

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

Pumped Hydro Storage LLC	)	
Navajo Nation Salt Trail Canyon Pumped Storage Project	)	
	)	P-14992-000

**AMERICAN RIVERS’ MOTION TO INTERVENE AND COMMENTS ON PUMPED  
HYDRO STORAGE LLC’S APPLICATION FOR A PRELIMINARY PERMIT FOR  
THE NAVAJO NATION SALT TRAIL CANYON PUMPED STORAGE PROJECT**

Pursuant to Rule 214, 18 C.F.R. § 385.214, and the “Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications,” eLibrary no. 20191002-4001 (Oct. 2, 2019) (Notice), American Rivers hereby files this Motion to Intervene and Comments regarding Pumped Hydro Storage LLC’s (Applicant) application for the Navajo Nation Salt Trail Canyon Pumped Storage Project to be located on the Little Colorado River in Arizona. American Rivers recognizes that a preliminary permit grants the holder the limited right of priority to file a license application during the permit term. However, American Rivers and its members have significant interests in natural resources that would be affected by the development of a pumped storage project on the Lower Colorado River and the Colorado River through the Grand Canyon and intervenes in this proceeding to protect those interests at even this preliminary stage.

**I.  
Motion to Intervene**

American Rivers is a national, non-profit, 501(c)(3) river conservation organization with offices in Denver, Glenwood Springs, and Durango, Colorado. It serves more than 300,000 members and supporters nationwide and more than 50,000 supporters in the Colorado River

Basin. It is dedicated to protecting wild rivers, restoring damaged rivers, and conserving clean water for people and nature.

Additionally, American Rivers promotes public awareness about the importance of healthy rivers and the threats that face them. American Rivers' programs address flood control and hydropower policy reform, endangered aquatic and riparian species protection, instream flow, clean water, and urban rivers. One of its principal programs is the protection of rivers from unwise hydroelectric development that negatively impacts fish and other aquatic organisms, water quality, recreational, and cultural values of North American rivers.

American Rivers' participation in this proceeding is in the public interest as required by the Commission's rules, *see* 18 C.F.R. § 385.214(b)(2)(iii), because it has knowledge of the environmental resources that would be affected by development of a pumped storage project at the proposed site. It also has extensive experience participating in the collaborative development of the administrative record necessary for a licensing decision by the Commission, including the due diligence at the preliminary permit phase.

No other party is qualified to represent American Rivers' significant interests in the preservation, restoration, and enhancement of the Little Colorado River and the Colorado River through the Grand Canyon. Accordingly, American Rivers requests party status in this proceeding.

American Rivers requests that the following representatives be added to the official service list for this proceeding:

Matt Rice  
Director, Colorado River Basin Program  
American Rivers  
1536 Wynkoop St., Office 321  
Denver, Colorado 80202

*American Rivers' Motion to Intervene  
Navajo Nation Salt Trail Canyon PSP (P-14992)*

[mrice@americanrivers.org](mailto:mrice@americanrivers.org)

Richard Roos-Collins  
Julie Gantenbein  
Water and Power Law Group PC  
2140 Shattuck Ave., Suite 801  
Berkeley, CA 94704  
(510) 296-5588  
[rrcollins@waterpowerlaw.com](mailto:rrcollins@waterpowerlaw.com)  
[jgantenbein@waterpowerlaw.com](mailto:jgantenbein@waterpowerlaw.com)

## **II. Comments**

The Commission is authorized under Federal Power Act (FPA) section 4(f), 16 U.S.C. § 797(f), to issue preliminary permits for the purpose of enabling license applicants to secure the data necessary to prepare a license application. Section 9 of the FPA, 16 U.S.C. § 802, requires license applicants to submit:

- (1) Such maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project....
- (2) Satisfactory evidence that the applicant has complied with the requirements of the laws of the State or States within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting and distributing power ...
- (3) Such additional information as the commission may require.

Section 5 of the FPA, 16 U.S.C. § 798, gives a preliminary permit holder priority to file an application for up to four years while the permit holder undertakes the due diligence necessary to comply with FPA section 9.

The Commission generally will issue a preliminary permit unless there is a clear legal barrier to its ability to ultimately issue a license for the proposed project or the proposed project would interfere with a project for which a license or preliminary permit already has been issued.

However, the Commission will deny a preliminary permit for a proposal that is so vague and uncertain that the applicant is unlikely to be able to gather the data necessary to prepare a license application during the four-year permit term. *See Wyco Power and Water, Inc.*, 138 FERC ¶ 62,150 (Feb. 23, 2002) (dismissing preliminary permit application as premature).

We have several concerns about issuance of a preliminary permit on review of the Application for Preliminary Permit, eLibrary no. 20190801-5039 (July 31, 2019) (Application).

**A. The Application Does Not Identify Any Sources of Funding.**

The Application does not demonstrate that the Applicant has the financial resources necessary to gather the data and perform the tasks necessary to prepare a license application over the next three years.<sup>1</sup> The Application (p. 10) states, “the costs to develop the project and perform the studies, investigations, tests, surveys, maps, plans or specifications will be approximately \$4,000,000 to \$8,000,000.” However, the Applicant has not identified any sources of funding for this effort: “[t]he expected sources to prepare the studies, plans, and specifications will be from Project partners that have yet to be identified. The plan for full Project financing will be developed during the course of the feasibility studies planned during the term of the preliminary permit.” *Id.* at 11.

We note that the Applicant has also applied for preliminary permit for the proposed Navajo Nation Little Colorado Pumped Storage Project, *see* eLibrary no. 20190801-5037 (July 31, 2019). It has estimated the costs of studies under that preliminary permit to be \$5,000,000 to \$10,000,000. *Id.* at 10. It has not identified any sources of funding for those studies either. *Id.* at 11.

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<sup>1</sup> “The proposed term of the requested permit is 36 months.” Application, p. 3.

The Application should be rejected as premature pending the Applicant showing that it has funding to prepare the numerous studies and plans that will be necessary for developing a license application, which is the purpose of obtaining a preliminary permit.

**B. The Application Does Not Show Adequate Consideration of Tribal Interests.**

The Application does not show that the Applicant adequately has considered or planned to consider the interests of the several tribes that have a sacred and cultural attachment to the lands and waters that would be affected by the proposed project. The Application lists the Navajo Nation as the only tribe that may be affected by the project. Application. at 5. The Navajo Nation would clearly be impacted as “the Project will be located entirely on Navajo Nation lands.” *Id.* at 6. In addition, as stated in the Hopi Tribe’s comments regarding the Applicant’s proposed Navajo Nation Little Colorado Pumped Storage Project, eLibrary no. 20191101-0006 (Nov. 1, 2019), p. 2, the Grand Canyon is a sacred place for the Hopi Tribe and many other Southwestern Tribes:

The Hopi people hold all of the Öngtupqa, Öngtuvqa, Öögtupqa, the Grand Canyon, among the most culturally significant places in our cultural history and beliefs.... The Grand Canyon is one of the places where the Hopi Tribe originated from and is the final resting place of Hopi people....

Any development within the area of the Confluence will forever compromise the spiritual integrity of this Sacred Place. The Hopi Tribe and many other Southwestern Tribes including the Navajo Nation hold the Grand Canyon as a sacred place of reverence, respect and conservation stewardship. We are aware that the Zuni Tribe emerged from the Grand Canyon. The Havasupai Tribe lives in the Grand Canyon. It is important to preserve and protect these sites from harm and wrongful exploitation.

Despite the sacredness of the proposed project site, the Application does not document actual notice to Southwestern Tribes other than the Navajo Nation. The apparent failure to provide actual notice to the potentially affected Southwestern Tribes is inconsistent with the notice requirement at FPA section 4(f). Also, the Application does not describe specific plans to

consult with Tribes other than the Navajo Nation or conduct cultural studies. Absent robust consultation and engagement with the Tribes, the Applicant likely will not be able to gather sufficient data on which to determine the feasibility of constructing the proposed project in compliance with the Commission's obligations to Tribes under authorities such as the FPA section 4(e), 16 U.S.C. § 797(e), National Historic Preservation Act, 16 U.S.C §§ 470 et seq., the Archaeological Resources Protection Act, 16 U.S.C. §§470aa et seq., and the Commission's Policy Statement on consultation with Indian tribes in Commission proceedings, 18 C.F.R. § 2.1c.

**C. The Application Does Not Show Adequate Consideration of Listed Species.**

The Application does not document that the Little Colorado River is critical habitat for Humpback chub. The Humpback chub has been federally listed as endangered since 1967, receiving full protection under the Endangered Species Act (ESA) in 1973.<sup>2</sup> According to the U.S. Fish and Wildlife Service (FWS):

There are currently only five extant cub populations, including four upstream of Lake Powell ... and one downstream of Lake Powell (Grand Canyon, which includes the [Little Colorado River (LCR)]. ... [¶] In the Lower Basin, humpback chub reproduction in the LCR sustains the entire Grand Canyon Humpback Chub population (Yackulic et al. 2014). Therefore, the LCR is a significantly important stream for the endangered humpback chub across the range of the species. The lower 12.9 km (8 miles) of the LCR is designated critical habitat ... and is the principal spawning area for the species in the Lower Basin of the Colorado River. In addition, the LCR provides habitat and food for the core population of humpback chub in the Grand Canyon.<sup>3</sup>

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<sup>2</sup> FWS, Humpback chub, available at [https://www.fws.gov/fisheries/freshwater-fish-of-america/humpback\\_chub.html](https://www.fws.gov/fisheries/freshwater-fish-of-america/humpback_chub.html) (last accessed Nov. 21, 2019).

<sup>3</sup> FWS, "COMMENTS – Notice of Application for Preliminary Permit for the Navajo Nation Little Colorado River Pumped Storage Project, FERC No. 14994-000, Coconino County, AZ (ER 19/0427)," eLibrary no. 20191115-5006 (Nov. 14, 2019) (FWS Comments), p. 2.

In designating the Little Colorado River as critical habitat, the FWS found that the river had unique water quality characteristics that are necessary to support the chub:

Humpback chub are specifically adapted to the unique characteristics of the Colorado River-high turbidity, and seasonally variable flows and temperatures. Significant threats to humpback chub survival in Grand Canyon remain, including the presence of non-native fish and parasites, altered temperature and flow regimes, as well as the potential for a large-scale disturbance in their main spawning site....

Humpback chub spawn in the Little Colorado River where warm water and suitable spawning habitat is available, while water released from Glen Canyon Dam in the Colorado River is too cold for successful reproduction. The conservation of this endangered species is a critical component of Colorado River management in Grand Canyon.<sup>4</sup>

The Application proposes to construct a lower concrete arch dam across the Little Colorado River, and an upper dam across a canyon at the plateau. Application, p. 6. The damming of the Little Colorado River would alter the hydrologic, geomorphic, temperature, and turbidity of the Little Colorado River, which are primary constituent elements on which the Humpback chub depend and the critical habitat designation was based.<sup>5</sup> These changes could contribute to the extinction of the Humpback chub.

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<sup>4</sup> National Park Service, Humpback Chub Tributary Translocations, available at <https://www.nps.gov/grca/learn/nature/shinumotransloc.htm> (last accessed Nov. 21, 2019).

<sup>5</sup> The final designating critical habitat describes the components of critical habitat as follows:

The primary constituent elements determined necessary for survival and recovery of the four Colorado River endangered fishes include, but are not limited to:

Water

This includes a quantity of water of sufficient quality (i.e., temperature, dissolved oxygen, lack of contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is required for the particular life stage for each species.

Physical Habitat

This includes areas of the Colorado River system that are inhabited or potentially habitable by fish for use in spawning, nursery, feeding, and rearing, or corridors between these areas. In addition to river channels, these areas also include bottom lands, side channels, secondary channels, oxbows, backwaters, and other

Extinction of the four Colorado River fishes [including the Humpback chub] would most likely occur as a result of the presence and continued introductions of nonnative fishes, significant changes in the hydrologic cycle, increased fragmentation and channelization of their habitat, and decreased water quality. Although a single action could result in extinction, the cumulative reduction in suitable habitat resulting from many actions also could lead to species extinction.<sup>6</sup>

We anticipate robust studies would be necessary to show that the proposed project could be constructed without contributing to the decline and even extinction of the chub in contravention of the Endangered Species Act.<sup>7</sup> Again, the Applicant has not identified funding to undertake the necessary studies under this or its other preliminary permit application for the Navajo Nation Little Colorado Pumped Storage Project.

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areas in the 100-year flood plain, which when inundated provide spawning, nursery, feeding and rearing habitats, or access to these habitats.

#### Biological Environment

Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, are out of balance due to introduced nonnative fish species in many areas.

*Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Colorado River Endangered Fishes: Razorback Sucker, Colorado Squawfish, Humpback Chub, and Bonytail Chub*, 59 FR 13374, 13378 (Mar. 21, 1994).

<sup>6</sup> *Id.* at 13382.

<sup>7</sup> FWS stated that installation of dams in the Colorado River Basin have caused negative changes to key habitat characteristics and “led to the decline or extirpation of native Colorado River fishes throughout the basin, including humpback chub ....” FWS Comments, p. 3.



### **III.** **Conclusion**

American Rivers requests that the Commission grant this motion to intervene and consider these comments in reviewing the Application.

Dated: November 21, 2019

Respectfully submitted,



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Matt Rice  
Director, Colorado River Basin Program  
AMERICAN RIVERS  
1536 Wynkoop St., Office 321  
Denver, Colorado 80202  
[mrice@americanrivers.org](mailto:mrice@americanrivers.org)

Richard Roos-Collins  
Julie Gantenbein  
WATER AND POWER LAW GROUP PC  
2140 Shattuck Ave., Ste. 801  
Berkeley, CA 94704-1229  
510-296-5588  
[rrcollins@waterpowerlaw.com](mailto:rrcollins@waterpowerlaw.com)  
[jgantenbein@waterpowerlaw.com](mailto:jgantenbein@waterpowerlaw.com)

Attorneys for AMERICAN RIVERS

**DECLARATION OF SERVICE**

**Pumped Hydro Storage LLC's Navajo Nation Salt Trail Canyon  
Pumped Storage Project (P-14992)**

I, Emma Roos-Collins, declare that I today served the attached "American Rivers' Motion to Intervene and Comments on Pumped Hydro Storage LLC's Application for a Preliminary Permit for the Navajo Nation Salt Trail Canyon Pumped Storage Project (P-14992)," by electronic mail, or by first-class mail if no e-mail address is provided, to each person on the official service list compiled by the Secretary in this proceeding.

Dated: November 21, 2019

By:



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Emma Roos-Collins  
WATER AND POWER LAW GROUP PC  
2140 Shattuck Ave., Suite 801  
Berkeley, CA 94704-1229  
Phone: 510-296-5591  
Fax: 866-407-8073  
[office@waterpowerlaw.com](mailto:office@waterpowerlaw.com)