

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

San Diego County Water Authority
City of San Diego

Project No. 14642-002

ORDER ISSUING PRELIMINARY PERMIT AND GRANTING PRIORITY TO FILE
LICENSE APPLICATION

(October 29, 2018)

1. On May 1, 2018, the San Diego County Water Authority and the City of San Diego, California (collectively, San Diego), jointly filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA),¹ proposing to study the feasibility of the San Vicente Energy Storage Facility, to be located at San Vicente reservoir, in Lakeside, California.

I. Project Proposal

2. The proposed project would consist of an integration of existing facilities and the construction of new facilities, as follows:

Lower Reservoir

The lower reservoir portion of the proposed project would consist of the following: (1) the existing San Vicente reservoir with a storage capacity of 246,000 acre-feet and a surface area of 1,600 acres at a normal maximum operating elevation of 766 feet above mean sea level (msl); (2) the existing 1,430-foot-long, 337-foot-high San Vicente roller compacted concrete (RCC) gravity dam; (3) a lower reservoir inlet/outlet structure equipped with trash racks and either one or two slide gates; (4) a new 230-kilovolt (kV) substation containing step-up transformers, circuit breakers, and disconnect switches; (5) a new switchyard constructed at the point of interconnection at the western edge of San Vicente Reservoir; (6) an approximately 5-mile-long, 230-kV overhead or underground transmission line that would extend from the northern end of San Vicente reservoir to the 230-kV Sycamore substation and interconnect with San Diego Gas and Electric's existing 500-kV Sunrise Powerlink; and (7) appurtenant facilities.

¹ 16 U.S.C. § 797(f) (2012).

Upper Reservoir

The upper reservoir portion of the proposed project would be constructed near Foster Canyon, approximately one-half mile northwest of the San Vicente reservoir and would consist of: (1) a reservoir with a storage capacity of 7,842 acre-feet and a surface area of 100 acres at a full pond elevation of 1,490 feet msl; (2) five RCC saddle dams impounding the reservoir and measuring, respectively: (i) 1,425 feet long and 230 feet high, (ii) 838 feet long and 80 feet high, (iii) 838 feet long and 80 feet high, (iv) 1,006 feet long and 240 feet high, and (v) 3,100 feet long and 30 feet high; (3) an upper reservoir inlet/outlet structure; (4) a 2,050-foot-long, 22-foot diameter power tunnel transitioning into two 326-foot-long, steel-lined penstocks extending between the upper reservoir inlet/outlet and the pump/turbines below; (5) a 360-foot-long, 83-foot-wide, 119-foot-tall subsurface powerhouse containing four 125-megawatt vertical Francis variable speed reversible pump/turbine/generator units; (6) a 2,244-foot-long, 25-foot-diameter concrete-lined tailrace tunnel connecting the pump-turbine draft tubes to the lower reservoir inlet/outlet structure; (7) a 2,200-foot-long, 230-kV, underground transmission line extending from the upper reservoir to the northern end of San Vicente reservoir; and (7) appurtenant facilities.

3. The project would generate an estimated 1,300 gigawatt-hours annually.

II. Background

4. On May 14, 2015, the Commission issued a preliminary permit to the San Diego County Water Authority and the City of San Diego for a term of 36 months, expiring on April 30, 2018, under Project No. 14642-000 to study the feasibility of the San Vicente Energy Storage Facility. On July 28, 2015, the permittees filed a Notice of Intent to file a license application (NOI), a Pre-Application Document (PAD), and a request to utilize the Traditional Licensing Process (TLP). Commission staff approved the use of the TLP on September 28, 2015.

5. Upon expiration of the initial preliminary permit, the permittees filed an application for a preliminary permit on May 1, 2018. On June 28, 2018, the Commission issued public notice of San Diego's permit application as accepted for filing and solicited comments, motions to intervene, and competing applications. The Mussey Grade Road Alliance (Alliance) and the Center for Biological Diversity filed motions to intervene in the proceeding.² The Alliance also filed comments opposing the proposed project due to

² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2018). Although the Center for Biological Diversity's motion to intervene was untimely, the motion is granted. *See Id.* (continued ...)

potential environmental impacts to nearby conservation lands, project need and size, and construction and operation-related impacts.

6. In its application, San Diego states that, while the Water Authority and the City are both municipal entities, they are specifically disclaiming municipal preference for this preliminary permit application. San Diego states that they will be seeking to develop this project with a potential private entity and do not want to foreclose any opportunity to file a joint license application with a non-municipal partner, or to share future ownership of the project with a non-municipal partner.

III. Discussion

7. The Alliance expressed concerns regarding the San Diego's 2015 PAD. Specifically, the Alliance alleges that the boundary map is inaccurate and that the PAD includes inaccurate statements regarding stakeholder involvement and meetings. Further, the Alliance is uncertain whether the substation has sufficient capacity to accommodate the project, whether the project is of an appropriate size, or whether the project will be usable. Finally, the Alliance raises concerns about leakage and construction risks, water level fluctuation and evaporation, and the aesthetic and recreational impacts of the project. The Center for Biological Diversity and Preserve Wild Santee also expressed concerns regarding project construction and operation and questioned whether the proposed project would be a net generator of greenhouse gases.

8. The Alliance's and the Center for Biological Diversity and Preserve Wild Santee's concerns relate to the construction and operation of the proposed project and are premature at the permit stage. These concerns can properly be addressed during the licensing process, should San Diego file a development application.³ The purpose of a preliminary permit is to study the feasibility of the project, including studying potential impacts. A preliminary permit does not authorize a permittee to undertake construction of the proposed project, and thus does not consider construction and operations issues.

9. In addition to its concerns, the Alliance recommends that San Diego conduct a number of studies regarding the project. For example, it recommends an economic viability study to prove benefits of the project and a firm capacity study to ensure that the project meets its design goals. The Alliance also recommends a fire protection study, a fire protection plan, and a drought impact study to ensure that the project does not contribute to fire risk and will not impact San Diego water supplies. Finally, the Alliance

§ 385.214(b)(3), (d).

³ *McGinnis, Inc.*, 133 FERC ¶ 61,144 at P 6 (2010).

(continued ...)

requests an interconnection study and a dispatch impacts study to ensure that net emissions benefit the project.

10. The Commission has not sought to place all relevant study requirements in preliminary permits.⁴ Rather, the studies to be undertaken by a permittee are shaped by the Commission's filing requirements for development applications. Potential development applicants are required to consult with appropriate state and federal resource agencies and affected Indian tribes, conduct all reasonable studies requested by the agencies, and solicit comments on the applications before they are filed.⁵

IV. Permit Information

11. 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,⁶ 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.⁷ 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.⁸

⁴ See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

⁵ See 18 C.F.R. § 4.38 (2018).

⁶ 16 U.S.C. § 802 (2014).

⁷ 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.”).

⁸ 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).

12. The applicant has previously held a preliminary permit for this site under Project No. 14642-000. The Commission will grant successive permits if it concludes that the applicant has diligently pursued the requirements of its prior permits in good faith. San Diego filed information demonstrating that it is currently making progress with the analysis of the project's feasibility, and towards the development of its proposed project. San Diego filed its NOI and PAD in July 2015 pursuant to sections 5.5 and 5.6 of the Commission's regulations and was approved to utilize the traditional licensing process to develop its application. San Diego has demonstrated that it has made progress during its prior permit term towards developing an application for its proposed project.

13. The Commission usually does not prescribe in great detail what a permittee must accomplish under a permit. However, a successive permit can warrant a greater degree of Commission oversight. Therefore, we will monitor the progress of the permittees' activities. If the permittees fail to make significant progress toward developing a development application, the permit may be subject to cancellation.

14. Article 4 of this permit requires the permittee to submit a progress report no later than the last day of each 12-month period from the effective date of this permit. A progress report must describe the nature and timing of what the permittee has done under the pre-filing requirements of section 4.38 and Part 5 of the Commission's regulations for the specific reporting period. A permit may be cancelled if a permittee fails to file a timely progress report or if the report does not demonstrate that progress is being made by the permittee. The late filing of a report or the supplementation of an earlier report in response to a notice of probable cancellation will not necessarily excuse the failure to comply with the requirements of this article.

15. A preliminary permit is not transferable. The named permittees are the only parties 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 permittees 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 permittees are added as joint applicants for license, the joint application will not be eligible for any permit-based priority.⁹

⁹ See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

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The Director orders:

(A) A preliminary permit is issued for the San Vicente Energy Storage Facility Project No. 14642 to the San Diego County Water Authority and the City of San Diego, for a period effective the first day of the month in which this permit is issued, and ending either 48 months¹⁰ 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 order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days of the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825*l* (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2018).

Timothy Konnert, Chief
West Branch
Division of Hydropower Licensing

¹⁰ The America's Water Infrastructure Act of 2018 amended section 5 of the Federal Power Act to allow for preliminary permit terms, and extensions thereof, of up to 4 years. *See* America's Water Infrastructure Act of 2018, Pub. L. No. 115-270, § 3001, 132 Stat 3765, 3862 (2018).

Form P-1 (Revised October 2018)**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. No later than the last day of each 12-month period from the effective date of this permit, the permittee shall file a progress report. Each progress report must describe, for that reporting 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. Progress reports may be filed electronically via the Internet, and the Commission strongly encourages e-filing. Instructions for e-filing are on the Commission's website at <http://www.ferc.gov/docs-filing/efiling.asp>. 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.