

129 FERC ¶ 62,208  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

KW Sackheim Development

Project No. 13224-000

ORDER ISSUING PRELIMINARY PERMIT  
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(Issued: December 17, 2009)

1. On May 12, 2008, KW Sackheim Development (Sackheim) filed an application, pursuant to section 4(f) of the Federal Power Act (FPA),<sup>1</sup> to study the feasibility of the proposed Jackson Meadows Project No. 13224-000 to be located at Jackson Meadows dam on the Middle Yuba River in Nevada County, California. The project would affect lands of the United States within the Tahoe National Forest. The project would use an existing dam owned and operated by the Nevada Irrigation District (Nevada Irrigation).
2. The proposed project would consist of: (1) an existing 1,530-foot-long, 195-foot-high embankment dam; (2) an existing reservoir having a surface area of 738 acres and a storage capacity of 52,500 acre-feet; (3) one penstock consisting of an existing 240-foot-long, 42-inch-diameter pipe; (4) a new powerhouse containing one new generating unit having an installed capacity of 2.5 megawatts; and (5) a proposed 8,000-foot-long, 60-kva power transmission line. The proposed Jackson Meadows Development would have an average annual generation of 8.7 gigawatt-hours, which would be sold to a local utility.

**I. Background**

3. The Commission issued a public notice for the project on August 14, 2009. Timely motions to intervene were filed by Nevada Irrigation; Foothills Water Network; Sierra Club – Mother Lode Chapter; American Whitewater; Trout Unlimited; California Sportfishing Protection Alliance; American Rivers; Sierra Salmon Alliance; and Northern

---

<sup>1</sup> 16 U.S.C. § 797(f) (2006).

California Federation of Fly Fishers.<sup>2</sup> The Department of the Interior filed a no-comment letter.

## II. Discussion

4. Section 4(f) of the FPA authorizes the Commission to issue preliminary permits for the purpose of enabling prospective applicants for a hydropower license to secure the data and perform the acts required by section 9 of the FPA,<sup>3</sup> which in turn sets forth the material that must accompany an application for license. The purpose of a preliminary permit is to preserve the right of the permit holder to have the first priority in applying for a license for the project that is being studied.<sup>4</sup> Because a permit is issued only to allow the permit holder to investigate the feasibility of a project while the permittee conducts investigations and secures necessary data to determine the feasibility of the proposed project and to prepare a license application, it grants no land-disturbing or other property rights.<sup>5</sup>

5. Nevada Irrigation's motion to intervene states that it opposes Sackheim's proposed development because it may impact Nevada Irrigation's facilities and operations at the Jackson Meadows dam and would conflict with its Yuba Bear Project No. 2266 relicensing proceeding. Nevada Irrigation does not provide any details regarding the specific impacts that Sackheim's proposed project would have on its operations. Nevada Irrigation is in the process of relicensing the multi-dam Yuba Bear Project, and a license application is due to be filed by Nevada Irrigation by April 30, 2011. The Jackson Meadows dam, at which Sackheim proposes to install incremental capacity, is a non-

---

<sup>2</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2009).

<sup>3</sup> 16 U.S.C. § 802 (2006).

<sup>4</sup> See, e.g., *Mt. Hope Waterpower Project LLP*, 116 FERC ¶ 61,232 at P 4 (2006) ("The purpose of a preliminary permit is to encourage hydroelectric development by affording its holder priority of application (i.e., guaranteed first-to-file status) with respect to the filing of development applications for the affected site.").

<sup>5</sup> Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment. A permit holder can only enter lands it does not own with the permission of the landholder, and is required to obtain whatever environmental permits federal, state, and local authorities may require before conducting any studies. See, e.g., *Three Mile Falls Hydro, LLC*, 102 FERC ¶ 61,301 at P 6 (2003); see also *Town of Summersville, W.Va. v. FERC*, 780 F.2d 1034 (D.C. Cir. 1986) (discussing the nature of preliminary permits).

generating feature of the Yuba Bear Project. In the Commission's policy statement *Preferences at Relicensing Units of Development* (Policy Statement), the Commission declined to impose a blanket moratorium on the issuance of preliminary permits for the study of unused capacity at licensed projects that are subject to the relicensing process.<sup>6</sup> Sackheim proposes to add a new powerhouse to the Jackson Meadows dam and states that the operation of the proposed powerhouse would not be expected to alter existing dam operations.<sup>7</sup> Further, a permit does not authorize ground-disturbing activities nor does it authorize additional entry rights within the existing licensee's project boundary beyond those that Sackheim would have had without the permit. Thus, it does not appear that studies conducted under the permit will conflict with Nevada Irrigation's current operations or relicensing studies.

6. Moreover, issuing the requested permit will not block Nevada Irrigation from proposing in its relicensing application the development of the same unused capacity that the permittee seeks to study. Consistent with the findings in the Policy Statement, the subject permit will provide tie-breaker preference over other third-party applicants for the filing of a development application for incremental capacity during the permit term, but not against comprehensive development applications filed by the licensee or a third party on relicensing.<sup>8</sup> If within a reasonably contemporaneous time period the Commission has (or reasonably expects to have) before it for consideration an application for incremental capacity and an application for relicense of existing facilities, then the Commission will consider the applications in a comparative proceeding.<sup>9</sup>

7. During the course of the permit, the Commission expects that the permittee will carry out pre-filing consultation and study development leading to the possible

---

<sup>6</sup> 57 FERC ¶ 61,349 (1991).

<sup>7</sup> Regarding possible alterations of the facilities and operations of Project No. 2266, the Commission will not issue a preliminary permit for a project proposal that would clearly cause an impermissible alteration of a licensed project, absent the consent of the licensee, as required under section 6 of the FPA. However, where as here it is not possible to find that a permit applicant's proposed project would inevitably entail such an impermissible alteration of the existing licensed project, the Commission will issue the permit. See, e.g., *Universal Elec. Power Corp.*, 92 FERC ¶ 61,242 (2000).

<sup>8</sup> *Preferences at Relicensing of Units of Development*, 57 FERC at 62,141-13. There, the Commission also stated: "If permit applicants are willing to incur the risks inherent in this framework, it does not appear necessary to preclude them from obtaining a permit and developing an application for a license."

<sup>9</sup> *Id.* at 62,141-10.

development of a license application. The pre-filing process begins with preparation of a Notice of Intent (NOI) and Pre-Application Document (PAD) pursuant to sections 5.5 and 5.6 of the Commission's regulations.<sup>10</sup> The permittee must use the Integrated Licensing Process unless the Commission grants a request to use an alternative process (Alternative or Traditional Licensing Process). Such a request must accompany the NOI and PAD and set forth specific information justifying the request.<sup>11</sup> Should the permittee file a development application, notice of the application will be published, and interested persons and agencies will have an opportunity to intervene and to present their views concerning the project and the effects of its construction and operation.

8. A preliminary permit is not transferable. The named permittee is the only party entitled to the priority of the application for license afforded by this preliminary permit. In order to invoke permit-based priority in any subsequent licensing competition, the named permittee must file an application for license as the sole applicant, thereby evidencing its intent to be the sole licensee and to hold all proprietary rights necessary to construct, operate, and maintain the proposed project. Should any other parties intend to hold during the term of any license issued any of these proprietary rights necessary for project purposes, they must be included as joint applicants in any application for license filed. In such an instance, where parties other than the permittee are added as joint applicants for license, the joint application will not be eligible for any permit-based priority.<sup>12</sup>

The Director orders:

(A) A preliminary permit is issued for the Jackson Meadows Hydroelectric Project No. 13224 to KW Sackheim Development, for a period effective the first day of the month in which this permit is issued, and ending either 36 months from the effective date or on the date that a development application submitted by the permittee has been accepted for filing, whichever occurs first.

(B) This preliminary permit is subject to the terms and conditions of Part I of the Federal Power Act and related regulations. The permit is also subject to Articles 1 through 4, set forth in the attached standard form P-1.

(C) This preliminary permit provides KW Sackheim Development preference over third-party applicants for the filing of a development application during the permit

---

<sup>10</sup> 18 C.F.R. §§ 5.5 and 5.6 (2009).

<sup>11</sup> See 18 C.F.R. § 5.3 (2009).

<sup>12</sup> See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

term, but does not provide preference against comprehensive development applications filed by the licensee or a third party on relicensing.

(D) This order is issued under authority delegated to the Director and constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Timothy J. Welch, Branch Chief  
Hydro West Branch 2  
Division of Hydropower Licensing

**Form P-1 (Revised December 2009)****FEDERAL ENERGY REGULATORY COMMISSION****TERMS AND CONDITIONS OF  
PRELIMINARY PERMIT**

**Article 1.** The purpose of the permit is to maintain priority of application for a license during the term of the permit while the permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and, if the project is found to be feasible, prepares an acceptable application for license. In the course of whatever field studies the permittee undertakes, the permittee shall at all times exercise appropriate measures to prevent irreparable damage to the environment of the proposed project. This permit does not authorize the permittee to conduct any ground-disturbing activities or grant a right of entry onto any lands. The permittee must obtain any necessary authorizations and comply with any applicable laws and regulations to conduct any field studies.

**Article 2.** The permit is not transferable and may, after notice and opportunity for hearing, be canceled by order of the Commission upon failure of the permittee to prosecute diligently the activities for which a permit is issued, or for any other good cause shown.

**Article 3.** The priority granted under the permit shall be lost if the permit is canceled pursuant to Article 2 of this permit, or if the permittee fails, on or before the expiration date of the permit, to file with the Commission an application for license for the proposed project in conformity with the Commission's rules and regulations then in effect.

**Article 4.** At the close of each six-month period from the effective date of this permit, the permittee shall file a progress report electronically via the Internet; and shall serve a copy on the intervenors in this proceeding. To paper-file instead, mail four copies of the progress report to the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The report shall describe, for that report period, the nature and timing of what the permittee has done under the pre-filing requirements of 18 C.F.R. sections 4.38 and 5.1-5.31 and other applicable regulations; and, where studies require access to and use of land not owned by the permittee, the status of the permittee's efforts to obtain permission to access and use the land.

Document Content(s)

P-13224 - 000OrderFORPRELIMINARYPERMIT.DOC.....1-6