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Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D. C. 20426

November 18, 2008

Subject: NOTICE OF INTERVENTION:

Pine Creek Mine Hydroelectric Projects, FERC Nos. P- 12532

Dear Ms. Bose:

In response to the Commission's notice dated September 19, 2008, and pursuant to Commission Rule 214 (18 C.F.R. 385.214(a)(2)), the United States Department of Agriculture, Forest Service (Forest Service), notifies you of its intervention in regards to the application for Preliminary Permit for the Pine Creek Mine Hydroelectric Projects, FERC Nos. P-12532.

This preliminary permits requested by Pine Creek LLC propose to use water from Pine and Morgan Creeks located on the Inyo National Forest. There may be impacts to sensitive, threatened and endangered species on National Forest lands, to heritage resources, and to Morgan and Pine Creeks, their tributaries and watershed.

The Forest Service previously intervened on this project on January 28, 2005 for the previous preliminary permit which expired in February 2008. The concerns expressed in that intervention are still valid. Exhibit 1 of the proponent's March 2008 application states,

"There is an existing concrete plug in the mine that is capable of storing water up to 1320 ft of gross head above the plug elevation and over 200 ac-ft of free water. The plug is located at an elevation of approximately 8080 ft above sea level. The plug is approximately 12' X 12' by 30' thick reinforced concrete located 2500 feet inside from the mine portal. The plug is not currently storing or diverting water inside the mine. The proposed penstock for the installation would be utilizing either an existing 24" or 18" steel pipe through the existing plug. A permit from the Department of Interior or Forest Service will be required to maintain the tunnel plug and store water in the mine if the plug is to be used for non-mining or milling purposes."

The Forest Service informed the Commission on December 18, 2003 (refer to submittal 20031230-5054 in P-12026) and also in our Notice of Intervention for P-12532 on January 28, 2005 of that this plug was illegally constructed and is in trespass. On April 5, 2006 the Forest Service ordered the mine owner to remove the plug by October 31, 2006. The plug is still in place and legal action is pending. Removal of the plug may affect the quantity of discharge available for development of the hydroelectric project.

The Forest Service also notes that the proponent filed an Application for Exemption for the Pine Creek Mine Tailings Lines on October 31, 2008 and cites rights under the 1872 Mining Law. The FERC should be aware that on June 13, 2007 Inyo County ordered (ID #91-14-0007) that the Pine Creek Mine (also referred to as Bishop Tungsten Development LLC, Lynn Goodfellow, Avocet Tungsten Inc, Pine Creek Development LLC, and Brownstone Holdings LLC):

“Cease all mining activity at the Pine Creek Mine and forward certification to the undersigned that all mining activity at the site has terminated.”

Further the hearing officer found that

“the Pine Creek mine was closed as of May 9, 2000....No interim management plan was filed as required by the Public Resource Code for idle mines and there is no evidence of an intent at the time of closure to resume surface mining operations in the future. The mine is also considered abandoned by OMR, since the site has not been reclaimed since its closure. There is no permit to begin new mining activities on the site and there is no reclamation plan for new activities. Any surface mining or milling activities at Pine Creek Mine violates SMARA and the Inyo County Code and are not allowed.”

No plan of operation for mining has been filed with the Forest Service to reopen this mine and in accordance with the order from Inyo County, the Pine Creek Mine is NOT an active mine.

The Forest Service wishes to become a party to these proceedings to ensure that the Forest Service’s interest and the public’s interest in the protection and management of the Inyo National Forest in accordance with statutory authority are adequately represented.

Please include the following persons on the official service list for any matter relating to these proceedings:

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Respectfully submitted,

/s/Joshua S. Rider
Attorney for the Forest Service

cc: Service List
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Document Content(s)

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