

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Baiocchi Family

v.

Project Nos. 2100-130  
and 2426-190

California Department of Water Resource

ORDER DISMISSING COMPLAINT

(Issued December 21, 2004)

1. On November 9, 2004, the Baiocchi Family filed a complaint against the California Department of Water Resources (DWR), licensee for the California Aqueduct Project No. 2426 and the Oroville Project No. 2100.<sup>1</sup> The California Aqueduct Project is located on the California Aqueduct, in San Bernadino, Los Angeles, San Luis Obispo, Ventura, and Kern Counties, California, while the Oroville Project is located on the Feather River, Butte County, California. The Oroville Project is currently in the relicensing process, while the California Aqueduct project is operating under the terms of a license that will expire in 2022.

2. The Baiocchi Family states that DWR “is proposing to divert more water through [project] pumps into the California Aqueduct,” that “threatened and endangered anadromous fish species may be adversely affected,” and that “the Commission has a duty and responsibility to the public to protect the public trust assets at FERC licensed projects when major changes are proposed by licensees.”<sup>2</sup> The complaint then states that the Commission should require the licensee to file an application to amend its license(s)

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<sup>1</sup> The Baiocchi Family states that the complaint is also filed on behalf of winter-run Chinook salmon, spring-run Chinook salmon, and steelhead trout.

<sup>2</sup> Complaint at 2.

to make the proposed changes, that the amendment proceeding must act as a reopener to the existing licenses to protect anadromous fish species, and that the Commission should require the licensee to answer a series of questions set forth in the complaint.<sup>3</sup>

3. The Commission's regulations provide that a complaint must allege that a person is "in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction" and must "[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements."<sup>4</sup>

4. Here, the Baiocchi Family alleges that a proposal apparently under consideration by DWR will have adverse effects on threatened or endangered species. The complainant does not allege that DWR is in violation of its license, or of any statute or regulation. If DWR files the proposal in question with the Commission, whether in the context of a relicensing proceeding or as an application for a license amendment, the Commission, in deciding whether and under what conditions to approve the proposed action, will examine its impact on all affected resources, including threatened and endangered species. Any proposal to materially amend either license will be publicly-noticed, and members of the public will have an opportunity to comment on it. However, the mere fact that DWR is considering a particular course of action cannot, without more, constitute a violation of law or regulation. We therefore dismiss the complaint.

The Commission orders:

The complaint filed by the Baiocchi Family on November 9, 2004, is dismissed.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>3</sup> *Id.* at 3-4.

<sup>4</sup> *See* 18 C.F.R. § 385.206(a) and (b) (2004).