

**FINAL FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

**ST. HILAIRE COLUMBIA RIVER PUMP STATION EXPANSION AND EAST IMPROVEMENT  
DISTRICT NEW PUMP STATION**

**U.S. ARMY CORPS OF ENGINEERS REAL ESTATE AMENDMENT AND NEW EASEMENT**

**M McNARY LOCK AND DAM**

**UMATILLA COUNTY, OREGON**

**MARCH 2018**

**I. Introduction/Background Information**

St. Hilaire Brothers Hermiston Farm, LLC (St. Hilaire or JSH Farms) currently owns and operates an existing irrigation pump station located at River Mile 301.7 on the middle Columbia River in Umatilla County, Oregon. Their existing station consists of seven 800 horsepower pumps and has a total water withdrawal capacity of approximately 27,600 gallons per minute (gpm) [61.4 cubic feet per second (cfs)]. From the river station a 30-inch cement-mortar lined steel discharge pipe runs south approximately 9,200 feet to the farm's main booster pump station. JSH Farms operates their irrigation system starting in March, peaking in June through July, and shutting down in October.

In 1972, the U.S. Army Corps of Engineers, Walla Walla District (Corps) issued an easement to Joanne Kosmos for the initial construction of, and subsequent operation and maintenance of, an irrigation pump station at this location. The pump station easement was transferred to St. Hilaire in August 2007. Then in 2013, the Corps issued an easement amendment to St. Hilaire to expand the original easement area by approximately .32 acre (submerged area) and to extend the irrigation water intake pipeline and its appurtenant facilities 180 feet further into the Columbia River. Therefore, the total area in the St. Hilaire easement is currently .6 acre.

Over the last decade, the State of Oregon has given support and committed resources to addressing the water shortage issue in the Lower Umatilla Basin, and specifically in the critical groundwater areas. Only about a third of the permitted groundwater has been allowed to be pumped by the Oregon Water Resource Department (OWRD) in the critical groundwater areas. The latest effort supported by the Oregon Governor's Office and state legislature, and partially funded through grant monies from OWRD, would be to bring water from the Columbia River to those areas and farmlands impacted by the water shortage.

**II. Purpose and Need**

The purpose of the proposed action is for St. Hilaire and the East Improvement District (EID) to consolidate the transfer of existing, and issuance of new, "mitigated" Columbia River water rights to a centralized point of diversion for irrigation purposes. The project is needed due to

an ongoing and critical groundwater shortage issue in the Lower Umatilla Basin, which is detrimental to farming practices. Alternatives considered must: (1) adequately address critical groundwater shortage in the Lower Umatilla Basin basalt aquifers, (2) be technically feasible, and (3) be environmentally acceptable.

### **III. Description of the Federal Action**

The Environmental Assessment (EA) evaluates a number of Federal actions (approvals/permits) associated with the proposed expansion of the St. Hilaire pumping station, and construction of a new pumping station to be owned and operated by the EID, on the middle Columbia River (Lake Wallula), as described in detail below.

The Corps is proposing to amend St. Hilaire's existing pump station Real Estate easement to allow for the expansion of their existing irrigation pump station. The Corps is also proposing to issue a new easement to the EID for the construction of a new pump station within St. Hilaire's existing easement area/footprint. The new, adjacent pump station would be owned and operated by EID. The Corps also intends to issue St. Hilaire a Clean Water Act (Section 404), and a River and Harbor Act (Section 10), permit for in-water actions associated with expansion and construction of the pump stations, as well as a short-term real estate license for the removal of a section of old Highway 30 in Boardman, Oregon as compensatory mitigation associated with the issuance of such Regulatory permits. The US Fish and Wildlife Service (USFWS) is proposing to issue St. Hilaire and EID separate rights-of-way for pipelines associated with the pump stations, where such pipelines would cross the McNary National Wildlife Refuge (MNWR) at two (2) locations.

### **IV. Scope of the Proposed Federal Action**

The EA does not assess potential effects associated with water intake withdrawals. The Corps and USFWS are not granting St. Hilaire/EID any right to use/withdraw water from the Columbia River. St. Hilaire/EID's right to withdraw water is the result of state issued/recognized water rights. The State of Oregon decides where (and for what purpose) water within the state will be put to beneficial use, not the Corps or USFWS. Additionally, the proposed Federal action would not increase water withdrawals, as the intent of the St. Hilaire pump station expansion, and construction of the EID pump station, is to consolidate the transfer of existing and new "mitigated" (bucket-for-bucket) Columbia River water rights to a single point of diversion.

The Federal action described above in Section III is associated with a larger private irrigation project (LPIP). The expansion of the St. Hilaire pump station and new 42-inch upland discharge pipe would provide an additional 38.6 cfs of irrigation water to the existing St. Hilaire-owned farmland. The EID consists of nine farms whose membership is based on commitment to pay a portion of the development costs based on water usage. The proposed EID pump station would provide water to an additional 29 existing farms representing a change in irrigation water source for 19,000 acres. Potential water users would install necessary infrastructure at delivery points along the EID pipeline to convey their water allocation to their properties. Secondary

systems necessary for infrastructure including booster pump stations and pipelines would be the sole responsibility of the individual farms.

The LPIP is not, however, being evaluated as (1) a connected action, or (2) an indirect effect of the proposed Federal action. Federal actions generally include all actions which are potentially subject to Federal control and responsibility (40 C.F.R. § 1508.18). The scope of a National Environmental Policy Act (NEPA) document should consider connected, cumulative, and similar actions (40 C.F.R. § 1508.25(a) (1) and (40 C.F.R. § 1502.4(a)), but if one of the actions might reasonably be completed without the existence of the other, the two actions have independent utility and are not “connected” for NEPA purposes. In this case, the proposed action and the LPIP have independent utility and are not “connected” for NEPA purposes. Additionally, the LPIP is not considered an indirect effect of the proposed federal action as the proposed federal action is not the “but for” or proximate cause of the LPIP. The proposed federal action is, more reasonably considered a link in a larger corridor type project.

## **V. Alternatives Considered**

The National Environmental Policy Act and 33 CFR Part 230 *Procedures for Implementing NEPA* require a reasonable range of alternatives be considered during the planning process. Alternatives considered under NEPA must include, at least, the proposed action and the “No Action” Alternative, which provides a baseline from which to compare other alternatives. The alternatives identified below were evaluated to determine if they satisfy the purpose and need of the Federal Project (Section 1.2 of the EA):

- (1) Alternative 1: The No Action Alternative (No Change).
- (2) Alternative 2: The Proposed Action. The Corps would issue an amendment to St. Hilaire to expand their pump station and issue a new easement to EID for construction and operation of a new pump station to be located immediately adjacent to St. Hilaire’s pump station and within St. Hilaire’s existing easement area/footprint.
- (3) Alternative 3: The Corps would issue a new easement to Superior Farms to expand their existing irrigation pump station.
- (4) Alternative 4: USFWS would issue an easement to the EID for the installation of a new irrigation pumping station at Cold Springs Reservoir in Umatilla County, Oregon.
- (5) Alternative 5: U.S. Bureau of Reclamation (BoR) or USFWS would issue an easement to the EID for the installation of a new irrigation pumping station at McKay Reservoir in Umatilla County, Oregon.
- (6) Alternative 6: Groundwater Recharge.

However, in order for any alternative to be acceptable for further evaluation it must meet certain objectives, or screening criteria. Screening criteria help eliminate those alternatives that could not reasonably or practically meet the project purpose and need. In this case, alternatives must: (1) adequately address critical groundwater shortage in the Lower Umatilla Basin basalt aquifers, (2) be technically feasible, and (3) be environmentally acceptable (see Table 2-1 on page 22 of the EA for the screening process).

#### ALTERNATIVES ELIMINATED FROM FURTHER CONSIDERATION:

Alternative 4 (Cold Springs Reservoir), Alternative 5 (McKay Reservoir), and Alternative 6 (groundwater recharge) were not carried forward for detailed analysis because they would not adequately address the purpose and need and associated screening criteria.

### **VI. Environmental Effects**

The following environmental resources were identified as being relevant to the project: Aesthetics/Visual Resources, Aquatic Resources, Water Quality, Threatened and Endangered Species, Terrestrial Resources/Wildlife, Vegetation, Cultural Resources, Noise, Climate Change, Socioeconomics, Environmental Justice, Recreation, Land Use, Geology and Soils, and Cumulative Effects. Environmental analysis and effects of the No Action Alternative, Alternative 2 (the proposed action), and Alternative 3 (a lease to Superior Farms) are detailed in Section 3 of the EA. The analysis concluded there would be no significant impacts to the environment resulting from implementation of any alternative.

### **VII. Public Comment/Involvement**

The draft FONSI and EA were made available to potentially interested members of the public, Tribes, and local, state, and Federal agencies for a 15-day review and comment period from February 23 through March 9, 2018. One comment document from Union Pacific Railroad was received. The Railroad indicated that a terminable license agreement must be entered into for each pipeline crossing and that any proposed pipeline must meet all Railroad engineering standards and requirements. In a conference call on March 16, 2018, St. Hilaire stated they were complying with the Railroad's requirements.

### **VIII. Compliance with Other Laws and Regulations**

**Endangered Species Act Compliance:** In compliance with Section 7(a)(2) of the Endangered Species Act, the Corps prepared a Biological Assessment (BA) and initiated consultation with the National Marine Fisheries Service (NMFS) and the USFWS in February 2018. The Corps determined the preferred alternative, as proposed, "may affect, and is likely to adversely affect" Upper Columbia River spring Chinook salmon, Snake River spring/summer Chinook salmon, Snake River fall Chinook salmon, Snake River sockeye salmon, Upper Columbia River steelhead, Middle Columbia River steelhead, and Snake River steelhead; therefore, formal consultation under this Act is required. The Corps also determined that the action "may affect, but is not likely to adversely affect", bull trout. However, on February 7, 2018, the USFWS

determined that the proposed action was “likely to adversely affect” bull trout and initiated formal consultation. There would be no adverse modification of critical habitat for any listed species. The Corps received a Biological Opinion from NMFS on March 7, 2018 (Attachment 1) and from USFWS on March 15, 2018 (Attachment 2) and incorporated the terms and conditions into the proposed action (Attachment 4).

**Clean Water Act Compliance:** Section 402 of the Clean Water Act regulates ground disturbance that could potentially cause storm water run-off into waters of the U.S. Activities involving construction or soil disturbance on the shoreline or upland have the potential for storm water runoff and would be subject to the storm water provisions of Section 402 if the area of soil disturbance would be more than an acre and would discharge storm water into surface water. The applicant would comply with the applicable Section 402 construction general permit for these site-specific actions.

Discharge of dredged or fill material below the line of ordinary high water requires evaluation under Section 404 of the Clean Water Act. Proposed activities would involve placement of fill below the ordinary high water mark in the Columbia River, therefore, an individual permit would be issued to St. Hilaire by the Corps of Engineers Portland District Regulatory Branch on or about March 30, 2018.

Section 401 of the Act requires a certification from the applicable permitting agency that the discharge of a pollutant or dredged or fill material meets water quality standards. Because a permit under Section 404 is needed for this action, Section 401 water quality certification is also needed. In this case, the Oregon Department of Environmental Quality (ODEQ), issued Section 401 Certification to St. Hilaire on March 22, 2018. Requirements associated with the 401 Certification have been incorporated into Attachment 4.

**Rivers and Harbors Act Compliance:** Section 10 of the Rivers and Harbors Act requires that regulated activities conducted below the Ordinary High Water elevation of navigable waters of the U.S. be approved/permitted by the Corps of Engineers. Regulated activities include the placement/removal of structures, work involving dredging, disposal of dredged material, filling, excavation, or any other disturbance of soils/sediments or modification of a navigable waterway. An individual permit would be issued to St. Hilaire by the Corps of Engineers Portland District Regulatory Branch on or about March 30, 2018.

**National Historic Preservation Act Compliance:** Implementing regulations, 36 Code of Federal Regulations (CFR) Part 800, requires an agency to consult with the State Historic Preservation Officer (SHPO), Tribes, and interested parties to ensure historic properties are adequately identified, evaluated, and considered in planning for proposed undertakings.

Consultation on the area of potential effect (APE) and scope of effort (36 CFR 800.4(a)) was initiated on February 1, 2018 with the Oregon State Historic Preservation Office (SHPO), Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Confederated Tribes of the Warm Springs Indian Reservation (Warm Springs Tribe), Confederated Colville Tribes (CCT), Nez Perce Tribe (NPT), and the Confederated Tribes and Bands of the Yakama Nation (YN). The

CCT deferred to the CTUIR the same day. The YN, CTUIR, and Warm Springs Tribe did not respond to the APE letters and the NPT requested information as to why the Corps was requesting an expedited review of the APE on February 23, 2018. A follow-up message (email) was sent to the consulting parties on February 16, 2018 requesting comments by February 23, 2018 on the APE and scope of effort. No additional comments on the APE were received.

On February 26, 2018, the Corps sent letters to the same groups named above providing a “No Adverse Effect to Historic Properties” determination. In the letter to the Nez Perce, the Corps archaeologist addressed the concerns raised by the NPT; provided additional background information and explained why an expedited review was initially requested. On February 26, 2018, the Warm Springs Tribe provided an additional address for Section 106 correspondence; the Corps re-submitted the determination letter to the provided address the same day. The CTUIR responded to the Corps determination letter on February 27, 2018 requesting confirmation their initial comments—received on January 3, 2018—were received, and requested an explanation as to how the Corps addressed these concerns. The Corps responded to this request on February 28, 2018 by email.

The Oregon SHPO requested additional information by email on March 1, 2018 and the Corps provided the requested information by email on March 2, 2018. On March 6, 2018, the SHPO emailed a follow-up letter stating they would concur with the Corps no adverse effect determination if approved by the CTUIR. On March 27, 2018 the CTUIR responded to the Corps determination letter, but did not disagree with the Corps determination. The Corps responded back to the CTUIR on March 28, 2018 and provided the SHPO with this response. The SHPO concurred with the Corps determination of No Adverse Effect to Historic Properties on March 28, 2018 (Attachment 3).

**Other Laws and Regulations:** See Section 4 of the EA for a detailed discussion of compliance with other laws and regulations. The proposed action complies with all other applicable laws and applicable regulations.

## IX. Findings and Decision

Having reviewed the EA for Walla Walla District's real estate actions associated with the St. Hilaire Columbia River Pump Station Expansion, and construction of the East Improvement District New Pump Station, I find that the document provides sufficient discussions on the purpose and need for the proposed action, alternatives, the potential environmental effects of the proposed action and the alternatives, and a listing of agencies and persons consulted. I have taken into consideration the technical aspects of the project, best scientific information available and public comments received. These documents provide sufficient evidence and analysis to meet the Corps requirements pursuant to the National Environmental Policy Act. Based on this information, I find that implementation of the proposed action would not result in significant impacts on the quality of the human environment and that an environmental impact statement is not required. The Corps will implement Alternative 2 – issue an amendment to St. Hilaire and an easement to East Improvement District, the preferred alternative, at the earliest opportunity.



DAMON A. DELAROSA  
Lieutenant Colonel, EN  
Commanding

3/28/2018

Date

- Attachment 1: National Marine Fisheries Service Biological Opinion dated March 6, 2018
- Attachment 2: U.S. Fish and Wildlife Service Biological Opinion dated March 14, 2018
- Attachment 3: SHPO Concurrence Letter dated March 28, 2018
- Attachment 4: Environmental Commitments Green Sheet