eric B. Beightel
Executive Director
Federal Permitting Improvement Steering Council