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Executive Director Determination re Extending FAST-41 Final Completion Date by More Than 30 Days

November 18, 2022

Boardman to Hemingway Transmission Line; Use Authorization (DOI-BOR) & Section 404 Clean Water Act (USACE)

I. Summary

The Boardman to Hemingway Transmission Line (B2H Project), sponsored by Idaho Power Company (Project Sponsor), is a “covered project” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), 42 U.S.C. § 4370m *et seq.* The Department of the Interior - Bureau of Land Management (BLM) has principal responsibility for an environmental review for the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, which makes BLM the lead agency for both NEPA and FAST-41.

BLM released a final environmental impact statement pursuant to NEPA on November 25, 2016, and issued a Record of Decision granting a right-of-way to the Project Sponsor for the construction, operation, and maintenance of the B2H Project on November 17, 2017. The B2H Project still has authorizations pending with two Federal agencies: a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (USACE), and a use authorization from the Department of the Interior - Bureau of Reclamation (BOR).

On September 21, 2022, BLM submitted a request to the Executive Director of the Federal Permitting Improvement Steering Council to modify the B2H Project’s permitting timetable on the Federal Permitting Dashboard. BLM requests an extension of the final completion date for the USACE Section 404 permit decision from February 15, 2023, to May 31, 2023, and an extension of the BOR use authorization decision from March 31, 2023, to May 31, 2023. BLM requests these extensions because the Project Sponsor was unable to submit complete applications for either the Section 404 permit or the use authorization by the dates presently posted on the Permitting Dashboard for application submittal. BLM is therefore requesting an extension of the final completion dates for these decisions to allow USACE and BOR sufficient time to review the Project Sponsor’s applications once those applications have been submitted. For the following reasons, the extension request is **GRANTED**, and the B2H Project permitting timetable will be revised accordingly.

II. Legal Standard

A lead agency may modify a permitting timetable only after: (1) consulting with the Executive Director regarding the potential modification; (2) reaching agreement on a different completion date with the affected cooperating agencies, after consulting with the participating agencies, the Executive Director, and the project sponsor; and (3) providing a written justification for the modification. 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(I-III).

If the proposed modification entails extending a final completion date by more than 30 days beyond the original final completion date, the lead agency additionally must submit a request to the Executive Director. The Executive Director then must consult with the project sponsor and make a determination on the record, based on consideration of relevant factors, whether to grant the modification. 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). The “relevant factors” considered by the Executive Director include, but are 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). Executive Director determinations to extend permitting timetables by more than 30 days beyond an original final completion date are not subject to judicial review. 42 U.S.C. § 370m-2(c)(2)(D)(iv)(I).

III. Background

The B2H Project is intended to provide additional electrical capacity between the Pacific Northwest region and the Intermountain region of southwestern Idaho. The approved route crosses approximately 100 miles of Federal land and about 190 miles of private land or land administered by the state. The Project Sponsor had to obtain a right of access to the private and state lands to complete survey work and wetland delineations to inform its Section 404 permit application. It took longer than the Project Sponsor had anticipated to gain access to those private and state lands. In fact, in some instances the Project Sponsor had to engage in state court litigation to gain the necessary right of access. Due to these delays, the Project Sponsor

has not yet completed the survey work and wetland delineations necessary to support its Section 404 permit application but anticipates it will do so in December 2022. The Project Sponsor then expects to submit its Section 404 application to USACE in January 2023.

State court litigation, including a state contested-case hearing process for required state permits, similarly has delayed the Project Sponsor from completing its construction plan of development (POD) in accordance with the completion date in its permitting timetable on the Permitting Dashboard. The POD is a construction compliance plan outlining how the Project Sponsor will meet federal construction requirements. The POD is a key component that must be submitted to BOR as part of BOR's use authorization process. For the B2H Project, the Project Sponsor is working with BLM and the State of Oregon to also include in the POD the Project Sponsor's plans for compliance with state construction requirements. Combining both federal and state requirements in a single POD is intended to provide a more streamlined and efficient approach for identifying project construction requirements. The state court and administrative proceedings that delayed development of the POD consequently delayed the Project Sponsor from submitting a complete use authorization application to BOR.

USACE and BOR both have informed the Executive Director that, assuming the Project Sponsor submits complete applications in January 2023, the Federal agencies will be able to render their respective permit and authorization decisions by May 31, 2023. USACE anticipates that BLM's requested revised final completion date for the Section 404 permit decision will be sufficient time regardless of whether the B2H Project applies for an individual permit or applies for coverage under one of the USACE nationwide permits. BOR has also confirmed to the Executive Director that May 31, 2023, is an appropriate revised final completion date for the use authorization decision, anticipating that it will complete its review relatively quickly once the Project Sponsor submits the necessary application materials, including the POD.

BLM consulted with the Project Sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I) regarding an extension of the final Section 404 permit and BOR use authorization completion dates to May 31, 2023, and has informed the Executive Director that the Project Sponsor has no objection to the requested permitting timetable extension.

The Executive Director similarly consulted with the Project Sponsor as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV) and confirmed the Project Sponsor does not object to the requested date changes.

IV. Discussion

The reasons underlying BLM's request to extend the B2H permitting timetable are outside the control of BLM, USACE, and BOR. The delays here are due to (1) difficulties in the Project Sponsor gaining access to conduct necessary surveys on private lands on which the B2H

Project will be located, and (2) state administrative and judicial proceedings related to state approvals that were necessary before the Project Sponsor could move forward with its planning processes, including construction planning and the related development of a POD. Notwithstanding the cause of the delays, in discussions with all the Federal agencies and the Project Sponsor regarding the requested extension of final completion dates, the Executive Director repeatedly heard how well the parties have been working together for authorizing various aspects of the B2H Project. BLM regularly joins the Project Sponsor in meetings with the Oregon Department of Energy. Similarly, USACE has coordinated with the Oregon Department of Environmental Quality regarding the timing of issuance of the state's water quality certification under Section 401 of the Clean Water Act, which must be issued before USACE can render its Section 404 permit decision. The Executive Director commends the Federal agencies for their cooperative efforts, and particularly commends BLM for working closely with the Project Sponsor and the state on the novel effort to address federal and state construction requirements in one POD. Given all the good work being done, and because the causes for the delay in the Project Sponsor's submission of the necessary applications are outside the control of the Federal agencies, the Executive Director finds that extending the completion dates for the USACE Section 404 permit decision and the BOR use authorization decision is warranted.

V. Determination

For the reasons identified above, BLM's extension request is **GRANTED**, and the permitting timetable is revised as requested.



Christine Harada
Executive Director
Federal Permitting Improvement Steering Council