

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Pine Creek Mine, LLC

)

Project No. 12532

**KC LLC'S MOTION TO INTERVENE, AND MOTION REQUESTING THAT  
P-12532 PROJECT BOUNDARY BE DEFINED AS IDENTIFIED IN  
PRE-APPLICATION DOCUMENT FILED FEBRUARY 29, 2008**

KC LLC, applicant for two relevant preliminary permits,<sup>1</sup> for the reasons provided herein hereby moves to intervene in the Pine Creek Mine Hydroelectric Project integrated licensing process proceeding pursuant to Rule 214 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") regulations.<sup>2</sup> KC LLC also moves to respectfully request that, consistent with 18 C.F.R. § 4.83(b) regarding loss of the permittee's priority of application for a license upon failure to file an application for license before the permit expires, and 18 C.F.R. § 4.37(b)(1) specifying rules of preference among competing applications that favor the applicant whose plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the FERC determine that the Tungsten Mine Hydropower Project preliminary permit application filed March 3, 2008 by KC LLC in fact does not propose to develop, conserve, and utilize, in whole or in part, the same water resources as continue to be secured for priority of application under P-12532 by the February 29, 2008 Pre-Application Document (PAD) submitted with a Notice of Intent (NOI) to File Original License Application.

---

<sup>1</sup> Preliminary Permit Application filed December 20, 2007, assigned P-13090 pending FERC action; Preliminary Permit Application for Tungsten Mine Hydropower Project filed March 3, 2008, concurrently with these motions

<sup>2</sup> 18 C.F.R. § 385.214

## **I. MOTION TO INTERVENE AND STATEMENT OF INTEREST**

In accordance with Rule 214(b) of the Commission's regulations, KC LLC hereby represents that, as evidenced by the information and arguments provided herein, its interests are directly impacted by the outcome of the P-12532 proceeding, it has a right to participate in this proceeding, and its participation is in the public interest.<sup>3</sup> The following information provides an overview of KC LLC's role and activities as a permit applicant endeavoring to develop, conserve, and utilize in the public interest the water resources of the region including those utilized by P-12532 and on adjacent public properties.

In addition to submitting a preliminary permit application for the Tungsten Mine Hydropower Project that would abut the project area described in the P-12532 pre-application document, and use the very same flow as the P-12532 project, KC LLC has also submitted the preliminary permit application designated as P-13090 proposing to also use the very same flow, which project is proposed to be sited entirely on public lands adjacent to the privately owned Pine Creek Mine parcels. Therefore, it is evident that KC LLC will be directly impacted by FERC's determination regarding the P-12532 project boundary and the outcome of the integrated licensing process on final design for the discharge of flows following generation. Moreover, given that KC LLC is endeavoring to develop, conserve, and utilize in the public interest the water resources of the region, thereby furthering the purposes of the Federal Power Act<sup>4</sup> by promptly promoting additional hydropower development with plans that are demonstrably better adapted, and

---

<sup>3</sup> 18 C.F.R. § 385.214(b)

<sup>4</sup> 16 USC § 806

taking into consideration the superior ability of KC LLC to carry out such plans, KC LLC's intervention is in the public interest.<sup>5</sup>

Intervention is warranted at this time, because the P-12532 preliminary permit is now expired and only a portion of the project area that may have been construed to pertain to the preliminary permit is addressed by the P-12532 notice of intent and pre-application document. Furthermore, Pine Creek Mine, LLC has also submitted a preliminary permit application, assigned P-13091 pending FERC action, that clearly competes with P-13090 submitted by KC LLC and potentially competes with the KC LLC March 3, 2008 preliminary permit application for the Tungsten Mine Hydropower Project, although significant conflicts, inconsistencies and ambiguities exist between various documents published and filed by Pine Creek Mine, LLC.

## **II. BACKGROUND AND CHRONOLOGY OF FILINGS AND ACTIVITIES AT PINE CREEK MINE AND ADJACENT PROPERTY**

Apparently, U.S. Tungsten owned and held a FERC license #8418 that was retired in 1992 on the Pine Creek Mine Mill site (Exhibit A).

A preliminary permit application that was granted and assigned P-12026 was submitted on May 18, 2001 on behalf of Pine Creek Development LLC that identified "The project site is located entirely within the former mining properties purchased by Pine Creek Development LLC (southern property) and Bishop Tungsten Development LLC (northern property)" (Exhibit B). The final six-month progress report under this permit identified that "The Forest Service, who has ultimate jurisdiction over the location of the proposed hydroelectric project, has taken exception to the installation of the mine existing plug on the grounds that a special use permit was not obtained prior to its

---

<sup>5</sup> 18 C.F.R. § 385.214(b)

construction.” and “It is hoped that the new preliminary permit for this project will be accepted [...]” (Exhibit C).

The application for the just expired P-12532 permit was submitted on August 31, 2004 as the referenced successor to P-12026. The project description retained the statement that “The proposed hydroelectric project will develop the potential of the water from the Pine Creek Mine and nearby Morgan Creek” yet reflects no hydraulic connection to Morgan Creek, and describes “The project area includes lands owned by Pine Creek Development LLC as described below. The project boundary consists of a 12’ wide right of way along the 12, 000’ long access tunnel and the approximate area of the mine that would be inundated by water being back up from the plug approximately 1,300 vertical feet” (Exhibit D).

On August 21, 2007, Pine Creek Mine filed a motion to intervene and request that the license for the neighboring P-7267 Tungstar Project be terminated. Upon termination of the P-7267 license, KC LLC and Pine Creek Mine, LLC both submitted on December 20, 2007 preliminary permit applications proposing to utilize at least in part the same water resources within the footprint reserved for the P-7267 license (Exhibit E). The Pine Creek Mine, LLC’s P-13091 "Mine Water Discharge and Conduit Extension Project" application could be construed as overlapping with P-12532 (Exhibit D). The application map shows a rectangular outline with a label for "Lower Project Boundary" and a T-shaped polygon that encompasses the entire mine including federal lands and displays adjacent labels "Proposed Intake and Upper Project Boundary" and "Private Millsite Land." The Exhibit 1 Description of Proposed Project identifies that “The proposed project will collect water at the Pine Creek Mine millsite at the Morgan Creek

Bridge where the mine discharges its mine and mill water. These flows will be collected in an intake system to be determined during this preliminary permit. From the intake the water will be conveyed approximately 9,000 feet [...],” suggesting that no generation would actually be developed on the private mine property.

By letter signed by Doug Hicks, Agent for Bishop Tungsten Development LLC, to the FERC Secretary dated January 3, 2008 (and filed in FERC’s e-library under P-13091, apparently at the discretion of the FERC), a joint agency and public meeting was announced for January 24, 2008 (and subsequently rescheduled to January 29, 2008) “to discuss the proposed Pine Creek Mine Water Discharge System Conduit Exemption” and “the proposed efficiency improvements to the existing mine water discharge system hydroelectric project that was constructed in the 1980’s.” Citing the purpose of the meeting as to solicit comments per “CFR Title 18 Chapter 1, Part 4 Subpart D Section 4.38” although there was no apparent notification of intent to file a license application pursuant to § 5.5 nor any pre-application document prepared pursuant to the provisions of § 5.6 as required by § 4.38(a)(3). Documents available at the library in Bishop but evidently never filed with the FERC (Exhibit F) include a map identifying Unit 1 and Unit 2 turbines, in addition to the “Tungstar Intake” and “Potential Future Turbine Locations.”

On February 29, 2008, immediately prior to the expiration of the P-12532 permit, Pine Creek Mine, LLC submitted its NOI to File Original License Application and PAD containing a Project Description stating “all new generating facilities will be located entirely underground in the existing mine tunnel connected to the existing mine tunnel plug by a penstock approximately 30 feet long” (Exhibit G, Exhibit D).

### **III. ARGUMENTS IN SUPPORT OF REQUEST TO DEFINE P-12532 BOUNDARY AS IDENTIFIED IN PRE-APPLICATION DOCUMENT**

As highlighted in the chronology of the previous section, since 2001, Pine Creek Mine, LLC has filed three preliminary permit applications and documentation referencing a proposed conduit exemption, all of which could be construed or clearly indicate an intent to utilize the same water resources within the same footprint on the surface of the private property (mill site). The two preliminary permits filed consecutively have been followed by a Notice of Intent to File Original License Application and a PAD that abandon all generation options on the surface of the private property, while the latter preliminary permit, most recent permit application, and conduit exemption documentation concurrently enclosed the mill site within the project area for discharge of flows from one project, collection of inflows for the next, and siting of generation for the third. (See relative boundaries on Exhibit D.) While Pine Creek Mine, LLC may argue that the three proposed projects could be smoothly integrated, in fact the introduction of each new concept simply distracts attention from the issues and concerns that remain to prevent successful realization of any of the proposed hydropower developments by Pine Creek Mine, LLC.

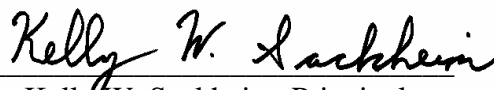
Pine Creek Mine, LLC is entitled by FERC regulations to retain priority of development for the project area defined in the P-12532 PAD for the period that may reasonably be required for development of this limited area (Exhibit D). Pine Creek Mine, LLC has no vested priority of development outside the P-12532 PAD boundary, and its pending P-13091 permit application and “proposed” exemption only merit consideration in accordance with 18 C.F.R. § 4.37 Rules of preference among competing applications, favoring the applicant whose plans are better adapted to develop, conserve,

and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans.

#### IV. CONCLUSION

For the reasons provided herein, KC LLC hereby moves to intervene in the P-12532 proceeding in accordance with Rule 214 of the Commission's regulations.<sup>6</sup> KC LLC's interests are directly impacted by the P-12532 proceeding, it has a right to participate, and its participation is in the public interest. In addition, intervention is warranted at this time due to the expiration of the preliminary permit granted P-12532, the fact that the P-12532 boundary identified in the pre-application document does not encompass the entire area that could be construed as reserved for priority of development under the preliminary permit, KC LLC's current efforts to develop hydropower in accordance with two relevant preliminary permit applications<sup>7</sup> and the fact that no other party can adequately represent its interests accordingly. Such circumstances warrant and constitute good cause for KC LLC's intervention. Consistent with 18 C.F.R. § 4.83(b) and 18 C.F.R. § 4.37(b)(1), KC LLC also moves to respectfully request that the Commission define the P-12532 boundary as identified in the pre-application document rather than any larger area as may be construed from the preliminary permit application.

Respectfully submitted this 3<sup>rd</sup> day of March, 2008.

By:   
Kelly W. Sackheim, Principal  
KC LLC

---

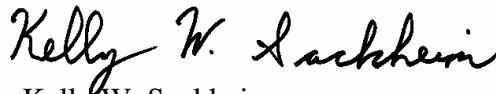
<sup>6</sup> 18 C.F.R. § 385.214(b)

<sup>7</sup> Preliminary Permit Application filed December 20, 2007, assigned P-13090 pending FERC action; Preliminary Permit Application for Tungsten Mine Hydropower Project filed March 3, 2008, concurrently with these motions

## CERTIFICATE OF MAILING

The foregoing document is being mailed by first class mail postage prepaid or email to those entities listed in Section 8 of the Notice of Intent to File Original License Application filed electronically on February 29, 2008 by Fred E. Springer, the mailing list enclosed with the transmittal to said NOI, and other likely interested parties.

Dated at Fair Oaks, CA this 3rd day of March 2008.



Kelly W. Sackheim

KC LLC

5096 Cocoa Palm Way

Fair Oaks, CA 95628

916/962-2271 (Phone)

kws@sackheimconsult.com

916/848-3345 (Facsimile)