

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application of S-R Broadcasting Co., Inc.,)	File No. BP-20000308ABU
for Minor Modification of Facilities of)	Facility ID No. 62056
Station KRKO(AM), Everett, Washington)	

MEMORANDUM OPINION AND ORDER

Adopted: September 7, 2012

Released: September 10, 2012

By the Commission:

1. The Commission has before it four Applications for Review¹ of the May 30, 2008, decision² of the Media Bureau, Audio Division (“Bureau”), granting the captioned application of S-R Broadcasting Co., Inc. (“S-R”) for minor modification of the facilities of Station KRKO(AM), Everett, Washington. In the *Staff Decision*, the Bureau found that S-R’s proposal would have no significant environmental impact and denied the informal objections of Stewards, Pilchuk, CPRSRV, the Days, and a number of other individual and organizations.

2. We have carefully reviewed the *Staff Decision* and the full record of this application proceeding. We conclude that the Bureau has correctly resolved all issues before it. As the Bureau explained in the *Staff Decision*, the Environmental Assessment (“EA”) submitted by S-R, as supplemented, contained current and complete information that both satisfied the requirements specified in Sections 1.1307 and 1.1311 of the Commission’s rules and provided a reasoned basis for a finding of no significant impact for all listed categories of action not categorically excluded from environmental processing.³ We uphold the Bureau’s decision for the reasons stated in the *Staff Decision*.⁴

¹ Applications for Review were filed by Robert and Angela Day on June 27, 2008, Stewards of the Land and Community (“Stewards”) on June 30, 2008, Pilchuk Audubon Society (“Pilchuk”) on June 30, 2008, and Citizens to Preserve the Upper Snohomish River Valley (“CPUSRV”) on July 1, 2008 (collectively, “Petitioners”). S-R filed oppositions on July 14, 2008, and on August 11, 2008.

² *S-R Broadcasting Co., Inc.*, Letter, 23 FCC Rcd 8574 (MB 2008) (“*Staff Decision*”).

³ Pilchuk and Stewards argue for the first time that the Bureau failed to adequately consider the impact on birds of the proposed construction in accordance with *American Bird Conservancy v. FCC*, 516 F.3d 1027 (D.C. Cir. 2008) (“*American Bird Conservancy*”). In addition, CPUSRV argues for the first time that the EA failed to consider the impact on the steelhead trout, a threatened species known to be present on the site. Section 1.115(c) prohibits parties from raising new arguments on review. See 47 C.F.R. § 1.115(c). Accordingly, we dismiss both new arguments as procedurally barred. As an alternative and independent basis for our decision, we deny these arguments on the merits. First, there is no inconsistency between the *American Bird Conservancy* decision and the Bureau’s decision here: the Bureau properly determined that no EIS was required under the particular circumstances of this case and did not, for example, fail to follow the Commission’s rules implementing NEPA, to require the preparation of an EA, to consult with the Fish and Wildlife Services, or to give public notice before

(continued....)

3. ACCORDINGLY, IT IS ORDERED that: (1) the Applications for Review of Pilchuk Audubon Society, Stewards of the Land and Community, and Citizens to Preserve the Upper Snohomish River Valley ARE DISMISSED, pursuant to 47 C.F.R. § 1.115(c), to the extent that they rely on questions of fact or law not previously presented to the Bureau; and (2) those Applications for Review, along with that of Robert and Angela Day, otherwise ARE DENIED, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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acting on the license approvals. *Cf. American Bird Conservancy*, 516 F.3d at 1032-1035. Second, the EA in this case addressed, and the staff carefully considered, the impact of the proposed construction on all of the threatened species in the vicinity of the site identified by the relevant state and Federal agencies. *See Staff Decision*, 23 FCC Rcd at 8580. We also note that the cumulative impact on steelhead trout of the proposed construction of the S-R facility and the two additional CAAM towers was addressed in the EA submitted with the application of the CAAM Partnership, LLC ("CAAM) for a new AM broadcast station (File No. BNP-20071010ABZ), and that EA found "no effect" on the steelhead trout. *See CAAM Partnership, LLC.*, Letter, 26 FCC Rcd 3883 (MB 2008).

⁴ Contrary to Petitioners' contentions, the *Staff Decision* correctly concluded that local opposition to the towers proposed in the Application did not create a significant "controversy" requiring the preparation of an EIS. The Bureau properly evaluated "the degree to which the effects on the quality of the human environment were likely to be highly controversial." *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (citing 40 C.F.R. § 1508.27(b)(4)); *see Staff Decision*, 23 FCC Rcd at 8584 n. 64. As the Bureau observed, mere opposition to a project does not constitute a "highly controversial" matter for purposes of Section 1508.27(b)(4) and thus require an EIS. 23 FCC Rcd at 8584; *see also Town of Cave Creek, Arizona v. F.A.A.*, 325 F.3d 320, 331-32 (D.C. Cir. 2003); *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1335 (9th Cir. 1993). We also agree with the Bureau that there was no "substantial dispute [about] the size, nature, or effect" of the Application. *Staff Decision*, 23 FCC Rcd at 8584 n 65; *see also Nat'l Parks & Conservation Assoc. v. Babbitt*, 241 F.3d 722, 736 (9th Cir. 2001), *rev'd on other grounds*, *Monsanto Co. v. Geertson Seed Farms*, 130 S.Ct. 2743 (2010); *Town of Cave Creek*, 325 F.3d at 331; *Indiana Forest Alliance, Inc. v. United States Forest Serv.*, 325 F.3d 851, 860-61 (7th Cir. 2003). For example, while objectors to the EA argued that the towers could create a flight hazard to birds, the EA's Avian Risk Assessment found that the towers posed virtually no such risk. Moreover, the United States Fish and Wildlife Service did not dispute the EA's determination and in fact acknowledged that the towers conformed to the agency's own guidelines with respect to migratory birds.