



municipal boundaries and is the public agency designated by the State of California to serve as the primary caretaker of Lake Elsinore (the “Lake”), Southern California’s largest natural lake.

The City is also the fee owner of the real property comprising the Lake’s basin and holds the exclusive easement to use the Lake’s surface for recreation purposes. The Lake is central to the Lake Elsinore Advanced Pumped Storage (“LEAPS”) Project, providing water storage as the designated “lower reservoir.”

The City’s ownership of the real estate comprising the Lake was granted by the State of California in 1993. By way of a Quitclaim Deed,

“the State of California ... hereby quitclaims to the City of Lake Elsinore  
... all of its right, title and interest in and to the [Lake Elsinore Recreation  
Area.]”

(FERC eLibrary Accession No. 20190726-5002, Attachment A, p. 1.)

The State’s grant was made “subject to the express condition that the real property herein conveyed shall be used, maintained, and improved by the City for public park and recreation purposes in perpetuity.” (*Id.*)

The vast real estate interest granted the City is burdened with a water storage easement granted by the State to the Elsinore Valley Municipal Water District (“EVMWD”). To EVMWD, the State reserved an “Easement Deed for Flood and Water Storage and Related Appurtenances” to use:

“the Lake Elsinore State Recreation Area ... as a water storage facility to  
receive, use, store withdraw and sell any and all waters above water level  
elevation 1240 feet above sea level ....”

(*Id.*, at Attachment A, pp. 10-11.)

The right to store supplemental water in the Lake – 15,000 acre-feet of water proposed to be imported into the Lake by Nevada Hydro to prime the LEAPS Project – relies on the Water Storage Easement held by EVMWD. EVMWD has agreed that Nevada Hydro may store project water in the Lake, which will be purchased from a third party and transported to the Lake. The City, however, has entered into no such agreement with Nevada Hydro for use of its real property interest in the Lake.

The LEAPS Project will impact the Lake for which the City has an obligation – imposed by the State of California – to protect. The LEAPS Project will also encroach on the City’s ownership interest in the real property constituting the Lake’s basin. Accordingly, the City’s participation is in the public interest (18 C.F.R. § 385.214 (b)(2)(iii)), and the City has an interest in these proceedings that may be directly affected by the outcome (18 C.F.R. § 385.214 (b)(2)(ii)).

### **III. COMMENTS**

The LEAPS Project includes the Lake as a primary project component which will be used as the “lower reservoir.” Other project components will affect the Lake Elsinore community, including the 32 miles of 500 kV transmission lines in the nearby national forest, the powerhouse located just beyond City limits and the newly created “upper reservoir.” The following is a discussion of the City’s primary concerns to the far-reaching impacts of the LEAPS Project.

#### **A. The City is concerned that the LEAPS Project will adversely affect the Lake’s recreational use and impact Lake safety.**

The City is concerned that any potential drawdown of Lake Elsinore below elevation 1,240-foot mean sea level (msl) will negatively affect operations at the City’s Seaport Boat

Launch facility and the recently opened Launch Pointe facility which also provides boating facilities.

The construction and operation of the inlet/outlet structure on the Lake also remains a concern. Navigation restrictions near this structure (200 feet has been suggested) would have an adverse impact on the boating traffic pattern on the Lake.

Fluctuating lake levels that will change on a minute to minute basis during peak daytime use at the City's beaches also presents a significant public safety challenge. The Lake's elevation will change by approximately twenty inches as a result of the pumping activities. But that effect is magnified at the shoreline with the waterline moving by as much as 40 feet across the sand.

LEAPS Project's impact to City facilities, shoreline beachgoers, and riparian owners remains largely unstudied and unmitigated.

**B. The City is concerned that the LEAPS Project violates the State of California's mandate that the Lake be used for park and recreation purposes and the City's ownership rights in the Lake**

As noted above, the State's grant of the Lake was made "subject to the express condition that the real property herein conveyed shall be used, maintained and improved by the City for public park and recreation purposes in perpetuity ...."

EVMWD's relationship to the Lake is significantly different from the City's but nonetheless consistent with its mission to provide our community with potable water. To that end, the State granted EVMWD an "Easement Deed for Flood and Water Storage and Related Appurtenant facility and to receive, store, withdraw and sell any and all waters above the water level elevation 1240 feet seal level" along with a quitclaim deed for water rights.

Earlier this year, the Commission instructed Nevada Hydro to amend the Final License Application (“FLA”) to “reflect[] your new minimum operating level” of 1,235-feet msl – a full five feet below the limit to withdraw water from the Lake allowed under EVMWD’s Water Storage Easement. (See FERC eLibrary Accession No. 20190122-3014, Schedule A at A-1.)

The applicant has yet to address the impact of the LEAPS Project’s new minimum operating level on the State’s use restriction imposed on the Lake, i.e., that the Lake be used in a manner consistent with the use, maintenance and improvement of the Lake for park and recreation purposes and the limitation placed on the withdrawal of stored water.

**C. The City is concerned that the LEAPS Project adversely impact the Lake’s water quality.**

Earlier this year, Nevada Hydro submitted its “Impacts of the Lake Elsinore Advanced Pumped-Storage (LEAPS) Project on Water Quality in Lake Elsinore Final Report” (hereinafter the “Final Report”). The Final Report addresses water quality impacts to Lake Elsinore as part of Study Requests 4 and 7. (See FERC eLibrary Accession No. 20190221-4001[V18 E1 1-Study 4 & 7].)

Following the City’s initial review of Final Report, the City retained Stillwater Sciences, Inc. to conduct a peer review of the Final Report. Stillwater found material deficiencies in the Final Report which are detailed in a technical memorandum submitted to the Commission on August 2, 2019. (FERC eLibrary Accession No. 20190805-5007.)

The City remains concerned that the applicant’s studies routinely downplay and minimize the impacts of the LEAPS Project on water quality in the Lake.

**D. The City is concerned that the LEAPS Project will adversely impact aquatic resources in the Lake.**

The City has committed to the restructuring of the fish population in the Lake to improve water quality, reduce fish kills and increase recreational sport fishing opportunities for the general public. Biomanipulation of the fishery can have a profound effect on water quality through the bottom-up and top-down effect on the aquatic food web.

The FLA continues to rely on outdated assessments, some of which were conducted over a decade ago. As a result, the applicant has yet to fully address impacts of the project on the Lake's aquatic resources and propose mitigation measures such as development and funding of a fishery, zooplankton and an aquatic vegetation assessment program consistent with the maintaining a high quality fishery.

**E. The City is concerned that the LEAPS Project will adversely impact avian resources.**

Lake Elsinore and the surrounding mountainside have a rich and diverse bird population that may be negatively impacted by LEAPS construction activity, installation of electrical power lines, fluctuating water level and shoreline. Nutrient enriched lakes, like Lake Elsinore, are often the most productive lakes on earth, resulting in higher fish biomass and insect production than clear water lakes. This type of habitat is ideal for wading, diving and shoreline birds. Lake Elsinore is the permanent and seasonal home to a wide variety of birds and serves an important role as a way-station on the Pacific Flyway for hordes of migrating waterfowl traveling from Alaska to South America. A short list of resident and often nesting birds includes Great Blue Herons, Great Egrets, Night Herons, Osprey, White-tailed Kites, Western Grebes, Terns, Gulls, Black-necked Stilts, Avocets, Killdeer and Plovers. The fluctuating water level and shoreline

caused by the LEAPS Project may have a substantial negative effect on shoreline birds. Black-necked Stilts, Avocets, Western Snowy Plovers and Killdeer are known to breed on undisturbed shorelines of Lake Elsinore.

The applicant has yet to address impacts of the project on the Lake's avian resources and propose mitigation measures.

**G. The City is concerned that the LEAPS Project will create fire hazards and impair fire management operations.**

The project's transmission lines that will weave through the Cleveland National Forest are located in an area that has historically been impacted by wildfires, where wind patterns can potentially exacerbate wildfires, and where recent residential development has occurred along the border of the national forest. As exemplified by the Holy Fire which occurred in 2018, there is significant fire risk associated with the project.

While the City is gratified that the United States Fire Service ("USFS") has required the applicant prepare an updated Fire Study, the City remains concerned about the project's impacts on regional fire management operations.

**H. The City is concerned that the LEAPS Project will adversely impact the traffic within the City.**

The latest traffic study submitted in as part of the FLA acknowledges that the sheer magnitude of the Project will lead to significant traffic impacts. (See FERC eLibrary Accession No. 20190221-4001 [V18 E1 3 – Study 31 – Traffic Report].) The City is currently reviewing the applicant's most recent traffic study and will be providing specific comments during the environmental review process.

**I. The City is concerned that the LEAPS Project will generate adverse noise and vibration impacts.**

With the inevitable impacts from noise and vibration associated with the extensive excavation necessary for the construction of the powerhouse and tunnels near the Lake, the City remains concerned that avoidance and minimization measures be addressed.

**J. The City is concerned that the LEAPS Project will have geological and seismic hazards.**

The proposed upper reservoir to be located in the Cleveland National Forest constitutes a “high hazard dam” placing a significant population center at the foot of the Lake at risk. It remains a critical task for the applicant to address the concerns of the USFS with respect to the upper reservoir dam.

The proposed powerhouse and inlet/outlet structure also lie in areas with known faults. The City remains concerned that the necessary studies have been postponed by the Commission and that these structures lying outside of the Cleveland National Forest nonetheless pose significant geological and seismic risk to nearby population centers.

Previously prepared “technical memorandums” contained in the FLA often indicate that the consultant’s opinions are “preliminary.” Despite this, the Commission allowed the project to proceed without the sort of detailed fault studies that are clearly necessary. The USFS has voiced its frustration concerning this “kick the can” approach to addressing seismic and geotechnical hazards:

“As described in both Study 2 - Seismic Hazard and Study 3 - Geotechnical Investigation, TNHC does not propose to perform either study until, ‘after the issuance of a license from FERC.’ This statement conflict’s with FERC staff’s

rationale for requiring these studies, which states, ‘Any license the Commission may issue for the project would include conditions related to the safe construction and operation of these proposed facilities.’ It is unclear how FERC or the Forest Service would be able to evaluate or determine whether and under what conditions the construction and operation of LEAPS, would be safe without first investigating these issues prior to FERC issuing the project a license.”

(FERC eLibrary Accession No. 20181001-5171, Forest Service Comments on Additional Studies for LEAPS Project, p. 7.)

The City remains concerned that the project’s geological and seismic hazards are largely unknown and notes the community’s expectation that municipal territories will be accorded the same treatment as federal lands when it comes to assessing these hazards.

**K. The City is concerned that the LEAPS Project will reduce property values.**

Homeowners and businesses within the project’s impact areas will endure a multiyear construction period with a host of construction related impacts along with long-term impacts to riparian rights. The City remains concerned that the applicant has yet to provide a meaningful and detailed economic analysis to properly inform citizens of the economic burdens posed by the LEAPS Project.

#### **IV. CONCLUSION**

Intervention is proper when the movant has or represents an interest that may be directly affected by the outcome of the proceeding (18 C.F.R. § 385.214 (b)(2)(ii)), or when the movant's participation is in the public interest (18 C.F.R. § 385.214 (b)(2)(iii)). The City meets both tests and requests that its motion to intervene be granted.

Respectfully submitted,

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Counsel to the City of Lake Elsinore

Date: August 30, 2019

**CERTIFICATE OF SERVICE**

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

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Date: August 30, 2019