



# Reform dam permitting rules

## to require tribal consultation and consent

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Recent hydroelectric dam proposals on the Navajo Nation highlight a major oversight in federal regulations: **Tribal consultation and consent are not required in the early stages of dam permitting.**

## The Problem

Tribes aren't invited to the table when dam projects are first proposed on their own lands.

The Federal Energy Regulatory Commission (FERC) oversees dam projects on tribal lands. FERC is not required to notify, consult with, or get consent from a tribe when a developer applies for a preliminary permit on the tribe's reservation lands.

**A preliminary permit** gives a developer an exclusive claim to a proposed project location for four years to allow the developer to conduct studies and prepare an application for the license needed for construction.

### THE EXISTING PRELIMINARY-PERMIT PROCESS:

- **Ignores** tribal sovereignty
- **Threatens** tribes' lands, waters, and cultural resources
- **Costs** tribes time and money to engage in or oppose unwanted dam projects



**For FERC to permit proposals like these, submitted by speculators, over the knowledge and experience of people who have lived in this land for thousands of years, is beyond reason.**

– Havasupai Tribe in its motion to intervene against the Big Canyon dams

## Case Study

### Little Colorado River Dams

A Phoenix-based company proposed three hydroelectric projects on Navajo Nation lands along the Little Colorado River near its confluence with the Grand Canyon. One proposal remains active in a tributary called Big Canyon.

The Navajo Nation, Hopi Tribe, Hualapai Tribe, and many Native communities oppose the Big Canyon dams, but current rules allow FERC to grant the preliminary permit despite objections by tribes.



**The proposed Project would be located entirely on Navajo Nation land, and the Nation has not authorized the permit holder to enter upon the lands of the Navajo Nation or to use its waters.**

– Navajo Nation in its motion to intervene against the Big Canyon dams



**This proposed development and location is simply unacceptable to Hopi religious leaders, practitioners and the Hopi people as it will significantly and forever adversely impact sacred places to which Hopis have aboriginal title and use.**

– Hopi Tribe in its motion to intervene against the Big Canyon dams

## Case Study

### Black Mesa Hydropower Project

In 2022, a Massachusetts-based company applied for preliminary permits for three proposed hydroelectric projects on Black Mesa on Navajo Nation land. While the developer contacted Navajo Nation and chapter officials before filing the application, it did not seek or secure the nation's consent before applying for the preliminary permit. The Navajo Nation told FERC during a 60-day comment period that it opposes the applications and requests meaningful government-to-government consultation.



**The Project may adversely impact the land, water, Navajo Endangered and Threatened wildlife and plants including Federally listed species under the Endangered Species Act, and cultural resources of the Navajo Nation.**

– Navajo Nation in its motion to intervene against the Black Mesa hydroelectric project

## The Solution

Reform dam permitting rules to require tribal consultation and consent.

After hearing concerns from Hopi and Diné communities, the LCR Initiative, Grand Canyon Trust, and American Rivers seek to support tribes and Native communities petitioning the Biden administration to add consultation and consent to the early stages of dam licensing on tribal lands.

Sample changes:

- **Require tribal consultation** prior to public notice about a preliminary permit filing on tribal lands.
- **Require consent** from the tribe on whose lands the project is proposed before a preliminary permit may be issued.

These changes would grant tribes additional authority to assert their positions early in the consultation process and would apply to all tribes and reservation lands across the country.



Little Colorado River  
**INITIATIVE**



**AMERICAN  
RIVERS**



GRAND CANYON  
TRUST