

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

California Department of Water Resources

Project No. 2100-052

NOTICE DENYING LATE INTERVENTION

(October 5, 2020)

On September 12, 2005, the Commission issued public notice of the California Department of Water Resource's new license application for the Oroville Project No. 2100. The notice established January 30, 2006, as the deadline to file motions to intervene. On September 29, 2006, the Commission issued public notice of the draft environmental impact statement (EIS) for the project, which established November 28, 2006, as the deadline to file motions to intervene based on the draft EIS.<sup>1</sup> On November 20, 2019, the Feather River Recovery Alliance (Recovery Alliance) filed a late motion to intervene. Recovery Alliance's motion to intervene is unopposed.

Movants for late intervention are required to "show good cause why the time limitation should be waived."<sup>2</sup> They should also provide justification by reference to the other factors set forth in Rule 214(d) of the Commission's Rules and Regulations.<sup>3</sup>

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<sup>1</sup> Under the Commission's regulations, if an entity files a motion to intervene within the comment period for a draft EIS, it will be considered timely. 18 CFR 380.10(a) (2020).

<sup>2</sup> 18 CFR 385.214(b)(3); *see Cal. Trout v. FERC*, 572 F.3d 1003, 1022 (9th Cir. 2009) (finding that failure to show good cause is a sufficient basis for the Commission to deny late intervention).

<sup>3</sup> 18 CFR 385.214(d)(ii)-(iv) (factors include the potential disruption caused by such late intervention, whether the movant's interest is not adequately represented by other parties, and any prejudice to existing parties). *See also Tennessee Gas Pipeline Co., L.L.C.*, 162 FERC ¶ 61,167, at PP 49-50 (2018) (expressing concern regarding late-filed motions to intervene that fail to adequately address the requirements in the Commission's regulations) and *DTE Midstream Appalachia, LLC*, 162 FERC ¶ 61,238, at P 11 (2018) (same).

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Here, Recovery Alliance failed to demonstrate that good cause exists to grant its motion to intervene out of time. In the motion, Recovery Alliance provided no explanation as to why it was unable to intervene in a timely manner or any other explanation that would justify missing the intervention deadlines. In a supplemental filing on March 17, 2020, Recovery Alliance states that it is a community-based organization formed after 2017. However, the formation of a group after a deadline for timely intervention is not sufficient to show good cause as to why the deadline should be waived.<sup>4</sup> Therefore, Recovery Alliance's motion to intervene is denied. The Recovery Alliance's pleadings will be considered as comments in any subsequently issued dispositive order.

This notice constitutes final agency action. Requests for rehearing of this notice must be filed within 30 days of the date of issuance of this notice, pursuant to section 313(a) of the Federal Power Act, 16 USC 825l(a), and Rule 713 of the Commission's Rules of Practice and Procedure, 18 CFR 385.713 (2020).

Kimberly D. Bose,  
Secretary.

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<sup>4</sup> See *Bradwood Landing, LLC*, 126 FERC ¶ 61,035, at P 17 (2009) (in determining that being a newly-formed entity is not a sufficient reason to grant late intervention at a late stage of a proceeding, the Commission found that "allowing a newly-formed entity to intervene late based on the date of its formation could encourage the formation of groups simply to seek late intervention.").

Document Content(s)

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