

150 FERC ¶ 62,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Bishop Tungsten, LLC

Project No. 13586-000

ORDER DENYING EXTENSION OF TERM FOR
PRELIMINARY PERMIT

(Issued January 20, 2015)

1. On April 30, 2014, Bishop Tungsten LLC (Bishop Tungsten) filed a timely application for an extension of its preliminary permit for the proposed Lower Pine Creek Canyon Hydroelectric Project (Lower Pine Creek Project). The project would be located adjacent to Pine Creek in Inyo County, California. For the reasons discussed below, Bishop Tungsten's request for an extension is denied.

I. Background

2. On June 15, 2011, Commission staff issued Bishop Tungsten a preliminary permit to study the feasibility of the Lower Pine Creek Project.¹ The project would consist of: (1) a connection to an existing network of penstocks that collect and convey ground water from the Pine Creek Mine above the project area; (2) a single 20-inch-diameter conduit within the project area that would convey the water to one of six potential discharge areas where a hydropower turbine would be located and the water beneficially reused; (3) a powerhouse containing a single 4,400-kilowatt impulse turbine and a generator with an installed capacity of 4,620-kVA; (4) an interconnection to a Southern California Edison 56-kilovolt power line that runs alongside the road for the length of the canyon; and (5) appurtenant facilities.

3. On April 30, 2014, Bishop Tungsten filed a timely request for a two-year extension of its permit, which was due to expire on May 31, 2014. Upon the filing of a timely request to extend the term of a permit, the permit term will be automatically extended (not to exceed a total term allowed by law, in this case an extra two years) until the Commission acts on the application for an extension.²

¹ 135 FERC ¶ 62,224 (2011).

² See 18 C.F.R. § 4.82(c) (2014).

II. Discussion

4. Sections 4(f) and 5 of the Federal Power Act (FPA) authorize the Commission to issue preliminary permits to potential license applicants for a period of up to three years.³ In 2013, Congress amended the FPA to provide that a preliminary permit term may be extended once for not more than two additional years if the Commission finds that the permittee has carried out activities under the permit in good faith and with reasonable diligence.⁴

5. Bishop Tungsten states that an extension is needed because of unforeseen circumstances related to another proposed project in the project area. It states that the feasibility of the Lower Pine Creek Canyon project is dependent on the successful outcome of studies currently being performed for the Pine Creek Mine Project No. 12532, for which Pine Creek Mine, LLC (Pine Creek Mine) formerly held a preliminary permit.⁵ Bishop Tungsten maintains that, once those studies are complete, they will be used to prepare the license application for the Lower Pine Creek Canyon Project.

6. Holding a site and delaying its assessment while waiting for studies to be completed on a separate project would constitute site banking. The essence of the Commission's policy against site banking is that an entity that is unwilling or unable to develop a site should not be permitted to maintain the exclusive right to develop it.⁶

7. Bishop Tungsten submitted only four of the five required progress reports and two of the reports were filed following warnings from Commission staff that they were overdue. Based on staff's review of the application for extension, as well as the four progress reports submitted under the preliminary permit, Bishop Tungsten has not demonstrated that it has carried out activities under the permit in good faith and with

³ 16 U.S.C. § 797f (2012).

⁴ The Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, § 5, 127 Stat. 495 (codified as amended at 16 U.S.C. § 798(b) (2012)).

⁵ Pine Creek Mine and Bishop Tungsten, LLC have the same mailing address and are both controlled by Lynn Goodfellow. Beginning in 2001, Pine Creek Mine held three consecutive preliminary permits for Project No. 12532. On March 20, 2014, Commission staff denied Pine Creek Mine an extension of its third preliminary permit term, and on July 17, 2014, the Commission denied Pine Creek Mine's request for rehearing.

⁶ See *Cascade Creek, LLC*, 140 FERC ¶ 61,221, at P 27 (2012).

reasonable diligence. The progress reports do not contain evidence of agency consultation, studies performed, or other specific information evidencing progress toward the development of a license application. Rather, the information provided in each of the progress reports is very similar, with each noting an ongoing search for the best discharge site based upon favorable site access. The final two staff reports reference studies being conducted for the Pine Creek Mine project and state that portions of those studies will be used to prepare a license application. However, there is no evidence of planning activities for completing the requisite Notice of Intent to File an Application for a New License and Pre-Application Document, choosing a licensing process, or conducting the required consultation to support a development application.

III. Conclusion

8. For the above reasons, Bishop Tungsten's request to extend for two years the term of its preliminary permit for the Lower Pine Creek Canyon Hydroelectric Project is denied.

The Director orders:

- (A) The preliminary permit extension application filed by Bishop Tungsten, LLC on April 30, 2014 for the Lower Pine Creek Canyon Hydroelectric Project No. 13586 is denied.
- (B) This order is issued under authority delegated to the Director and constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2014).

Timothy Konnert, Chief
West Branch
Division of Hydropower Licensing

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