



TÓ NIZHÓNÍ ÁNÍ

“SACRED WATER SPEAKS”

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12 November 2025

Secretary Debbie-Ann Reese
Federal Energy Regulatory Commission
88 First Street, NE
Washington, DC 20426

Re: Comments Opposing Proposed Rule to Remove Tribal Consent Requirement for Preliminary Permits. Docket No.: RM26-5-000

Dear Chairman, Rosner and Commissioners,

On behalf of Tó Nizhóní Ání, I am writing to express strong opposition to the Department of Energy's proposed rule under Section 403 of the Department of Energy Organization Act, which direct the Commission to eliminate its current policy of denying preliminary hydropower permits on Tribal lands when the affected Tribe objects.

The Federal Energy Regulatory Commission's 2024 policy is a lawful and necessary affirmation of Tribal sovereignty and the federal government's trust responsibility, and it reflects sound administrative practice and responsible use of agency resources. Reversing this policy would undermine those principles and erode the integrity of FERC's decision-making process.

Community and Tribal Consultation and Consent are crucial for impacted communities and tribes where these projects are being proposed, like the Black Mesa Pumped Storage Project (BMPSP). For decades, coal mining on Black Mesa has not only extracted coal but also billions of gallons of groundwater to support the mining operation. Despite vigorous protest and objection from the community to find an alternate supply of water, the mine was allowed to proceed. Today, these same aquifers that communities rely on have been drawn down and depressurized. Community wells like Forest Lake must drill deeper to access water, and this is costly since the most reliable aquifer is more than 2000 ft in the ground in most places. Projects like the BMPSP threaten to worsen the state of the aquifers.

Water access and reliability is crucial for our communities on Black Mesa and the southwest region of the United States. Energy projects that propose to use large amounts of water for energy production should be vetted diligently. Tribal communities understand the resources and impacts by industry. Any project that proposes to use groundwater when it has been heavily impacted and in a state of recovery should not be considered for continued industry use.



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FERC’s current policy is consistent with the Federal Power Act, the federal trust responsibility, and principles of good governance. It respects Tribal sovereignty, conserves agency resources, and encourages responsible development through partnership rather than coercion. I urge the Commission to reject the Department of Energy’s proposed rule and to reaffirm its commitment to the policy established in 2024, which ensures that hydropower development on Tribal lands proceeds only with the consent of the affected Tribe.

Thank you for the opportunity to comment and for your continued attention to the protection of Tribal rights and resources in the Commission’s proceedings.

Sincerely,

Adrian Herder, Media Organizer

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