



**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Nature and People First Arizona PHS, LLC

Docket No. P-15233-000

Preliminary-Permit Application for the
Black Mesa Pumped Storage Project – North

The Grand Canyon Trust’s Motion to Intervene

I. Introduction

The Grand Canyon Trust moves to intervene in this proceeding under Federal Energy Regulatory Commission Rule 214.¹ At this stage, the Trust is neither supporting nor opposing the preliminary-permit application at issue here, but rather, is seeking to intervene to be added to the service list for this proceeding and to add several observations as a party about the proposed hydropower project in question.

II. Background

The “Black Mesa Project” at issue here is a three-part plan for a hydropower development on the Navajo Nation that, at full scale, could string reservoirs for nearly 50 miles—from Tsegi to Rough Rock, and beyond—along both the rim of Black Mesa and the lands below.² According to the preliminary-permit applications, it could take 450,000 acre-feet of water to fill these reservoirs, if they all were built.³ That is more

¹ 18 C.F.R. § 385.214.

² See Nature and People First Arizona PHS, LLC (“Arizona PHS”), *Application for Preliminary Permit: Black Mesa Pumped Storage Project – North*, P-15233, Ex. 3, Att. B. at Drawing 1-N (Sep. 1, 2022) (“N App.”); Arizona PHS, *Application for Preliminary Permit: Black Mesa Pumped Storage Project – East*, P-15234, Ex. 3, Att. B. at Drawing 1-E (Sep. 1, 2022) (“E App.”); Arizona PHS, *Application for Preliminary Permit: Black Mesa Pumped Storage Project – South*, P-15235, Ex. 3, Att. B. at Drawing 1-S (Sep. 1, 2022) (“S App.”).

³ N App. at Ex. 1, p. 2 (100,000 acre-feet of capacity in upper reservoir and the same in lower reservoirs); E App. at Ex. 1, p. 2 (same); S App. at Ex. 1, p. 2 (250,000 acre-feet).

water than best estimates say the Navajo Nation uses in total each year, where lack of access to water is a persistent problem that constrains the Nation's water use.⁴ It is five times more water than can be held today in all the significant reservoirs and lakes on the Navajo Nation combined.⁵

At that scale, this proposal raises questions. What does the Navajo Nation and what do the Navajo people think of this idea? What are the Hopi Tribe's views? Is this the best use of the scarce water in this dry place? Where would the water come from? Exactly how much water would be needed to fill the project's reservoirs? What about refilling them after evaporative losses? Does the applicant hope to build just one of the projects for which it is seeking preliminary permits or all three? Who would be served by the electricity generated? Would the surrounding communities benefit? The Navajo Nation as a whole? The Hopi Tribe? How? At what cost to the surrounding landscape and the life it sustains? At what cost to the Navajo, Coconino, or other groundwater aquifers? The San Juan River? The Colorado River?

III. The Trust, for now, takes no position on the permit applications.

Because the foregoing questions, and others, lack good answers as yet, the Trust is not now supporting or opposing the preliminary permit sought here,⁶ recognizing that the permit will do nothing more than put the applicant first in line if it chooses to seek a hydropower license from the Commission.⁷ At the least, the Trust

⁴ U.S. Bureau of Reclamation, *Colorado River Basin Ten Tribes Partnership Tribal Water Study*, Table 5.5-I (Dec. 2018) (estimating annual diversions from 2009–2013 of 361,315 acre-feet and depletions of 235,079 acre-feet), attached hereto as Exhibit 1 (excerpts).

⁵ *Id.* at Table 5.5-H (listing capacity for 26 lakes and reservoirs at 87,946 acre-feet).

⁶ See 18 C.F.R. § 385.214(b)(1).

⁷ See *In re Pumped Hydro Storage LLC*, P-14994, 171 FERC ¶ 61,138, p. 15 (May 21, 2020).

does not intend to take a position on the proposed project until the Navajo Nation and Navajo people have been afforded more time to consider the proposal and express their views, for the project is entirely on the Navajo Nation's lands.

IV. The Trust's intervention is in the public interest.

The public interest will be served by the Trust's participation in this proceeding.⁸ The Trust is a nonprofit with over 3,000 members. We are headquartered in Flagstaff, Arizona; have an office in Denver, Colorado; and have staff who work remotely in Utah, Colorado, Arizona, and on the Navajo Nation. Our mission is to safeguard the wonders of the Grand Canyon and the Colorado Plateau, while supporting the rights of its Native peoples.

For years, we have sought to support entrepreneurship in tribal communities in this region that balances economic needs with cultural preservation and environmental protection. And when Native communities or governments have invited our support, we have advocated against developments on tribal lands that would irresponsibly use water, otherwise harm the environment, or damage Native lifeways or culture. In recent years, for example, we intervened in three preliminary-permit proceedings that pitched the idea of building dams on the Navajo Nation in the Little Colorado River and its tributaries for pumped hydropower.⁹ Beginning many years before that, we have worked in support of local families advocating at the chapter level of the Navajo Nation in opposition to a developer's proposal to build a

⁸ See 18 C.F.R. § 385.214(b)(2)(iii).

⁹ See 171 FERC ¶ 61,138 at p. 19; *In re Pumped Hydro Storage LLC*, P-14992, 171 FERC ¶ 61,137, p. 19 (May 21, 2020); *In re Pumped Hydro Storage LLC*, P-15024, Mot. to Intervene by Save the Colorado, *et al.*, (Aug. 3, 2020).

gondola and mega-resort where the Little Colorado River flows into the Colorado River in the Grand Canyon.

We have also resisted other developments around the Grand Canyon and in the surrounding region that could pollute water, use it irresponsibly, or otherwise harm the landscape. One example is a proposal for a massive development in Tusayan, Arizona that, like the project proposed here, might use water from the Colorado River. Another is uranium mining around the Grand Canyon, which could contaminate water, dry up springs, and desecrate lands sacred to tribes in the region.

It would serve the public interest to allow our intervention so that we may contribute the perspective we have gained from this past advocacy and other efforts to safeguard the Grand Canyon and Colorado Plateau for more than three decades.

V. Comments

It is with the perspective described above that we offer three observations at this preliminary stage.

First, the permit applications assert that the project developer intends to evaluate its proposal in consultation with the Navajo Nation.¹⁰ While we do not question the developer's *bona fides* in this regard, the Commission has held, and should reiterate here, that studies for the project can move forward not simply in consultation with the Navajo Nation, but only with the Nation's consent, where the Nation's laws and regulations require authorization.¹¹ “[L]ack of access to the project

¹⁰ N App. at PDF p. 1; E App. at PDF p. 1; S App. at PDF p. 1.

¹¹ See 171 FERC ¶ 61,138 at 8 (“[P]ermittee[s] must obtain any necessary authorizations and comply with any applicable laws and regulations to conduct any field studies.”).

site for studies,” for example, “could preclude the preparation of an adequate [license] application.”¹²

Second, the developer did not in its applications identify the Hopi Tribe as a tribe who “may be affected by the project” when that possibility is obvious.¹³ The Hopi reservation occupies the southwestern part of Black Mesa, and the reservation boundary comes within fifteen miles of some of the project’s proposed reservoirs.¹⁴ Groundwater beneath Black Mesa is critical to the Tribe, as is the fate of other sources of water in the region that the proposed project might use.¹⁵ If the proposal advances toward licensing, consultation both between the applicant and the Hopi Tribe and the Commission and the Tribe would be required.¹⁶

Third, while we recognize that the Commission as a matter of practice does not specify in preliminary permits the studies and outreach that must be completed before a license application is filed,¹⁷ we wish to stress at this early stage that the developer is required by Commission rules to “consult with appropriate state and federal resource agencies and affected Indian tribes, conduct all reasonable studies requested by the agencies, and solicit comments on draft license applications before

¹² *Id.*

¹³ N App. at p. 5 of 6; E App. at p. 5 of 6; S App. at p. 6 of 7.

¹⁴ Compare E App. Ex. 3, Att. B at Drawing 1-E with U.S. Geological Survey, *Groundwater, Surface-Water, and Water-Chemistry Data, Black Mesa Area, Northeastern Arizona—2012–2013*, Figure 1 (2016), attached hereto as Exhibit 2 (excerpts).

¹⁵ See, e.g., Hopi Tribe Office of Community Planning and Economic Development and Land Information Systems, *Hopi Tribe Comprehensive Economic Development Strategy*, pp. 40–41 (2018) (“The nature, occurrence, and availability of groundwater are critical concerns of the Hopi Tribe.”), attached hereto as Exhibit 3.

¹⁶ See 18 C.F.R. § 4.38; 54 U.S.C. § 306108; see also 18 C.F.R. § 2.1C.

¹⁷ See, e.g., 171 FERC ¶ 61,138 at 5–6.

they are filed.”¹⁸ It is difficult for us to foresee how a project of this nature could move forward with sensitivity to the Native people on whose homelands it would be built and with sensitivity to the delicate lands and waters it would use. But gaining an understanding of the questions we have asked above, along with many others, is an essential prerequisite if the project is to make any further progress.

VI. Conclusion

The Trust requests that the Commission grant its motion to intervene and add the undersigned counsel to the service list for this proceeding.

Respectfully submitted this 30th day of December, 2022.

s/ Aaron M. Paul
Aaron M. Paul
Staff Attorney
Grand Canyon Trust
4404 Alcott Street
Denver, CO 80211
(303) 477-1486
apaul@grandcanyontrust.org

Chaitna Sinha
Staff Attorney
Grand Canyon Trust
338 Jenkins Ranch Road
Durango, CO 81301
(970) 399-9565
csinha@grandcanyontrust.org

Attorneys for the Grand Canyon Trust

¹⁸ *Id.* at 6.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Denver, Colorado this 30th day of December, 2022.

s/ Aaron M. Paul
Aaron M. Paul
Staff Attorney
Grand Canyon Trust
4404 Alcott Street
Denver, CO 80211
(303) 477-1486
apaul@grandcanyontrust.org