

142 FERC ¶ 62,181  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Peabody Trout Creek Reservoir LLC

Project No. 14446-001

ORDER ISSUING PRELIMINARY PERMIT  
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(March 5, 2013)

1. On November 30, 2012, Peabody Trout Creek Reservoir LLC (Peabody) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA),<sup>1</sup> to study the feasibility of the proposed Peabody Trout Creek Reservoir Hydroelectric Project No. 14446 (Trout Creek Reservoir Project or project) to be located on Trout Creek, near the city of Steamboat Springs, Routt County, Colorado. The proposed reservoir would occupy 4.3 acres of land administered by the Bureau of Land Management.

**I. Project Proposal**

2. The proposed project would consist of: (1) a 1,900-foot-long, 75-foot-high, compacted earth-fill dam with a normal high water elevation of 6,669 feet above mean sea level forming a 392-acre reservoir and impounding 11,720 acre-feet of water; (2) a primary spillway consisting of a 54-inch-diameter ductile iron-reinforced concrete conduit; (3) a 200-foot-long, earthen, side-channel emergency spillway with an armored crest, sides, and outlet works and a width that varies between 350 feet at the crest and 500 feet at the exit spillway; (4) water supply and hydropower intakes consisting of three separate intakes discharging from three levels inside the reservoir pool; (5) a 40-foot by 30-foot, two-story combined water treatment plant, pump station, and powerhouse containing a 125-kilowatt turbine-generator; (6) a 200-foot-long primary transmission line connecting to an existing 7.2-kilovolt transmission line owned by Yampa Valley Electric Association; and (7) appurtenant facilities. The project would generate an estimated average of 756 megawatt-hours annually.

**II. Background**

3. The Commission issued public notice of Peabody's permit application on December 4, 2012. A timely motion to intervene was filed by American Rivers on

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

January 24, 2013.<sup>2</sup> A late motion to intervene was filed by the Upper Yampa Water Conservancy District (Upper Yampa District) on February 11, 2013.<sup>3</sup> On January 28, 2013, the U.S. Department of the Interior indicated that it had no comments at this time.

### **III. Permit Information**

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>4</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>5</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>6</sup>

5. 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 development of a license application. At this time, Peabody has already begun the Integrated Licensing Process (ILP) and filed a Pre-Application Document (PAD) on

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<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 (2012).

<sup>3</sup> The Upper Yampa District's late motion to intervene was granted on February 28, 2013.

<sup>4</sup> 16 U.S.C. § 802 (2006).

<sup>5</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>6</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).

August 9, 2012. Peabody also filed a proposed study plan on January 18, 2013 and is currently in the study development phase.

6. Article 4 of this permit requires the permittee to submit a progress report no later than the last day of each six-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.

7. 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>7</sup>

The Director orders:

(A) A preliminary permit is issued for the Trout Creek Reservoir Project No. 14446 to Peabody Trout Creek Reservoir LLC, 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.

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<sup>7</sup> See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

(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. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2012).

Timothy Welch, Chief  
West Branch  
Division of Hydropower Licensing

**Form P-1 (Revised April 2011)**

**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 six-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.