

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

Arizona Public Service Co.       )  
Childs Irving Project               )

**Project No. 2069**

**MOTION TO INTERVENE IN SUPPORT OF SURRENDER APPLICATION  
FILED BY AMERICAN RIVERS INC.**

**INTRODUCTION**

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §385.214, American Rivers Inc. (“American Rivers”) hereby moves to intervene in the above-captioned proceeding.<sup>1</sup> Movant reserves the right to supplement this Motion as appropriate. Additional comments will be filed based on subsequent studies and analysis proposed by Arizona Public Service Company (“APS”) or any other participant in this proceeding.

In this proceeding, the Commission will decide the fate of Fossil Creek. The return of full and natural flows to Fossil Creek will re-create a geologic marvel of travertine formations and improve conditions for recovery of native desert fishes and the entire riparian ecosystem. The surrender and removal of the Childs Irving Project, and restoration of full flows to Fossil Creek, as proposed by APS in its surrender application, represents a huge net societal benefit.

As currently operated, the Childs Irving Project removes virtually all water from

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<sup>1</sup>All filings, orders and correspondence respecting this intervention should be addressed to the following: Andrew Fahlund, American Rivers, 1025 Vermont Ave. NW, Suite 720, Washington, DC 20005, and to Samuel G. Coppersmith, Esq., Coppersmith Gordon Schermer Owens & Nelson PLC, 2633 E. Indian School Road, Suite 300, Phoenix, AZ 85016.

nearly 14 miles of stream channel, degrades a significant and rare desert riparian ecosystem, and prevents the establishment of a viable population of native desert fishes. In addition, the unique nature of the travertine formations in Fossil Creek makes it one of only a few such streams in the nation. The proposed restoration of Fossil Creek will result in spectacularly rare and beautiful recreation area, with geological significance, and enhancement of anadromous fish resources and creation of a healthy aquatic ecosystem.

## **I. DESCRIPTION OF MOVANT**

American Rivers is a national nonprofit environmental advocacy organization with a national membership of more than 30,000 and a membership in Arizona of 650. The mission of American Rivers is to protect and restore America's river resources and foster a river stewardship ethic. American Rivers operated an office in Phoenix, Arizona from 1992 to 1999 that focused on the restoration and protection of the Colorado River basin and also managed several smaller projects, including participating in the relicensing proceeding for the Childs Irving Project. American Rivers remains strongly committed to river protection in the Southwest and restoration of Fossil Creek remains an organizational priority.

American Rivers is also founder and chair of the Hydropower Reform Coalition, a nationwide association of conservation organizations, which has significant interests in the Commission policy, including those regarding license surrender and project decommissioning.

## **II. GROUNDS FOR INTERVENTION**

Members, staff, and the board of directors of American Rivers all have significant interests in both Fossil Creek and the Verde River watershed through their use,

enjoyment, and research of this area. American Rivers is an intervenor in the Commission's relicensing proceeding for the Childs Irving Project and signatory to a Settlement Agreement dated September 15, 2000 (the "Settlement Agreement") with APS and several other parties for the surrender, decommissioning, and removal of that project to restore natural flows to Fossil Creek. American Rivers is also involved in negotiations with the U.S. Forest Service ("USFS") over the management of the Verde River Wild and Scenic River area and has commented on the efforts of both USFS and the Bureau of Reclamation ("BOR") to restore native fish populations in Fossil Creek.

American Rivers has recognized expertise in issues relating to hydroelectric power and in assisting the Commission in determining the public interest in hydropower proceedings, and has participated in numerous Commission proceedings. Accordingly, participation by American Rivers in this proceeding will enable a more complete record to be developed, will lead to better informed decision making, and will serve the public interest.

Members of American Rivers use Fossil Creek, upstream of the diversion of its flows into the project, for recreational pursuits. Specifically, American Rivers members swim and hike along Fossil Creek and otherwise enjoy the vicinity of the project. Furthermore, members of American Rivers would participate in these activities even more often if the Commission grants APS's surrender application. Finally, as signatories to the underlying settlement agreement with APS, American Rivers and its members have an interest in working to uphold the terms of that settlement in this proceeding.

Further, American Rivers has broad organizational interests in the Commission's equal consideration of power and non-power values in hydropower

licensing pursuant to Sections 4(e) and 10(a) of the Federal Power Act (“FPA”). American Rivers also has an interest in the Commission’s license amendment process pursuant to 18 C.F.R. §4.200. American Rivers has intervened in dozens of ongoing licensing proceedings across the nation, in order to assure that the FPA is administered so as to protect and restore natural resources impacted by hydropower projects. We have filed comments in the Commission’s ongoing policy-making proceedings to improve the integration of environmental considerations and public participation into FERC's licensing decisions. These organizational interests are consistent with intervention in this proceeding.

### **III. STATEMENT OF POSITION**

American Rivers supports the APS surrender application as consistent with, and required by, the Settlement Agreement, and asks that the Commission accept this application and move forward with the actions and schedule contained therein. American Rivers also moves to intervene in this new proceeding, offering the following comments on the application.

The Commission’s rules for project surrender are fairly limited and provide little guidance to participants. However, American Rivers believes that APS has satisfied the initial requirements for application for surrender. *See* 18 C.F.R. §6.1. In its application, APS has incorporated the terms of the Settlement Agreement along with a timeline for action, and an acknowledgement of the need for some additional information. Specifically, as required by the Settlement Agreement, American Rivers seeks a surrender process that allows APS to continue to generate electricity from the project until December 31, 2004. No later than that date, APS has agreed to cease generation, and to return full flows to Fossil Creek permanently. Finally, APS will

complete project removal and restoration by December 31, 2009. Thus, American Rivers seeks final approval by the Commission of a surrender order, effective upon completion of the decommissioning activities generally outlined in the APS surrender application.

Section 6.2 of the Commission's regulations includes language about project surrenders on federal lands. "Where project works have been constructed on lands of the United States the licensee will be required to restore the lands to a condition satisfactory to the Department having supervision over such lands and annual charges will continue until such restoration has been satisfactorily completed." 18 C.F.R. §6.2.

While American Rivers assumes that these regulations will apply to this project's occupancy of the Tonto and Coconino National Forests, there remains some ambiguity about completion of actions satisfactory to USFS, the agency having supervision, and the termination of the Commission's jurisdiction.

Signatories of the Settlement Agreement agree that the decommissioning proposal contained in the Removal and Restoration Plan referenced in the APS surrender application is technically, legally, biologically, and economically feasible, and consistent with applicable law. The Settlement Agreement and APS surrender petition are in the public interest and meet the Commission's responsibilities for issuing decisions that balance power and non-power values. Although few formal comprehensive plans exist for Fossil Creek beyond limited mentions in USFS plans and other documents, we believe that the Settlement Agreement and surrender constitute the best comprehensive plan of development for the waterway as considered under Section 10(a) of the FPA. Several plans are now under development for the restoration of native desert fishes made possible through the return of natural flows to Fossil

Creek such as those of the BOR.

While certain state and federal agencies did not sign the Settlement Agreement for various reasons, each generally supports the principles and terms of the settlement, including the surrender application. The U.S. Fish and Wildlife Service submitted two letters to the Commission generally supporting the Settlement Agreement (July 27, 2000 and August 16, 2000), and filed comments on the Petition for Declaratory Order favorable to the position of the signatories to the Settlement Agreement.

American Rivers supports APS in its intention to continue to operate the project for power generation purposes, but not beyond the date of December 31, 2004 specified in the Settlement Agreement, while APS takes steps to surrender and decommission the project. Although this action will cause some additional ongoing impacts of continued water diversion, it is necessary to plan and implement this complex decommissioning process and will provide APS with additional revenue to offset the costs involved. The Commission has concluded that no “regulatory obstacle or apparent policy reason” would prevent the Commission from allowing continued operation of the project while APS engaged in activities leading to final surrender and decommissioning.

Once removed, the loss of electricity from the Childs Irving Project will have no appreciable affect on power supply, rates, air quality, or other related values. As APS explained in their surrender application, “[t]he generating capacity at Childs Irving is rated at 7 megawatts. Present output is limited to 4.2 MW. The [current] reduction in generation capacity is due to turbine wear at each facility. In addition the capacity at Childs is further limited by calcium build-up in the penstock that limits throughput to the turbines. The loss of this generating capacity will have little impact on system

capacity in Arizona as the generating capacity in the State is projected to be over 20,000 MW by 2004.” Surrender Application at 10. This project thus represents approximately 0.021% of Arizona’s total electricity production, a *de minimus* amount even under the most hyper-technically restrictive definition of “*de minimus*.”

American Rivers also supports the request by APS to make the surrender effective upon completion of the decommissioning. Although the Settlement Agreement sets the deadline for final actions by APS to complete removal and restoration by no later than December 31, 2009, APS may not require the entire period for purposes of decommissioning.

American Rivers recognizes that some additional studies and information will be needed for the surrender proceeding in addition to what has already been collected and submitted to the Commission. In particular, some information in addition to the current planning documents is required to analyze and determine the most appropriate method for decommissioning the project. American Rivers believes that the Commission may rely upon some information already developed in the record of the original relicensing process, and that those documents proposed by APS for transfer from the evidentiary record in relicensing are appropriate for this surrender proceeding. American Rivers is reviewing the record in the relicensing proceeding and other appropriate materials, and reserves the right to propose additional materials for incorporation into this surrender proceeding to support the APS surrender application and the Settlement Agreement. We will work with other settlement signatories to continue to build support for the Surrender Application.

American Rivers concurs with APS on a number of the issues that deserve close examination and supplementation during the surrender proceeding. These include

Fossil Springs dam removal impacts, the relationship between travertine formation and project decommissioning, native fish recovery, impacts on macroinvertebrate populations, and ancillary impacts of implementation of the decommissioning plan on aquatic and terrestrial resources. American Rivers also supports further examination of archaeological resources and the potential impacts resulting from this change in proposed action.

#### **CONCLUSION**

For the foregoing reasons, the Commission should grant this motion to intervene and, as supported by the Settlement Agreement and the record in this proceeding, approve the APS surrender petition.

Respectfully submitted,

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June 5, 2002



## **CERTIFICATE OF SERVICE**

I hereby certify that I have this 7 day of June, 2002, served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Rebecca Sherman  
Conservation Associate