

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Department of Water Resources

Project No. 2100-187

ORDER DENYING TEMPORARY AMENDMENT TO RECREATION PLAN

(Issued October 10, 2018)

1. On July 10, 2018¹, the California Department of Water Resources (licensee or DWR) filed a request to temporarily amend the approved Recreation Plan² for the Feather River Hydroelectric Project No. 2100. The licensee requests to temporarily redesignate portions of some limited-use recreational trails to multi-use (i.e., hike, bike, equestrian)³ to address the negative impacts from the temporary closure of certain trails since the spillway emergency in February 2017.⁴ The project is located on the Feather River in Butte County, California, and occupies federal lands managed by the U.S. Bureau of Land Management and the U.S. Forest Service.
2. As discussed below, Commission staff conclude that available information does not justify the burden to temporarily change designated trail uses. This order denies DWR's request.

¹ The California Department of Water Resources originally filed its request on July 5, 2018, but refiled the application on July 10, 2018, and the original filing was subsequently designated "Privileged". This proceeding and order considers the public July 10, 2018 filing.

² The Commission approved the Recreation Plan in 1994 and has subsequently approved four amendments: *Cal. Dep't of Water Res.*, 68 FERC ¶ 61,358 (1994); 124 FERC ¶ 62,182 (2008); 160 FERC ¶ 62,021 (2017); 160 FERC ¶ 62,226 (2017); 162 FERC ¶ 62,077 (2018).

³ Multi-use is also referred to as multiple use or shared use.

⁴ In February 2017, high flows in the Feather River basin caused extensive erosion and damage to the main spillway and emergency spillway area at Oroville Dam. Since that time, DWR has implemented numerous emergency actions and has initiated reconstruction of the main spillway and fortification of the emergency spillway.

I. Background

3. The Federal Energy Regulatory Commission (Commission or FERC) issued a license for the 762-megawatt (MW) Feather River Project to the DWR on February 11, 1957.⁵ The project is located in the foothills of the Sierra Nevada, approximately five miles east of the city of Oroville and about 130 miles northeast of San Francisco.

4. The licensee's Recreation Plan approved on September 22, 1994, included provisions for improving and maintaining an existing 17.5-mile-long equestrian/hiking-only trail and for developing a 35-mile-long loop mountain bicycle trail. The approved plan also included a provision for establishing the Oroville Recreation Advisory Committee (ORAC) to review recreational facilities in the project area and determine the need for any additions or improvements.⁶ While DWR is the licensee and ultimately responsible for implementing the license, the California Department of Parks and Recreation (California Parks) manages the public recreational facilities within the FERC boundary for the Feather River Project, including the trails in the Lake Oroville State Recreation Area. An equestrian/hiking-only trail was substantially modified by California Parks in 2001 to meet standards described in that agency's 1993 Trail Handbook. There are approximately 25 miles of trails at the project designated for exclusive use by equestrians and hikers. The 35-mile-long loop mountain bicycle trail was originally completed in June 1996, with an additional six miles added later.

Background of Trail Use Designations

5. In the past DWR has unsuccessfully proposed to change trail use designations to multi-use. On February 26, 2002, DWR notified the Commission that California Parks intended to convert most of the trails within its management area to multi-use. When California Parks implemented the changes in trail use, the Commission received numerous letters from recreational trail users at the Feather River Project.⁷ Some opposed and others supported the trail use modifications. On November 26, 2002,

⁵ *Dep't of Water Res. of the State of Cal.*, 17 FPC 262 (1957).

⁶ ORAC consists of representatives from the following entities: California Department of Fish and Wildlife, California Parks, the City of Oroville, Butte County, the Oroville Chamber of Commerce, the California Sportfishing Protection Alliance, Butte County Citizens for Fair Government, Citizens for Fair and Equitable Recreation Use of Lake Oroville, the Butte Sailing Club, Lake Oroville Fish Enhancement Committee, the State Water Contractors, and the licensee.

⁷ DWR did not request Commission approval for the change prior to its implementation.

Commission staff sent a letter to DWR reminding it of the currently approved Recreation Plan and informing it that a request to amend the approved Recreation Plan was necessary to effectuate a change in trail use.

6. At the direction of Commission staff, DWR held a public meeting and received letters of opposition and of support for the proposed changes to the trail designations in the project area. After the meeting, DWR prepared and filed an application on April 4, 2003, to amend the approved Recreation Plan to redesignate certain recreational trails within the project boundary to multi-use trails.⁸ Commission staff denied the application on August 17, 2004 (2004 Order).⁹ That order included the following discussion:

The approved recreation plan for the Feather River Project includes a variety of trails that are designated for various types of uses. These trails offer recreational opportunities for equestrians, hikers, and mountain bicyclists, and the user-specific nature of the trail designations helps minimize safety concerns and user conflicts between competing trail users. The 25 or so miles of equestrian and hiker-only trails and the more than 47 miles of mountain bicycle trails in and adjacent to the project area offer a balance of recreational opportunities for the trail users. In addition, there are hundreds of miles of mountain bicycle trails available in the region surrounding the Feather River Project.

...[C]onverting the trails to multiple use (with bicycles sharing the trail) would adversely change the recreational experience for equestrian users primarily because it may increase the potential for user conflicts and necessitate more trail maintenance and modifications to accommodate the multiple uses. Through research of the trails and trail uses in the region of the project, we identified many trails available to mountain bikers. The approved recreation plan designated special use trails for equestrians to provide a unique recreational experience.

This proposed amendment comes at a time when the project is undergoing the process of relicensing and considerations are being made by existing work groups such as the [ORAC] and the Recreation and Socioeconomics Work Group. The relicensing process will address the balance of recreational uses at the project in a comprehensive manner. Making changes such [as]

⁸ Specifically, in addition to other changes, DWR proposed full-time multi-use on the Brad Freeman Trail, the Bidwell Canyon Trail, and the Dan Beebe Trail.

⁹ *Cal. Dep't of Water Res.*, 108 FERC ¶ 62,164 (2004).

the proposed trail use conversion is premature and untimely.”¹⁰

7. The 2004 Order concluded “based [on] the analysis presented in the attached [Final Environmental Assessment] and supported by the Commission record, that the subject trails should remain as originally designated in the approved recreation plan for the remainder of the license term.”¹¹

Environmental Analysis for Relicensing

8. In the relicensing proceeding for the Feather River Project, DWR filed a comprehensive Offer of Settlement (Settlement Agreement) on March 24, 2006,¹² and later filed a Settlement Agreement-Recreation Management Plan (SA-RMP) on March 28, 2006.¹³ The SA-RMP included a proposal to change existing trail designations, including changing the Dan Beebe and Loafer Creek trails from equestrian and hiking only to multiple use.

9. The Final Environmental Impact Statement (FEIS) for the relicensing included an analysis of the potential effects of the licensee’s proposal in the SA-RMP to change the existing trail use designations, including changing the Dan Beebe and Loafer Creek trails from equestrian and hiking only to multiple use.¹⁴ DWR proposed to do additional trail planning and design assessment to address resource protection and public safety *before* implementing changes to the trail use designations.¹⁵ Equestrians opposed the proposal in the SA-RMP to change trail use designations, citing concerns regarding safety, resource damage, and user conflicts.¹⁶

¹⁰ *Id.* at PP 17-20.

¹¹ *Id.* at P 22.

¹² DWR, Settlement Agreement and Explanatory Statement, Docket No. P 2100-052 (filed March 24, 2006).

¹³ DWR, Settlement Agreement Recreation Management Plan, Docket No. P 2100-052 (filed March 28, 2006).

¹⁴ Commission staff, Final Environmental Impact Statement for the Oroville Facilities Project (FEIS), Docket No. P 2100-052, at 201-280 (issued May 18, 2007) (Section 3.3.6 Recreational Resources).

¹⁵ FEIS at 255-269 (in Section 3.3.6.2 Recreational Resources).

¹⁶ FEIS at 10-11.

10. In the FEIS, Commission staff found that the existing trail designations provide a unique recreational experience for equestrians and that converting them to multi-use would adversely affect the equestrian experience because it could result in an increase in user conflicts and because it would result in the need for more trail modifications and maintenance. Staff also noted in the FEIS that some of DWR's recreational data that was used to justify the proposed trail use redesignation were inaccurate or incomplete. Therefore, Commission staff recommended revisions to the terms of the SA-RMP and DWR's proposal, including adding provisions to conduct a trail condition inventory *prior to* recommending changes, if necessary, to any trail use designation, collect trail use data, conduct visitor surveys (including methodology to focus on multiple use and user conflicts), and complete trail feasibility investigations.¹⁷

Licensee's Proposal

11. Due to the closure of certain recreational trails following the spillway emergency in February 2017, all recreational users have reduced access to trail mileage until DWR completes all reconstruction activities in 2019. The licensee requests Commission approval to temporarily redesignate portions of the Brad Freeman, Bidwell Canyon, Dan Beebe, and Loafer Loop recreational trails from equestrian/hiking-only or bicycle/hiker-only to multi-use until the reopening of the spillway recreation facilities. The proposed redesignation would allow equestrian use on portions of specific trails currently designated for bicycle/hiker use only and would allow bicyclist use of portions of specific trails currently designated for equestrian/hiker use only. DWR states that the trail designations would revert back to their original designations under the Recreation Plan when the recreation facilities reopen in 2019.

12. DWR indicates that if the redesignations are approved, California Parks would assess the trail segments to determine whether they meet that agency's multi-use design criteria for visibility, width, and slope, or whether improvements could include widening some trail sections, selective vegetation removal, or trail realignment. DWR states that changing the trail designations may require vegetation removal and ground disturbance because some trail segments do not currently conform to California Parks' multi-use standards. Ground disturbance has the potential to cause erosion and sedimentation, to affect cultural resources, and to increase the proliferation of invasive species. The proposal would also have temporary impacts on recreation due to restricted trail access during these ground-disturbing activities. DWR states that it would fully evaluate the environmental effects of any needed trail improvements and that California Parks would modify trail signage to reflect the temporary modified use designation

¹⁷ FEIS at 263, 359, 362, and 381 (Section 5.0 Staff's Conclusions).

13. According to DWR, the proposal to re-designate certain trails to multi-use was discussed at a special single-topic meeting with ORAC on June 1, 2018, at which representatives from bicycle and equestrian groups presented their respective positions to the committee. There was no consensus among user groups, but ORAC produced a recommendation for DWR to pursue the approval of the temporary trail redesignation. Ten committee members voted on this proposal, with six voting in favor, one voting no, and three abstaining.¹⁸

14. Finally, the DWR states that this proposal to change trail designations is consistent with the Settlement Agreement and is being proposed in order to comply with California Governor Edmund G. Brown, Jr.'s Executive Order B-39-17 signed on April 6, 2017, which directed the DWR to “develop plans for additional access points to Lake Oroville for recreational use.”¹⁹

IV. Public Notice

15. On July, 10, 2018, the Commission issued a notice of DWR's application and solicited comments, motions to intervene, and protests.²⁰ The deadline for filing responses to the notice was August 10, 2018.²¹ On August 3, 2018, the California State Water Contractors filed a motion to intervene and comments in support of DWR's request. On August 10, 2018, a combination of 12 equestrian organizations and 14 individuals (equestrian coalition) filed a motion to intervene, comments, and protest.²²

¹⁸ The ORAC vote on this proposal was as follows. Voting yes: Oroville Chamber of Commerce, Butte County, Butte County Citizens for Fair Government, Citizens for Fair and Equitable Recreation Use of Lake Oroville, Lake Oroville Fish Enhancement Committee, DWR. Voting no: Butte Sailing Club. Abstaining: California Department of Fish and Wildlife, California DPR, State Water Contractors. The City of Oroville and the California Sportfishing Protection Alliance were not present.

¹⁹ See <https://www.gov.ca.gov/news.php?id=19744>.

²⁰ See *Notice of Application Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests*, 83 Fed. Reg. 32, 849 (July 16, 2018).

²¹ On July 12, 2018, the Commission issued a notice extending the deadline from August 3 to August 10, 2018, to give interested parties sufficient opportunity to comment.

²² The equestrian coalition is composed of: Action Coalition for Equestrians, Oroville Pageant Riders, Golden Feather Riders, Desperate Horse Wives Group, Loafer Loop Riders Group, Back Country Horsemen (Sutter/Buttes unit), Safe Trails Alliance, Audubon Society, Emigrant Trail Conservancy, Back Country Horsemen (Mother Lode unit), Gold Country Trail Council, Paradise Horsemen assn., Janine Cody, Mike Cody,

The general reason for the protest involves safety and user conflicts. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.²³ The Commission also received comments from approximately 136 individuals and organizations. Approximately 34 of those individuals or organizations support the trail use redesignation, and approximately 102 oppose the trail use redesignation.

16. The State Water Contractors assert that the proposal to designate various trails as multi-use is consistent with the Recreation Plan, which was approved by a variety of interests as part of the Settlement Agreement. The State Water Contractors contend that Commission staff considered the proposed change in the 2007 FEIS and recognized that increased demand may require some limited use trails to become multi-use trails. They also request that the Commission adopt the proposed request without material modification.

17. The equestrian coalition reiterates the opposition to changing the designation of certain trails from equestrian/hiker-only to multi-use that was stated in response to the Settlement Agreement proposal to do the same. The equestrian coalition refers to Commission staff's recommendations from the FEIS that are also discussed above (i.e., to conduct a trail condition inventory *prior to* recommending changes to any trail use designation, collect trail use data, conduct visitor surveys, and complete trail feasibility investigations). They oppose the current proposal in order to protect the unique, safe, quiet trail experience, and they believe that DWR's request misrepresents the FEIS analysis as well as the Governor's Executive Order B-39-17.

V. Discussion

18. DWR's present application is similar to past proposals for trail use redesignations, and we deny it for similar reasons. Regardless of the new context of the spillway reconstruction, there remains considerable disagreement among user groups and insufficient information to justify a temporary change in trail use designations, especially given the studies and potential trail construction that would be necessary for this relatively short time period.

19. We are not able to quantify the current loss of trail availability for bicyclists within the Feather River Project boundary.²⁴ According to DWR's January 26, 2018 filing, bike

Robert Weinzinger, Nancy Weinzinger, Marlene Rold, Vickie Speegle, Lois Cameron, Mary Griffin, Gary Paul, Johnetta Nicholson, Tina Strangeland, Roxie Herrington, Sandra Finwick, Calvin Sanders.

²³ 18 C.F.R. § 385.214(c) (2018).

²⁴ There are varying trail mileages and distances in documents filed with the

users had access to approximately 37.3 miles of trails within the Lake Oroville State Recreation Area prior to the spillway incident, but they only have access to approximately 5.5 miles of trails following closures of the recreation area and trails. In an August 1, 2018 filing, DWR indicated that the Brad Freeman and Dan Beebe trails reopened from Lakeland trailhead to Glen Pond on April 18, 2018, the Dan Beebe trail opened from Glen Pond to Canyon Drive on June 29, 2018, and a connector trail was constructed from the existing Dan Beebe trail near the Palermo Canal so the trail can remain open during certain construction activities.²⁵ DWR did not provide mileages or distances for these trails or trail segments in either the July 10, 2018 or the August 1, 2018 filings. The licensee has been aware since the 2007 issuance of the FEIS that more data is needed regarding trail usage, condition, and maintenance, but DWR did not provide this type of information or data in its current request.

20. There are opportunities for mountain biking, including miles of single track dirt trails, logging roads, and four-wheel drive tracks, on public land within the Lassen and Plumas National Forests, and other areas, outside of the project boundary. However, we recognize that the trail closures and existing conditions resulting from the spillway emergency incident, the reconstruction, and associated activities have negatively impacted, and continue to negatively impact, recreation in the project area, possibly with a disproportionate impact to bicyclists. We also recognize that existing trails at the project that exclude bicyclists may ultimately prove to be suitable for multi-use in the future. However, the findings in the 2004 Order and in the 2007 FEIS remain true at this time that the existing trail designations provide a unique recreational experience for equestrians and that converting these trails to multi-use would adversely affect equestrians due to the potential increase in user conflicts and the need for more trail modifications and maintenance. Staff also noted in the FEIS that “DWR’s recreational data were, in some cases, inaccurate or incomplete (e.g., counters moved or malfunctioned during data collection period) and the data were collected in 2002-2003, at a time when the trails were managed for multiple use instead of their approved designation.”²⁶ DWR did not provide any current recreational use data for the project in its application to justify its proposal to open the existing equestrian/hiking-only trails to

Commission. A complete, up-to-date trail inventory, as recommended in the FEIS, would assist in accurately comparing and analyzing trail usage at the project.

²⁵ The Thermalito Diversion Pool and trails along its northern shore were opened from August 28 through September 4, 2018. See the map of Oroville Recreation Closures at https://water.ca.gov/-/media/DWR-Website/Web-Pages/What-We-Do/Recreation/Lakes-And-Reservoirs/Files/Oroville-Closure-Area_Labor-Day_2018.pdf?la=en&hash=DA78C02D5B7E4FCD1C9878925CB51BD8B8F7F608.

²⁶ FEIS at 263.

bicyclists and thus eliminate the existing unique recreational experience for equestrians at the Oroville facilities.

21. We expect that DWR will continue to open trails or portions of trails as conditions allow throughout the remainder of the spillway reconstruction period, so the negative impacts for bicyclists will decrease over the next several months and cease as all trails re-open when construction is completed in 2019. Additionally, DWR filed its request on July 10, 2018, with the acknowledgement that additional studies and trail construction would be required, so the proposed change would not practically add trail access for bicyclists within the near-term.

22. The trail use designations and related trail maintenance have been controversial subjects at Oroville for many years, and continue to be, as demonstrated by the large number of comments received in response to the public notice issued for this current proposal. The State Water Contractors' comment that the proposal to designate various trails as multi-use was approved by a variety of interests as part of the Settlement Agreement is misleading. As discussed above in the section titled *Environmental Analysis for Relicensing*, several equestrian groups specifically opposed the portion of the Settlement Agreement that proposed changing the equestrian/hiking-only trails to multi-use. While it is true that in the FEIS, Commission staff considered and analyzed a change in trail use designations and recognized that there may be a future increased demand for bicycle access to more trails, staff recommended a requirement to study the issue *prior to* proposing and implementing any changes to the existing trail use designations. We note that although many members of ORAC voted to send a redesignation proposal to the Commission for approval, the State Water Contractors abstained.

23. DWR cites Governor Edmund G. Brown, Jr.'s Executive Order B-39-17 as highlighting the importance of pursuing this proposal expeditiously. The executive order specifically directs DWR to develop plans for additional access points to Lake Oroville, but it is not clear that the Executive Order was meant to apply to all other recreational resources at the project. Also, we note that California Parks did not vote in favor of the ORAC motion, which recommended that "DWR undertake the process to direct [California Parks] to immediately make the Dan Beebe trail and Bidwell Canyon trail both become multi-use" DWR also states that this proposal is consistent with the licensing Settlement Agreement. However, equestrian groups filed in opposition to the settlement, stating that they did not agree with changing the equestrian-only trails to multi-use (i.e., to allow for bicycles) and citing concerns about safety, resources damage, and user conflicts. They also note that DWR proposed the changes without knowledge of the trail conditions since a trail condition inventory had not been completed.²⁷ Equestrian

²⁷ FEIS at 10-11.

groups also oppose this current proposal, as discussed above. The concerns they raise remain relevant, and DWR did not provide any new information on which to re-evaluate or ameliorate these issues.

24. Commission staff's analysis of the current proposal to change certain trail use designations finds that authorizing the change in trail designation temporarily would necessitate lengthy and costly studies and would have some negative environmental impacts due to required trail construction. It would permanently alter the tread width of the trails, which is undesirable for equestrians. Such physical alteration of the trails, realistically, may pre-judge a decision whether to permanently change the current trail designations to multi-use. As indicated in the licensee's application, trail assessments are required to determine whether trail widening, realignment, or vegetation removal would be necessary to meet multi-use design criteria. This could then require ground disturbance, which could adversely impact vegetation and cultural resources and cause erosion and the proliferation of invasive species. Therefore, we conclude that it is unwarranted to approve a temporary, controversial change in trail use designation that lacks consensus or sufficient information and was previously denied.

25. Based on our review of the application, we conclude that the proposed temporary amendment to the project's Recreation Plan should be denied. Denial of this request to change the trail designations does not in any way prejudice or pre-determine any decision or requirement that may become part of a new license.²⁸

The Director orders:

(A) The application for a temporary amendment to the Recreation Plan for the Feather River Hydroelectric Project (FERC No. 2100), filed on July 10, 2018, by the California Department of Water Resources, is denied.

(B) 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 (2018). 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

²⁸ The relicensing of the Feather River Project is pending before the Commission.

order. The licensee's failure to file a request for rehearing will constitute acceptance of this order.

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and Compliance