



U.S. Fish and Wildlife Service

Finding of No Significant Impact

for the Issuance of a Short-Term Eagle Take Permit for the
Lower Klamath Project

California

Prepared by:

U.S. Fish and Wildlife Service, California-Great Basin Region
Division of Migratory Birds and Habitats
U.S. Department of the Interior
2800 Cottage Way, W-2606, Sacramento, CA 95825
Contact: Heather Beeler, heather_beeler@fws.gov, (775) 861-6304

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Introduction

The U.S. Fish and Wildlife Service (Service) received an application from the Klamath River Renewal Corporation (KRRRC) requesting eagle take coverage under the Bald and Golden Eagle Protection Act (Eagle Act) (16 United States Code [U.S.C.] §§ 668 and 50 Code of Federal Regulations [CFR] § 22.80¹) for incidental disturbance take of eagles at the Lower Klamath Project (Federal Energy Regulatory Commission [FERC] Project No. 14803) (Project). The Project includes the removal of four dams and associated restoration activity on the Klamath River in Klamath County in south-central Oregon, and in Siskiyou County in north-central California. The Applicant requested a five (5) year incidental take permit (permit) for the disturbance of golden eagles (*Aquila chrysaetos*) and bald eagles (*Haliaeetus leucocephalus*) that would prevent territorial pairs from successfully breeding and producing young. Issuance of a permit by us for take that is incidental to otherwise lawful activities under the Eagle Act constitutes a discretionary Federal action that is subject to the National Environmental Policy Act (NEPA; 42 U.S.C. §§ 4321–4347).

In accordance with NEPA, we prepared an Environmental Assessment (EA) analyzing the environmental consequences of issuing a permit for the disturbance take of golden eagles and bald eagles associated with the Project, as well as alternatives to this proposed action (Attachment 1). The EA assists us in ensuring compliance with NEPA and in making a determination as to whether any “significant” effects to the environment not previously analyzed under our Programmatic Environmental Impact Statement (EIS) for the Eagle Rule Revision, December 2016 (Service 2016) could result from the analyzed actions, which would require preparation of an EIS. “Significance” under NEPA is addressed by regulation 40 CFR § 1501.3 and requires we analyze the potentially affected environment and degree of the effects of the action. The definition of effects was recently updated at 40 CFR 1508.1(g) to include cumulative effects; the updated definition was used in making this decision and analyzed in the EA. This EA incorporates by reference elements of the FERC final EIS, including the Project description, evaluated alternatives, and biological impacts analyses (FERC 2022). The EA evaluates the effects of alternatives for our decision whether to issue an eagle incidental take permit.

The Service’s purpose in considering the proposed action, issuance of an eagle incidental take permit, is to fulfill our authority under the Eagle Act (16 U.S.C. §§ 668) and its regulations (50 CFR § 22). Applicants whose otherwise lawful activities may result in take of eagles can apply for incidental take permits so that their projects may proceed without potential violations of the Eagle Act. We may issue permits for eagle take that is associated with, but not the purpose of, an activity. Such permits can be issued by us when the take that is authorized is compatible with the Eagle Act preservation standard; is necessary to protect an interest in a particular locality; is

¹ Effective February 7, 2022, 50 CFR 22.26 was renumbered to 50 CFR 22.80 (87 FR 876, Migratory Bird Permits: Administrative Updates).

associated with, but not the purpose of, the activity; and cannot be practicably avoided (50 CFR § 22.80(f) and 81 Federal Register [FR] 91494).

The need for this federal action is a decision on an eagle incidental take permit application from KRRC that is in compliance with all applicable regulatory requirements set forth under the Eagle Act in 50 CFR § 22.80.

KRRC is requesting a permit to authorize take from disturbance of bald eagles and golden eagles that would prevent territorial pairs from successfully nesting and producing young. This EA evaluates whether issuance of the eagle incidental take permit will have significant effects on the existing potentially affected environment and the degree of the effects of the action. In considering this, 40 CFR § 1501.3 directs an agency to consider the affected area (national, regional, or local) and its resources. In evaluating the degree of the effects, we must also consider short-term, long-term, beneficial, and adverse effects; impacts to public health and safety; and compliance with other environmental protection laws.

This proposal conforms with, and carries out, the management approach analyzed in, and adopted subsequent to, our Programmatic EIS (PEIS) for the Eagle Rule Revision (Service 2016). Accordingly, this EA tiers from the 2016 PEIS. We will consider project-specific information not considered in the PEIS in this EA as described below.

Public Comment and Tribal Coordination

We published drafts of this FONSI and our EA on our Regional webpage² for a 30-day public comment period from June 23, 2022 to July 23, 2022. We received no public comments on either document during this open period.

To notify Tribes regarding potential issuance of an eagle take permit, we sent letters to 12 federally-recognized tribal governments located within 109 miles of golden eagle nests and 86 miles of bald eagle nests (the average natal dispersal distances of golden eagles and female bald eagles, respectively, thought to adequately define the local area populations [LAPs] of the eagles) located within 2 miles of the Project disturbance footprint, informing them of the received permit application and preparation of the EA. We also encouraged comments from tribes during the 30-day public comment period for the draft FONSI and EA. We received no responses following this notice about preparing the EA or our eagle take permit considerations.

² <https://www.fws.gov/library/collections/nepa-documents-eagle-permits-requested-california-and-nevada>

Proposed Action

We propose to issue a 5-year permit to authorize up to 26 instances of bald eagle and 17 instances of golden eagle take from disturbance of breeding pairs caused by Project activities, with associated conditions, as allowed by regulation. To allow for operational flexibility, KRRC may utilize their take authorizations for up to 5 years, inclusive of future nest locations within the Project Area that are not yet specifically identified. The effects of the authorized take to eagle populations are expected to be the same, regardless of the exact locations of nesting eagles. The action includes the requirement to implement avoidance and minimization measures, conduct eagle monitoring, and, if necessary, implement adaptive management, which we would use to review permit compliance and to verify authorized take is not exceeded.

Take of bald and golden eagles is predicted to occur; however, for bald eagles the projected impacts fall below designated take thresholds for the relevant LAP and eagle management unit (EMU) (Service 2016), therefore we have no concerns for population level impacts. The take threshold for golden eagles is zero, however, the Proposed Action fully offsets the take of golden eagles at the population level by decommissioning a sufficient number of electric utility poles and removing all associated lines and energized infrastructure. The Proposed Action also includes monitoring of eagle territories and nest sites within 2 miles of the Project.

The Proposed Action is consistent with the purpose and need for this federal action and is in compliance with all statutory (16 U.S.C. §§ 668) and regulatory requirements (50 CFR § 22.80 and 50 CFR § 13.21), including the criteria codified for permit issuance (50 CFR § 22.80(f)).

Potentially Affected Environment

The Project includes the removal of four dams and infrastructure, and associated restoration activities, on the Klamath River in Klamath County in south-central Oregon, and in Siskiyou County in north-central California. Our EA analyzes the potential affects to the environment caused by our issuance of an incidental eagle take permit to the Applicant for their otherwise lawful activities.

Degree of Effects

The following have been considered in evaluating the degree of the effects (40 CFR 1501.3(b)(2)), as appropriate, of the Proposed Action:

1. Short- and long-term effects

We expect no direct mortality of bald or golden eagles to occur as a result of the Project, and no such take would be authorized under the permit. However, we do expect Project activities to cause short-term adverse effects to the breeding efforts of individual pairs of bald and golden eagles.

Project-related disturbances leading to at least temporary reductions in breeding activity and/or productivity are expected to occur at bald eagle breeding territories with nests located within 0.5

miles, and golden eagle breeding territories with nests located within 2 miles of the Project footprint, respectively.

Although we expect some bald eagle nest locations and breeding territory domains to shift as a result of the reservoir drawdowns and other Project disturbances, we generally do not anticipate that the Project will result in the permanent abandonment and loss of bald eagle breeding territories. We anticipate that current territory spacing will be sufficient for the pairs to maintain their current, general domains while potentially adjusting their nesting locations to focus on restored river resources rather than reservoir resources. Should they in fact relocate, we do not expect to lose any bald eagle breeding territories along the Klamath River or in the LAP.

Although golden eagles are opportunistic, we do not expect reservoir drawdowns and temporary degradations of river quality to adversely affect golden eagles in the Project area because the species typically does not exploit aquatic prey resources to a significant degree.

2. Beneficial and adverse effects

As discussed in the previous section, Project-related disturbances and issuance of our Permit would result in temporary adverse effects by causing reductions in breeding activity and/or productivity at both bald and golden eagle breeding territories. As part of the Project's inherent design, over 14 miles of low and medium voltage electric-utility lines, including more than 220 power poles and associated energized infrastructure will be decommissioned and all lines and energized infrastructure removed. The existing electric infrastructure represents electrocution and collision risk for both bald and golden eagles and migratory birds. The lines and electric utility infrastructure will be decommissioned and removed as part of the Project, with selected decommissioned poles left in place to serve as eagle perches. We have accepted these removals as offsetting mitigation for golden eagle, resulting in no net loss to golden eagle populations for the project – a requirement under our permit regulations to prevent population-level effects.

Removal of power lines under the Project and Proposed Action will prevent injury and mortality caused by electrocution and collisions with the electric utility infrastructure. We have determined the powerline removals will offset population-level impacts to golden eagles and provide a long-term benefit to bald and golden eagles, and migratory bird populations by reducing the potential for electrocution and collision on the landscape.

As described in our EA (Appendix 1), our decision regarding issuance of an eagle take permit would not alter the physical footprint of the Project and therefore would not alter the Project impacts to any federally threatened and endangered species in the Plan Project boundary, nor would it result in any impacts to cultural and socioeconomic interests.

Although we expect Project activities to adversely affect individual pairs of bald eagles, the projected impacts fall below our designated take thresholds for the relevant LAP and EMU (Service 2016). Our risk assessment was conservative to account for uncertainties regarding how long bald eagles may be impacted by changes in water quality and impacts to their waterfowl and fishery prey base at the reservoirs and in the river system. We do not expect our issuance of an eagle incidental take permit to KRRC for this Project to result in a significant population-level effect for bald eagles.

Although we expect Project activities to adversely affect individual pairs of golden eagles, authorized take will be fully offset by effective mitigation stemming from the Project reducing electrocution risk by decommissioning more than 220 electric-utility power poles. Therefore, the cumulative effects contributed to golden eagle populations from our authorizations under an eagle take permit would result in no net loss at the population level. The cumulative impact from issuance of an incidental eagle take permit to KRRC is within the range of what we have determined is compatible with our goals of maintaining stable or increasing breeding populations of eagles in all EMUs, and the persistence of local populations throughout the geographic range of the species. Therefore, issuance of this eagle take permit would not result in significant effects to golden eagles and would provide a long-term net benefit to bald and golden eagles and migratory birds.

3. Effects on public health and safety

The Proposed Action would include offsetting golden eagle take by removing electric utility infrastructure, thereby preventing eagle electrocutions. As eagle and other raptor electrocutions on power poles can start fires, decreasing eagle and other raptor electrocutions could also benefit human safety by reducing fire risk.

4. Effects that would violate Federal, State, Tribal, or local law protecting the environment

The Proposed Action, issuance of an incidental take permit under the Eagle Act, does not violate any known Federal, State, Tribal, or local law or requirement imposed for the protection of the environment. In addition, the Proposed Action is consistent with applicable Eagle Act, MBTA, and ESA regulations, policies, and programs.

Finding of No Significant Impact Determination

Our Migratory Bird Program concludes, based on the analyses outlined in the EA and the information provided above, that the Proposed Action would not cause significant effects on the environment based on criteria established by regulations, policy, and analysis. We conducted analyses of effects at the Project, LAP, and regional/EMU scales, and we assessed direct, indirect, and cumulative effects. The selected Proposed Action is unlikely to have significant impacts on eagles, because a significant population-level effect for bald eagles is not expected, all reasonably foreseeable take of golden eagles will be fully offset, cumulative effects are addressed, and the Proposed Action meets the Eagle Act's preservation standard (16 U.S.C. §§ 668(a), 50 CFR § 22.80(a)) and all regulatory requirements (50 CFR § 22.80, 50 CFR § 13.21).

Based on the findings discussed herein, we conclude that the Proposed Action is not a major federal action and will result in no significant impacts to the environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition of significance in 40 CFR 1501.3. Therefore, preparation of an EIS to further analyze possible effects is not required pursuant to NEPA Section 102(2)(c), and our environmental review under NEPA is concluded with this finding of no significant impact.

Signed

Thomas Leeman
Deputy Chief, Migratory Bird Program
California-Great Basin Region
U.S. Fish and Wildlife Service

References

- 16 United States Code (U.S.C.) § 668. Title 16 – Conservation; Chapter 5a - Protection and Conservation of Wildlife; Subchapter II - Protection of Bald and Golden Eagles; Section (§) 668 - Bald and Golden Eagles. Available at: <http://uscode.house.gov>.
- 33 United States Code (U.S.C.) § 1344. Title 33 – Navigation and Navigable Waters; Chapter 26 – Water Pollution Prevention and Control; Subchapter IV – Permits and Licenses; Section (§) 1344 – Permits for dredged or fill material. Available at: <http://uscode.house.gov>.
- 40 Code of Federal Regulations (CFR) § 1501.3. Title 40 – Protection of Environment; Chapter V – Council on Environmental Quality; Subchapter A – National Environmental Policy Act Implementing Regulations; Part 1501 – NEPA and Agency Planning; Section (§) 1501.3 – Determine the appropriate level of NEPA review. Available at: <https://www.ecfr.gov>.
- 40 Code of Federal Regulations (CFR) § 1508.1. Title 40 – Protection of Environment; Chapter V – Council on Environmental Quality; Subchapter A – National Environmental Policy Act Implementing Regulations; Part 1508 – Definitions; Section (§) 1508.1 - Definitions. Available at: <https://www.ecfr.gov>.
- 42 United States Code (U.S.C.) §§ 4321–4347. Title 42 – the Public Health and Welfare; Chapter 55 - National Environmental Policy; Subchapters I (Policies and Goals) and II (Council on Environmental Quality); Sections (§§) 4321–4347. Available at: <http://uscode.house.gov>.
- 43 Code of Federal Regulations (CFR) § 46. Title 43 – Public Lands: Interior; Subtitle A – Office of the Secretary of the Interior; Part 46 – Implementation of the National Environmental Policy Act of 1969; Sections (§§) 46.10–46.450. Available at: <https://www.ecfr.gov>.
- 50 Code of Federal Regulations (CFR) § 13.21. Title 50 – Wildlife and Fisheries; Chapter I - United States Fish and Wildlife Service, Department of the Interior; Subchapter B - Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants; Part 13 - General Permit Procedures; Section (§) 13.21 – Issuance of permits. Available at: <https://www.ecfr.gov>.
- 50 Code of Federal Regulations (CFR) § 22. Title 50 – Wildlife and Fisheries; Chapter I – United States Fish and Wildlife Service, Department of the Interior; Subchapter B – Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants; Part 22 – Eagle Permits. Available at: <https://www.ecfr.gov>.
- 81 Federal Register (FR) 91494. 2016. Eagle Permits; Revisions to Regulations for Eagle Incidental Take and Take of Eagle Nests. Vol. 81, No. 242. December 16, 2016. pp 91494–91554. Available at: <https://www.federalregister.gov>.
- Federal Energy Regulatory Commission (FERC). 2022. Final Environmental Impact Statement for Hydropower License Surrender and Decommissioning Lower Klamath Project – FERC Project No. 14903-001, Klamath Hydroelectric Project – FERC Project No. 2082-063, Oregon and California. Office of Energy Projects, Washington, DC, USA.
- U.S. Fish and Wildlife Service (Service). 2016. Programmatic Environmental Impact Statement for the Eagle Rule Revision. December 2016. Available at: https://www.fws.gov/migratory_birds/pdf/management/FINAL-PEIS-Permits-to-Incidentally-Take-Eagles.pdf.

**Attachment 1. Final Environmental Assessment for the
Issuance of an Eagle Take Permit for the Lower Klamath Project
(FERC Project No. 14803)**