



## Executive Director Determination on Request to Extend FAST-41 Final Completion Date by More Than 30 Days

October 20, 2026

### Hell's Kitchen Critical Minerals & Power

#### I. Summary

The Hell's Kitchen Critical Minerals & Power Project ("Hell's Kitchen"), sponsored by Controlled Thermal Resources (the "Applicant" or "Project Sponsor"), is a covered project under Title 41 of the Fixing America's Surface Transportation Act ("FAST-41"), 42 U.S.C. § 4370m *et seq.* As the federal agency with principal responsibility for the environmental reviews<sup>1</sup> required by the Project, the U.S. Army Corps of Engineers ("USACE") serves as the lead agency for purposes of FAST-41. The U.S. Fish and Wildlife Service is a cooperating agency on this project.

On October 14, 2026, USACE submitted a request to the Executive Director of the Federal Permitting Improvement Steering Council (the "Permitting Council") to extend the final completion dates for the Project's permitting timetable for the Environmental Assessment ("EA"), and permit decision under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403 and Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (together, "Section 10/404"). This is USACE's third request for modification of the project's permitting timetable.<sup>2</sup>

For the following reasons, USACE's extension request is **GRANTED**, and the project permitting timetable will be revised accordingly.

#### II. Legal Standard

Under 42 U.S.C. § 4370m-2(c)(2)(D)(i), once a permitting timetable is established under 42 U.S.C. § 4370m-2(c)(2)(A), the facilitating or lead agency may modify it only if the conditions set forth in subclauses (I) through (IV) are satisfied. 42 U.S.C. § 4370m-2(c)(2)(D)(i). First, the facilitating or lead agency must consult with the Executive Director about the potential modification at least fifteen (15) days before it consults the other stakeholders under subclause (II). *Id.* § 4370m-2(c)(2)(D)(i)(I). Second, after consultation with any participating agencies, the Executive Director, and the project sponsor, the facilitating or lead agency and any affected cooperating agencies must agree to a different completion date. *Id.* § 4370m-2(c)(2)(D)(i)(II).

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<sup>1</sup> USACE is also acting as the lead agency for the preparation of the Environmental Assessment under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*

<sup>2</sup> The prior Executive Director Determinations that approved permitting timetable modifications can be found here: <https://cms.permits.performance.gov/permitting-projects/hells-kitchen-executive-director-determination10-10-2025> <https://www.permits.performance.gov/fpisc-content/hells-kitchen-critical-minerals-power-executive-director-determination5-20-2026>





Third, the facilitating or lead agency must provide a written justification for the modification. *Id.* § 4370m-2(c)(2)(D)(i)(III). Fourth, where a modification would extend a final completion date by more than thirty (30) days beyond the final completion date originally established, the lead agency must submit a request to modify the permitting timetable to the Executive Director, who must consult with the project sponsor and make a determination on the record as to whether to grant the authority to make the modification.

In making that determination, the Executive Director considers the “relevant factors” set forth in 42 U.S.C. § 4370m-2(c)(2)(B), including, but not limited to:

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV) are not subject to judicial review. 42 U.S.C. § 4370m-2(c)(2)(D)(iv)(I).

### III. Background

USACE seeks authorization from the Executive Director to modify the following milestones shown in the following table, which would extend the final completion dates by more than thirty (30) days.

| Action Agency | Action         | Milestone                                   | Original Date | Current Date | Requested Date |
|---------------|----------------|---------------------------------------------|---------------|--------------|----------------|
| USACE         | EA             | Issuance of Final EA                        | 9/1/2026      | 11/20/2026   | 5/3/2027       |
| USACE         | EA             | EA Process Concluded                        | 9/1/2026      | 11/20/2026   | 5/3/2027       |
| USACE         | Section 10/404 | Final Verification/Permit Decision Rendered | 9/1/2026      | 11/20/2026   | 5/3/2027       |





USACE requests the foregoing extensions to accommodate the additional time needed for the Project Sponsor to secure the Project's Section 401 Clean Water Act Water Quality Certification ("WQC"). Two factors have caused these delays. First, the Project Sponsor did not timely submit a complete application to the California Regional Water Quality Control board ("RWQCB"). Second, the Environmental Impact Report ("EIR") prepared by Imperial County for the Project under the California Environmental Quality Act ("CEQA") remains the subject of ongoing state litigation, which has effectively halted the issuance of the WQC.<sup>3</sup> No timeline has yet been established to rectify the state litigation, and USACE, in turn, cannot finalize the Section 10/404 permit decision in the absence of a valid WQC. Accordingly, USACE asserts that an adjustment to the schedule is warranted to allow time for the ongoing state litigation to be resolved.

#### **IV. Discussion**

The Project's permitting timetable was established pursuant to 42 U.S.C. § 4370m-2(c)(2)(A) on August 15, 2025. On August 19, 2026, USACE consulted with the Executive Director about a potential modification to the permitting timetable. On October 14, 2026, USACE submitted a written justification for the modification. After receiving the written justification, the Executive Director then consulted with the Project Sponsor on October 19, 2026, and confirmed that the Project Sponsor does not object to these requested permitting timetable modifications.

USACE requests authorization to modify the permitting timetable to extend the final completion dates for the EA and Section 10/404 permit. In evaluating this request, the Executive Director has considered the relevant factors set forth in 42 U.S.C. § 4370m-2(c)(2)(B). However, the statute's list is not exhaustive and allows the Executive Director to consider other factors when appropriate. Here, the relevant factor most pertinent to the Executive Director's review is the federal government's ability to take the actions on the Dashboard. The ongoing state litigation is delaying USACE from completing its review on its current timetable.

USACE cannot render a final Section 10/404 permit decision without a valid WQC, and the WQC cannot be issued until the state environmental review is completed. That state review remains the subject of ongoing state litigation, for which no timeline has been established. The timing of USACE's final action therefore depends on state proceedings outside of its control, and USACE cannot complete its review on the current timetable no matter how diligently it proceeds. This weighs heavily in favor of the requested extension, and because USACE will finalize the EA together with its Section 10/404 permit decision, the EA completion date is likewise affected. Accordingly, the Executive Director finds that the requested modification to the EA and Section 10/404 permit completion dates are warranted.

#### **V. Determination**

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<sup>3</sup> *Comité Cívico del Valle v. County of Imperial*, No. D085747 (Cal. Ct. App. Aug. 11, 2026).  
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Based on the foregoing, and after consultation with the Project Sponsor, the Executive Director determines, pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), that USACE's request to modify the Project's permitting timetable is **GRANTED**. The Project's timetable on the Permitting Dashboard will be revised accordingly.

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Emily Domenech  
Executive Director  
Permitting Council

