

173 FERC ¶ 61,046  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and James P. Danly.

United Water Conservation District

Project No. 2153-067

ORDER SETTING ASIDE PRIOR ORDER

(Issued October 15, 2020)

1. On May 27, 2020, the National Marine Fisheries Service (NMFS) filed a request for rehearing of an April 27, 2020 Commission staff order modifying and approving United Water Conservation District's (United) Habitat Improvement Plan pursuant to license article 401(a) for the Santa Felicia Project No. 2153.<sup>1</sup> Pursuant to *Allegheny Defense Project v. FERC*,<sup>2</sup> the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act,<sup>3</sup> we are modifying the discussion in the April 27, 2020 Order and setting it aside, as discussed below.<sup>4</sup>

**I. Background**

2. The Santa Felicia Project is located on Piru Creek, a tributary of the Santa Clara River, in Ventura County, California. The Commission issued a new license for the project on September 12, 2008,<sup>5</sup> after completing formal consultation with NMFS under section 7 of the Endangered Species Act (ESA). Among other things, the new license

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<sup>1</sup> *United Water Conservation Dist.*, 171 FERC ¶ 62,068 (2020) (April 27, 2020 Order).

<sup>2</sup> 964 F.3d 1 (D.C. Cir. 2020) (en banc).

<sup>3</sup> 16 U.S.C. § 825l(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

<sup>4</sup> *Allegheny Def. Project*, 964 F.3d at 16–17.

<sup>5</sup> *United Water Conservation Dist.*, 124 FERC ¶ 62,193 (2008).

included measures, provided as Reasonable and Prudent Alternatives (RPA) in NMFS's Biological Opinion (BO), to avoid jeopardy to the endangered Southern California Distinct Population Segment<sup>6</sup> of steelhead and adverse modification of the species' designated critical habitat, as well as measures to avoid or minimize incidental taking of steelhead.<sup>7</sup> Article 401(a) of the license requires United to file for Commission approval the Habitat Improvement Plan required under RPA 1(c).<sup>8</sup> The plan was to be filed within 15 months of license issuance with NMFS's formal agreement prior to implementation.<sup>9</sup>

3. Prior to issuance of the new license, on January 23, 2007, Commission staff issued the final Environmental Assessment (EA) for the relicensing of the Santa Felicia Project, which also served as the Commission's biological assessment for ESA consultation. In the final EA, Commission staff found that relicensing the project would likely adversely affect the endangered Southern California Distinct Population Segment of steelhead and its designated critical habitat, and, as a result, on November 30, 2005, Commission staff requested initiation of formal consultation with NMFS under section 7 of the ESA.<sup>10</sup>

4. On May 5, 2008, NMFS issued its final BO for the relicensing of the Santa Felicia Project, which stated that the Commission's recommended alternative was likely to jeopardize the continued existence of listed steelhead and was likely to destroy or adversely modify the species' designated critical habitat.<sup>11</sup> To avoid these effects, the BO included an RPA for inclusion in the license to avoid jeopardy and adverse modification, as well as measures to avoid or minimize incidental taking of steelhead.<sup>12</sup> The RPA requires United to: (1) minimize the effects of Santa Felicia Dam and its operation on the quality and quantity of habitat for steelhead in Piru Creek downstream of the dam; (2) provide a water release plan and schedule to ensure unimpeded migration of adult and juvenile steelhead in Piru Creek downstream of Santa Felicia Dam and in the Santa Clara River, and to create and maintain freshwater spawning and rearing sites for

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<sup>6</sup> A Distinct Population Segment is a vertebrate population or group of populations that is discrete from other populations of the species and significant in relation to the entire species.

<sup>7</sup> *United Water Conservation Dist.*, 124 FERC ¶ 62,193 at app. B.

<sup>8</sup> *Id.* at 64,516–64,518.

<sup>9</sup> *Id.*

<sup>10</sup> Formal consultation was initiated on February 7, 2007.

<sup>11</sup> NMFS's May 5, 2008 Final Biological Opinion.

<sup>12</sup> *Id.* at 96–106.

steelhead throughout Piru Creek downstream of the dam; and (3) assess the feasibility of providing passage of steelhead at or around Santa Felicia Dam or a suitable alternative to passage.<sup>13</sup> Element 1 of the RPA further requires: (a) preparation of a geomorphic effects<sup>14</sup> study plan (Study Plan); (b) execution of the Study Plan and preparation of a findings report (Findings Report); and (c) preparation and implementation of a Habitat Improvement Plan.<sup>15</sup>

5. The Habitat Improvement Plan is intended to improve aquatic habitat conditions for federally-listed steelhead below Santa Felicia Dam, including channel bed morphology, substrate characteristics, and substrate condition.<sup>16</sup> Part 1(c) of the RPA provides that the plan should: (1) identify the specific geomorphic effects determined from implementation of the Study Plan; (2) identify specific measures to minimize geomorphic effects; (3) describe methods to install habitat improvement measures; (4) detail needed resource agency permits; (5) define effectiveness and performance criteria for each habitat measure; (6) describe field methods for effectiveness monitoring; (7) describe field methods for long-term maintenance; (8) detail decision criteria for judging the effectiveness and performance of the habitat improvement measures; (9) define schedules for implementation and monitoring; and (10) provide cost and engineering analyses.<sup>17</sup>

6. On October 26, 2010, Commission staff approved the geomorphic effects Study Plan.<sup>18</sup> The purpose of the study was to quantify the geomorphic effects of the Santa Felicia Dam and its operations on the quantity and quality of habitat for steelhead in Piru

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<sup>13</sup> *United Water Conservation Dist.*, 129 FERC ¶ 61,244, at P 13 (2009). The final EA analyzed the need for fish passage and found that providing fish passage around Santa Felicia Dam was not justified, given the small number of adult steelhead observed passing the downstream Freeman Diversion dam, the engineering challenges, and cost. However, the provisions were included in the license to ensure complete implementation of the RPA. EA at 199–200.

<sup>14</sup> Geomorphic effects are characterized as the effects to channel-bed morphology (shape), substrate characteristics, and condition.

<sup>15</sup> NMFS's May 5, 2008 Final Biological Opinion at 96–97.

<sup>16</sup> April 27, 2020 Order, 171 FERC ¶ 62,068 at P 3.

<sup>17</sup> NMFS's May 5, 2008 Final Biological Opinion at 97.

<sup>18</sup> *United Water Conservation Dist.*, 133 FERC ¶ 62,086 (2010).

Creek downstream of the dam.<sup>19</sup> On October 9, 2012, United filed the final Piru Creek geomorphology study Findings Report as required in RPA 1(b).<sup>20</sup> In response, on December 10, 2012, NMFS filed a letter with the Commission concluding that the Findings Report did not fulfill the requirements of RPA 1(b), that United failed to revise the report based on NMFS's comments, and that it did not have NMFS's formal agreement.<sup>21</sup> On January 18, 2013, Commission staff responded to NMFS's letter by noting its concerns and citing to the Findings Report to acknowledge United's efforts to address NMFS's comments.<sup>22</sup> Commission staff encouraged United and NMFS to work collaboratively to develop the Habitat Improvement Plan to address any remaining issues.<sup>23</sup>

7. Based on the Findings Report, United developed the first iteration of its Habitat Improvement Plan in 2013.<sup>24</sup> Since that time, United has undertaken extensive consultation efforts with NMFS, including written correspondence,<sup>25</sup> site visits, and formal meetings.<sup>26</sup> However, NMFS ultimately did not provide its formal agreement to the Habitat Improvement Plan.<sup>27</sup> United then provided NMFS and Commission staff a

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<sup>19</sup> United's October 5, 2012 Final Piru Creek Geomorphology Study Findings Report (filed Oct. 9, 2012).

<sup>20</sup> *Id.* As required in RPA 1(c), the geomorphic effects identified in the Findings Report will inform the content of the Habitat Improvement Plan, which will contain actions intended to minimize the identified geomorphic effects. *Id.*

<sup>21</sup> NMFS's May 27, 2020 Request for Rehearing at 6–7.

<sup>22</sup> Commission staff's January 18, 2013 letter.

<sup>23</sup> *Id.* As discussed below, NMFS's concerns with the findings report focused on sediment supply, flushing flows, and spill events, and were discussed in the April 27, 2020 Order. NMFS's request for channel alterations and installation of additional habitat improvements was raised during the development of later iterations of the Habitat Improvement Plan.

<sup>24</sup> April 27, 2020 Order, 171 FERC ¶ 62,068 at P 6.

<sup>25</sup> NMFS filed comments and recommendations on June 7, 2012, February 25, 2013, January 14, 2014, August 21, 2017, April 19, 2018, April 26, 2019, and February 6, 2020.

<sup>26</sup> April 27, 2020 Order, 171 FERC ¶ 62,068 at P 16.

<sup>27</sup> *Id.* P 13.

final iteration of the plan on March 15, 2019.<sup>28</sup> On April 26, 2019, NMFS filed comments on the plan, stating that it failed to comply with RPA 1(c) because the plan omits certain habitat measures that NMFS considers essential to address geomorphic effects.<sup>29</sup> On June 17, 2019, United filed an application requesting approval of the plan.<sup>30</sup>

8. On April 27, 2020, Commission staff issued an order modifying and approving the plan. Staff stated that given the history of the parties' inability to reach agreement, requiring further consultation would be ineffective.<sup>31</sup> Therefore, staff approved the Habitat Improvement Plan, modifying to incorporate NMFS's comments, to the extent they were consistent with the RPA.<sup>32</sup> Specifically, the approved Habitat Improvement Plan required measures to initiate gravel supplementation, conduct sediment and gravel monitoring, report on the effectiveness of monitoring, and implement changes based on monitoring results.<sup>33</sup>

9. On May 27, 2020, NMFS filed a request for rehearing of the April 27, 2020 Order, arguing that Commission staff wrongly approved the Habitat Improvement Plan because it does not include certain habitat improvement measures (including a schedule for implementing those measures) that NMFS states are essential for addressing geomorphic effects and attaining compliance with RPA 1(c). NMFS also contends that the order circumvents the requirements of RPA 1(c) by allowing the plan to go into effect without NMFS's formal approval.

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<sup>28</sup> United's March 15, 2019 Revised Habitat Improvement Plan (filed Mar. 18, 2019).

<sup>29</sup> NMFS's April 24, 2019 Comments on Habitat Improvement Plan (filed Apr. 26, 2019).

<sup>30</sup> United's June 14, 2019 Habitat Improvement Plan and Responses to NMFS's Comments (filed June 17, 2019).

<sup>31</sup> April 27, 2020 Order, 171 FERC ¶ 62,068 at P 17.

<sup>32</sup> *Id.* P 19.

<sup>33</sup> *Id.* P 33.

## II. Discussion

### A. The April 27, 2020 Order Erred in Allowing Implementation of the Habitat Improvement Plan Prior to Receiving NMFS's Formal Agreement

10. NMFS alleges that because the April 27, 2020 Order authorizes United to implement the Habitat Improvement Plan, and United has not received final agreement from NMFS, the order circumvents RPA 1(c).<sup>34</sup>

11. We agree that the April 27, 2020 Order erred in granting United authority to implement the plan prior to receiving final agreement from NMFS. RPA 1(c) requires that “[t]he [I]icensee [] receive final NMFS agreement for the final habitat-improvement plan prior to implementing the habitat-improvement plan.”<sup>35</sup> Therefore, we set aside the order to allow further consultation efforts to develop a plan that will receive NMFS’s final agreement prior to Commission approval and implementation.

12. We encourage United and NMFS to implement sound and timely measures to meet the requirements of RPA 1(c). Although NMFS disagrees with United’s and our interpretation of the RPA, we also recognize that there are points of agreement between the parties based on years of consultation. Review of the consultation efforts in the record indicates that there is general agreement concerning the utility of gravel augmentation below Santa Felicia Dam, which is a major element of United’s most recent Habitat Improvement Plan.

13. Given the unusual circumstances surrounding the development of the plan and in the interest of implementing mitigative measures in a timely manner, we encourage United and NMFS to consider a phased approach that includes implementing habitat improvement measures that are consistent with the Findings Report and have NMFS’s agreement.<sup>36</sup> This approach would, at minimum, provide immediate benefits to steelhead while United and NMFS continue to work toward a final Habitat Improvement Plan. In the event United and NMFS choose to implement a phased approach, United should coordinate the final details, gain NMFS’s approval on a first phase of plan implementation, and file the plan with the Commission for approval. We strongly urge United and NMFS to work collaboratively to find solutions to resolve the outstanding

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<sup>34</sup> NMFS’s May 27, 2020 Request for Rehearing at 25.

<sup>35</sup> NMFS’s May 5, 2008 Final Biological Opinion at 98.

<sup>36</sup> For example, United and NMFS may consider agreeing to immediately implement the gravel augmentation elements of the Plan in an initial phase, while the parties finalize any additional elements of a subsequent phase of the plan.

issues that are preventing the approval and implementation of the significantly delayed plan, including using the pending license amendment proceeding to incorporate certain habitat improvement measures.

14. In order to assist United and NMFS in resolving the matters at issue, the remainder of this order discusses other issues raised by NMFS in its request for rehearing.

**B. The April 27, 2020 Order Did Not Err in Determining That Habitat Improvement Measures Should Address the Effects Identified in the Findings Report**

15. NMFS argues that the April 27, 2020 Order wrongly determined that habitat improvement measures should be based solely on the project effects identified in the Findings Report.<sup>37</sup> NMFS avers that the order omits habitat measures that are essential for addressing the geomorphic effects of the project on endangered steelhead and designated critical habitat for the species.<sup>38</sup> NMFS asserts that the following four types of habitat improvement measures are necessary to attain compliance with RPA 1(c) before the Habitat Improvement Plan can be approved: (1) increasing pool frequency and depth; (2) enhancing habitat complexity of juvenile steelhead rearing sites; (3) relocating maintenance roads further from the creek to minimize sedimentation and restore riparian habitat; and (4) establishing and maintaining side-channel habitats.<sup>39</sup>

16. We agree with the April 27, 2020 Order's determination that the mitigation NMFS requests is outside the parameters of the RPA and that each measure should compensate for the geomorphic effects caused by the project and its operations, as described in the Findings Report.<sup>40</sup> RPA 1(c) requires that the licensee formulate a plan that (1) identifies the specific geomorphic effects determined from the Findings Report; and (2) identifies the specific habitat improvement measures that will be undertaken to minimize each geomorphic effect.<sup>41</sup> These geomorphic effects were identified through the Commission- and NMFS-approved Study Plan. Following completion of the geomorphic effects study, the Findings Report identified several factors that required additional action to offset the

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<sup>37</sup> NMFS's May 27, 2020 Request for Rehearing at 12–13.

<sup>38</sup> *Id.* at 10–12.

<sup>39</sup> *Id.*

<sup>40</sup> April 27, 2020 Order, 171 FERC ¶ 62,068 at P 29.

<sup>41</sup> NMFS's May 5, 2008 Final Biological Opinion at 97.

effects of the project.<sup>42</sup> These factors are primarily limited to sediment supply from the presence of Santa Felicia Dam. Therefore, Commission staff correctly determined that the RPA only required habitat improvement measures that addressed geomorphic effects identified in the Findings Report.

17. NMFS also claims that the April 27, 2020 Order recognized that “the [Habitat Improvement] Plan requirement under RPA 1(c) indicates that it should compensate for geomorphic effects caused by the project and its operations.”<sup>43</sup> NMFS asserts that the Findings Report and BO include descriptions of geomorphic effects of the proposed action on freshwater rearing for juvenile steelhead, which provides a basis for the omitted habitat improvement measures.<sup>44</sup>

18. We disagree. NMFS’s reference to an excerpt in the Findings Report it asserts provides a basis for the omitted habitat improvement measures is taken out of context and is merely a discussion of background sections of the document and general watershed scale effects in the project area.<sup>45</sup> Similarly, the reference to language in the BO that provides a basis for the omitted habitat improvement measures includes general species habitat requirements, as well as references to general expected effects of the project and anecdotal observations of project conditions.<sup>46</sup> None of the cited language contains a reference to actual study results contained in the Findings Report. As explained above, the Habitat Improvement Plan should offset only those effects identified in the Findings Report.<sup>47</sup> Commission staff’s review of Findings Report did not indicate that the broad array of habitat improvements that NMFS requested were warranted by the data contained in the Findings Report.<sup>48</sup> Consequently, the April 27, 2020 Order did not “...

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<sup>42</sup> United’s October 5, 2012 Final Piru Creek Geomorphology Study Findings Report (filed Oct. 9, 2012).

<sup>43</sup> NMFS’s May 27, 2020 Request for Rehearing at 15.

<sup>44</sup> *Id.* at 15–16.

<sup>45</sup> NMFS references a portion of the Executive Summary that discusses re-working the channel morphology via overbank flows at a frequency of approximately every five years. *See* United’s October 5, 2012 Final Piru Creek Geomorphology Study Findings Report at 5–6 (filed Oct. 9, 2012).

<sup>46</sup> NMFS’s May 27, 2020 Request for Rehearing at 16–17.

<sup>47</sup> *See supra* P 16.

<sup>48</sup> April 27, 2020 Order, 171 FERC ¶ 62,068 at P 29.

find a clear nexus between RPA 1(c) and the need for channel modifications or supplemental features, nor [we]re they recommended in the [Findings Report].”<sup>49</sup>

19. Moreover, NMFS’s initial August 30, 2012 comments on the Findings Report focus specifically on sediment supply, flushing flows, and spill events. There is no reference in NMFS’s 2012 comments to the need for channel alterations or any of the four requested types of habitat improvements. However, as the parties worked to develop the Habitat Improvement Plan, NMFS expressed its desire to include a broader range of habitat improvements, including the four requested types of measures.<sup>50</sup> Contrary to NMFS’s assertion, Commission staff found that those measures were not warranted by the results of the Findings Report, nor were they previously identified in the RPA or the Findings Report.<sup>51</sup> Further, requiring habitat improvement measures outside of the scope of the RPA and Findings Report negates the need for a geomorphic effects study plan, which is for the express purpose of identifying, refining, and prioritizing only those needed habitat improvements identified in the Findings Report. Thus, NMFS’s request for habitat improvements should only function within the parameters of the Findings Report, and its approving authority should not be interpreted as an opportunity to expand existing requirements beyond those of the RPA.

20. Next, NMFS argues had Commission staff contacted it prior to issuing the order, staff would have better understood the requirements of RPA 1(c) and how those requirements may relate to the Findings Report.<sup>52</sup>

21. Commission staff relies on the record in a proceeding to make informed decisions regarding license compliance. This includes review of the project license, Environmental Assessments or Environmental Impact Statements, compliance filings, reports, plans, and resource agency comments. Here, Commission staff regularly communicated with NMFS staff informally, as necessary, through phone calls and emails. On June 26, 2019, Commission staff and NMFS held a conference call to discuss the Habitat Improvement Plan filed by United for approval.<sup>53</sup> NMFS stated that the focus of the call would be “on

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<sup>49</sup> *Id.*

<sup>50</sup> NMFS filed additional comments and recommendations on February 25, 2013, January 14, 2014, August 21, 2017, April 19, 2018, April 26, 2019, and February 6, 2020.

<sup>51</sup> April 27, 2020 Order, 171 FERC ¶ 62,068 at P 29.

<sup>52</sup> NMFS’s May 27, 2020 Request for Rehearing at 13–14.

<sup>53</sup> *See* Commission staff’s August 7, 2020 Email Correspondence Memo at 2–5.

key items missing from United's Plan."<sup>54</sup> Thus, contrary to NMFS's assertion, Commission staff and NMFS did meet to discuss NMFS's perspectives on the plan and maintained a cooperative relationship prior to the approval of the plan.

22. NMFS also contends that the omission of certain habitat improvement measures from the plan is inconsistent with United's previous indication that the measures are necessary to satisfy its obligations under RPA 1(c) and the project license.<sup>55</sup> Regardless of whether United previously indicated that certain measures would be included in the Habitat Improvement Plan, the April 27, 2020 Order considered NMFS's proposed measures and determined that they were outside the scope of the RPA and Findings Report. United's previous statements have no bearing on this determination.

**C. The April 27, 2020 Order Did Not Err in Finding That United Would Be Unable to Provide Scouring Flows**

23. NMFS asserts that the April 27, 2020 Order wrongly approved a plan that does not provide an adequate flow release mechanism for mobilizing sediment to the degree that it would create increased pool frequency, pool volume, and pool depth in lower Piru Creek.<sup>56</sup> NMFS notes that the Findings Report analyzed certain flows that were needed to mobilize various gravel sizes and those flows should have been included in the plan.<sup>57</sup>

24. United has explained that it is unable to provide the full range of flows requested by NMFS due to the physical limitations of the flow outlet works.<sup>58</sup> Thus, the April 27, 2020 Order did not require United to provide flows it was incapable of providing.<sup>59</sup> We agree with this determination.

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<sup>54</sup> *Id.* at 4.

<sup>55</sup> NMFS's May 27, 2020 Request for Rehearing at 14–15.

<sup>56</sup> *Id.* at 18.

<sup>57</sup> *Id.* at 18–20.

<sup>58</sup> United's June 14, 2019 Habitat Improvement Plan and Responses to NMFS's Comments, Enclosure at 6 (filed June 17, 2019). Outlet works are defined as a closed conduit under or through a dam or through an abutment for the controlled discharge of the contents normally impounded by a dam and reservoir. Thus, flow releases are limited by the size and ensuing hydraulic capacity of the fixed conduit, as well as the limitations of the release valve and the hydraulic head of the reservoir.

<sup>59</sup> On May 26, 2020, United filed a license amendment to relocate and reconfigure the outlet works, which would have similar limitations on its maximum flow release

**D. The April 27, 2020 Order Did Not Err in Finding that Installation of Forcing Features is Not Supported by the Findings Report**

25. NMFS argues that the April 27, 2020 Order should have required forcing features to be installed in lower Piru Creek to encourage the creation and maintenance of pool habitat immediately below Santa Felicia Dam.<sup>60</sup> As discussed above, NMFS makes no reference to any relevant portions of the Findings Report that recommended improvements to pool frequency, pool quality, or forcing features.<sup>61</sup> Although we recognize the value of these channel characteristics, NMFS's proposed measures are not supported by the Findings Report.

**E. The April 27, 2020 Order Did Not Err in Not Providing a Schedule for Implementing Certain Channel Improvement Measures**

26. NMFS contends that the April 27, 2020 Order's recommendation that United incorporate channel improvement elements into the upcoming dam safety improvement project<sup>62</sup> lacks specificity regarding the scope of the necessary improvements.<sup>63</sup> NMFS asserts that this recommendation may be construed as an adequate substitute for the omitted habitat improvement measures and could lead to delays in developing the Habitat Improvement Plan.<sup>64</sup> NMFS also states that the lack of a schedule for when channel improvement elements would take place fails to meet RPA 1(c), which requires schedules

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capability. United's May 13, 2020 Application for Non-Capacity Related License Amendment (filed May 26, 2020).

<sup>60</sup> NMFS's May 27, 2020 Request for Rehearing at 23–24.

<sup>61</sup> *See supra* P 19.

<sup>62</sup> On May 26, 2020, United filed an amendment application to conduct safety improvements on the Santa Felicia Dam. *See* United's May 13, 2020 Application for Non-Capacity Related License Amendment (filed May 26, 2020). Specifically, as part of the proposed amendment, United is proposing to relocate the Piru Creek stream channel and to make various channel improvements. *See* United's July 28, 2020 Biological Assessment (filed July 29, 2020).

<sup>63</sup> NMFS's May 27, 2020 Request for Rehearing at 24–25.

<sup>64</sup> *Id.* at 24.

to guide habitat implementation measures and conduct effectiveness and performance monitoring.<sup>65</sup>

27. The RPA states that the Habitat Improvement Plan submitted to NMFS for approval should “define schedules to guide implementation of the habitat-improvement measures . . . .”<sup>66</sup> The RPA also states that “[s]pecific details of various elements of th[e] study plan, including schedules, will be developed by the [l]icensee in cooperation with and agreement from NMFS prior to implementation of th[e] plan.”<sup>67</sup> However, as outlined above, Commission staff did not agree that the full range of habitat improvements requested by NMFS were warranted based on the results of the Findings Report. Thus, the order approving the Habitat Improvement Plan did not include a schedule for implementing those measures. Instead, the April 27, 2020 Order approved United’s proposed schedule.<sup>68</sup>

28. With respect to channel improvements, as discussed in the April 27, 2020 Order, the licensee has proposed to implement a dam safety project, which would entail relocating a portion of the Piru Creek channel immediately below Santa Felicia Dam.<sup>69</sup> The order raised the prospect of incorporating channel improvement measures into the upcoming dam safety project and taking advantage of a valuable opportunity to design the channel in a way that would improve the habitat for steelhead immediately.<sup>70</sup> This recommendation lacked specificity regarding timing because the license amendment had not yet been filed.<sup>71</sup> Thus, the April 27, 2020 Order did not require United to make the proposed channel improvements or establish a schedule for proposing such improvements

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<sup>65</sup> *Id.*

<sup>66</sup> NMFS’s May 5, 2008 Final Biological Opinion at 97.

<sup>67</sup> *Id.* at 97–98.

<sup>68</sup> April 27, 2020 Order, 171 FERC ¶ 62,068 (approving United’s proposed Habitat Improvement Plan, which included a schedule for implementation).

<sup>69</sup> *Id.* P 31.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* Since the issuance of the order approving the Habitat Improvement Plan, the license amendment application has been filed with Commission. *See* United’s May 13, 2020 Application for Non-Capacity Related License Amendment (filed May 26, 2020).

because they were not warranted by the Findings Report and the license amendment request was still conceptual in nature.

**F. Request for Extension of Time**

29. On July 24, 2020, United filed a request for an extension of time to implement the Habitat Improvement Plan due to its need to obtain necessary resource agency permits for plan implementation. Because we are setting aside the April 27, 2020 Order, the licensee's July 24, 2020 request is dismissed as moot.

The Commission orders:

(A) In response to NMFS's May 27, 2020 request for rehearing, the April 27, 2020 Order is hereby modified and set aside as discussed in the body of this order.

(B) United's July 24, 2020 request for an extension of time to implement the Habitat Improvement Plan is dismissed as moot.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.