

142 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Calleguas Municipal Water District

Project No. 14404-001

ORDER GRANTING REHEARING AND AMENDING EXEMPTION

(Issued January 17, 2013)

1. On October 25, 2012, the Calleguas Municipal Water District (Calleguas) filed a request for rehearing of Commission staff's September 25, 2012 order¹ granting it an exemption from the licensing requirements of Part I of the Federal Power Act (FPA)² for the Grandsen Hydroelectric Generating Station Project No. 14404 (Grandsen Hydro Project). The project will be located in the City of Moorpark, in Ventura County, California. We grant Calleguas' request for rehearing and amend the exemption order as discussed below.

Background

2. Section 30 of the FPA³ provides that the Commission may grant an exemption from licensing for a small conduit hydroelectric project (i.e., a project that uses the hydroelectric potential of a manmade conduit that is operated primarily for agricultural, municipal, or industrial purposes). The exempted project includes only those facilities that are "constructed, operated, or maintained for the generation of electric power."⁴ It does not include the conduit on which the hydroelectric facility is located or any dam or impoundment.⁵

¹ *Calleguas Mun. Water Dist.*, 140 FERC ¶ 62,224 (2012).

² 16 U.S.C. §§ 792-823 (2006).

³ 16 U.S.C. § 823a (2006).

⁴ *Id.*

⁵ *See* 18 C.F.R. § 4.30(b)(28) (2012).

3. On May 4, 2012, and supplemented June 5 and 6, 2012, Calleguas filed an application for a small conduit hydroelectric facility for the 360-kilowatt (kW) Grandsen Hydro Project, located on Calleguas' municipal water supply conduit. The project will capture a portion of the hydraulic energy contained in the flow of Calleguas' municipal water supply system through a new powerhouse with two 180-kW reverse pump-type turbines located on land previously disturbed by the construction of an adjacent pump house that is part of Calleguas' water supply system.

4. On June 28, 2012, the Commission's Secretary issued public notice of Calleguas' conduit exemption application. The U.S. Department of the Interior (Interior) filed a comment stating that, while the project site is already disturbed and does not contain any vegetation, vegetation located adjacent to the project site may contain the federally threatened coastal California gnatcatcher, and this species could be indirectly adversely affected by the project's noise effects during construction. Interior thus recommended, among other things, that exemptee "attenuate all sources of noise to less than 60 decibels if the [p]roject activities occur within 500 feet of the adjacent vegetation" ⁶

5. On September 25, 2012, Commission staff issued an order granting the Grandsen Hydro Project an exemption from licensing. The order adopted Interior's recommendation in Ordering Paragraph (D), which states:

In order to protect potential habitat near the project site for the California gnatcatcher, the exemptee shall attenuate all sources of noise to less than 60 decibels for project activities that occur within 500 feet of the adjacent vegetation. Additionally, the exemptee shall adjust project lighting downward and away from open space areas to decrease predation risk to this species.

6. On October 25, 2012, Calleguas filed a request for rehearing.

Discussion

7. On rehearing, Calleguas asks the Commission to modify Ordering Paragraph (D) of the exemption order. Calleguas states that the requirement that it attenuate noise levels below 60 decibels at the project site is not achievable during project construction. Calleguas states that it has engaged Interior's U.S. Fish and Wildlife Service (FWS) in discussions for a suitable alternative condition that would allow the project to move forward. On November 8, 2012, Calleguas filed an October 25, 2012 letter from FWS that provides a mutually agreeable alternative condition to protect the California gnatcatcher. Calleguas has agreed to conduct surveys for the California gnatcatcher in

⁶ July 30, 2012 letter from Patricia Sanderson Port (Interior) to Kimberly D. Bose (Commission Secretary).

nearby suitable habitat and attenuate noise levels to 60 decibels or less as measured at those areas if California gnatcatchers are observed.

8. The request to amend Ordering Paragraph (D) is reasonable, ensures that noise impacts on the California gnatcatcher are avoided, and is consistent with the recommendation of the FWS. Thus, we grant rehearing and modify Ordering Paragraph (D) accordingly.

The Commission orders:

(A) Calleguas Municipal Water District's October 25, 2012 request for rehearing of the September 25, 2012 order granting an exemption from the licensing requirements of Part I of the Federal Power Act for Project No. 14404 is granted.

(B) Ordering Paragraph (D) of the order granting an exemption is revised to state:

To ensure that noise impacts to the California gnatcatcher are avoided, the exemptee shall conduct protocol-level surveys for the coastal California gnatcatcher within suitable habitat adjacent to the project site. If gnatcatchers are observed, the exemptee shall attenuate all sources of noise for project activities to less than 60 decibels as measured at the area in which the gnatcatcher was observed, thus avoiding indirect impacts to the species. If no California gnatcatchers are observed in adjacent habitat, no restrictions on noise are necessary. Additionally, the exemptee shall adjust project lighting downward and away from open space areas to decrease predation risk to this species.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.