



August 17, 2020

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE Washington, D.C. 20426

RE: ***LEAPS Project (P-14227-003)***
*Comments on Scoping Document 1 for Lake Elsinore Advanced Pumped
Storage Project No. 14227*

Dear Secretary Bose:

Thank you for this opportunity to provide comments on Scoping Document 1 (“SD1”) issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) on June 18, 2020 for Nevada Hydro Company’s (“Nevada Hydro” or “applicant”) Lake Elsinore Advanced Pumped Storage (“LEAPS”) Project, Project No. 14227-003 (the “Project”).

The City of Lake Elsinore (“City”) submits these comments to identify areas of additional environmental studies and analysis which must be conducted as part of the environmental review of the Project in accordance with the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (“NEPA”).

The City serves as the local agency responsible for overseeing the health, safety and welfare of more than 63,000 residents within our 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 Project, serving as the so-called “lower reservoir.”

The Project as proposed directly conflicts with and is inconsistent with the City’s legislative mandate to preserve the Lake for public and recreation purposes, and therefore will have a direct significant adverse impact on the City, the Lake and the public interest that has been served for generations by the City’s commitment to maintain the Lake on behalf of the public.

I. INCORPORATION OF PRIOR COMMENTS

The City incorporates by reference, and hereby submits as part of its comments on SD1, the City's December 1, 2017 request for additional studies (FERC eLibrary Accession No. 20171201-5362); the City's July 25, 2019 comments regarding the City's ownership of the Lake, request for additional information and supplemental responses (FERC eLibrary Accession No. 20190726-5002; and the City's August 2, 2019 comments to final report of water quality in the Lake and submission of peer review of water quality report by Stillwater Sciences (FERC eLibrary Accession No. 20190805-5007).

The Stillwater Sciences technical memorandum and peer review (the "Stillwater Technical Memorandum"), in particular, provides recommendations from subject-area experts regarding missing pieces of Nevada Hydro's final report on Project impacts to water quality in the Lake.¹

II. DETAILED COMMENTS

A. Data Regarding the Project Must Be Sufficient for a Hard Look at Assessment and Mitigation of Project's Environmental Impacts

NEPA sets forth procedural requirements to ensure that federal agencies take a hard look at the foreseeable direct and indirect consequences of their actions. Under the "rule of reason" or "hard look" standard applied in NEPA review, the courts assess whether an agency has engaged in a "reasonably thorough discussion of the significant aspects of probable environmental consequences." *American Rivers v. FERC*, 201 F.3d 1186, 1195 (9th Cir. 1999) (quotation marks and citation omitted); *see also*, *Sierra Club v. Fed. Energy Regulatory Comm'n*, 867 F.3d 1357, 1368 (D.C. Cir. 2017).

Accordingly, studies performed in connection with NEPA must allow the Commission to engage in a "hard look" at environmental impacts of the Project. The City remains concerned that the License Application continues to fall short of the necessary studies and information needed to fully evaluate the Project. There is still time, through this scoping process, for corrective action.

NEPA also requires that an EIS analyze and include appropriate mitigation measures or alternatives in its review (40 C.F.R. § 1502.14(f) (directing inclusion of "appropriate mitigation measures not in the proposed action"); 40 C.F.R. § 1508.25(b)(3) (requiring agencies to consider "mitigation measures (not already included in the proposed action)"). Because rigorous and objective consideration of alternatives provides the "clear basis for choice," factors producing an attenuated alternatives analysis are danger signals suggesting a possible failure of the reasoned decision-making process. See 40 C.F.R. § 1502.14. NEPA's regulations require agencies to "[r]igorously explore and objectively evaluate all reasonable alternatives." *Id.*

For the reasons set forth below, additional information and studies are required to examine the Project, alternatives to the Project, impacts of the Project on various resources, and protection, mitigation, and enhancement measures ("PM&Es") necessary to address such environmental impacts.

B. Additional Studies and/or Analysis Are Required to Address Resource Issues Posed by the Project

1. Recreation Impacts

In 2017, the City specifically requested additional recreation studies related to the Project.² The City requested a Recreation Needs Study to evaluate recreational use information and identify current and future recreation needs within the project area, with specific emphasis on the Lake and the National Forest. The City also requested a study detailing the effect of daily Lake elevation fluctuations on existing recreation facilities. Notably, operations of the LEAPS will result in daily fluctuation of the Lake's surface by 1-foot and weekly fluctuations of up to 1.7-feet.³ Due to the shallow topography of the Lake, the edge of the Lake will regularly move between eight (8) linear feet and over 100 linear feet, creating a new multi-acre "mud zone" along the entire perimeter of the Lake.⁴

While Nevada Hydro's consultants considered these mud zones in 2005 and 2006 when the proposed LEAPS operations were between Lake level 1,240 mean sea level ("msl") and 1,247 msl,⁵ no analysis of these inundations areas was performed by Dr. Anderson in connection with his updated water quality study submitted to the Commission in February 2019 in support of the new 1,235 msl minimum operating range (discussed in greater detail below).⁶

In 2006, Dr. Anderson estimates that the mud zone to be as large as 134 acres with the Lake elevation between 1,240 msl and 1,247 msl.⁷ Despite the fact that last year the Commission instructed the applicant to lower the minimum Project operating level to 1,235 msl, the applicant was not required to further study and determine the size of the resulting mud zone at Lake level 1,235 msl. Because the Lake flattens so dramatically at lower elevations, proper delineation of the mud zones will likely vastly exceed the 134 acres in the 2006 analysis. Given the significant expansion of the Project's operating range in the Lake, further study of the size (and, in turn, impacts) of the mud zones when LEAPS is operating at elevation 1,235 msl is warranted.

In denying the City's request for additional recreation studies, the Commission noted that "Section 7 of Exhibit E of the FLA provides a report on recreational resources in the vicinity of the proposed project. Commission's staff's analysis for P-11858 is sufficient to assess the effects of the proposed project on recreation since the currently proposed project is largely the same."⁸

The indifference accorded the City's recreation concerns stands in stark contrast to the deference accorded the U.S. Forest Service and its concerns regarding Project impacts to recreation in the Cleveland National Forest. In June 2019, Nevada Hydro submitted an 8-page Recreation Study Plan exclusively addressing Project impacts in the National Forest.⁹ On October 8, 2019, U.S. Forest Service issued 26 detailed comments to this Recreation Study Plan.¹⁰ Even a brief review of those comments reveals the U.S. Forest Service's expectation that a detailed and rigorous recreation study be conducted for the benefit of the National Forest.

Section 7 of Exhibit E of the FLA, cited by FERC when it declined the City's study request, is largely a narrative of the Project setting and uniformly avoids any substantive analysis of project impacts on the recreation facilities identified in the Exhibit nor does it propose any meaningful

mitigation measures. And this is at the heart of the problem. It is not that the applicant asks the wrong questions in getting to the wrong answers; it is that the applicant has been allowed to pass over the hard questions about Project impacts and thereby avoid mitigation altogether.

But when it comes to the National Forest, the U.S. Forest service is asking the hard questions and demanding answers. In commenting on Nevada Hydro's recreation study plan, the U.S. Forest Service directed that:

“[a]t a minimum, the study should include an assessment of effects on the following sites:

- Blue Jay Campground
- Falcon Campground
- San Juan Loop Trailhead
- Upper San Juan Campground
- El Cariso Campground
- El Cariso North Picnic Area
- El Cariso South Picnic Area
- California Wildland Firefighter Memorial
- El Cariso Nature Trail
- Morgan Trailhead and trail
- Hang Glider Launch Site – North
- Hang Glider Launch Site – South
- Wildomar OHV Area
- Wildomar OHV Campground
- Tenaja Trailhead”¹¹

The Lake's recreational resources should be accorded the same level of assessment. Accordingly, the City requests that the EIS assess the effects of the Project on the following recreational sites on the Lake:

- Launch Pointe Recreation Destination & RV Park (formerly La Laguna Resort)
- Seaport Boat Launch and Elm Grove Beach
- Elsinore West Marina (private)
- Lakepoint Park
- Davis Fishing Beach
- Lowell Street Fishing Beach
- Whisker's Fishing Beach
- Perret Park Fishing Beach (unincorporated area)
- Cranes Lakeside Park and RV Resort (private - unincorporated area)
- Paradise Weekend (private - unincorporated area)

The U.S. Forest Service also instructed Nevada Hydro that the recreation study plan:

“should describe how LEAPS will affect the recreation opportunities for the project area, including:

- Hunting
- Biking
- Hiking
- Birdwatching
- Sight Seeing / Scenery”¹²

Recreational opportunities at the Lake should be accorded the same level of assessment. Accordingly, the City requests that the EIS assess the effects of the Project on the following recreational opportunities at the Lake:

- Boating and related watersports (motorized and non-motorized)
- Fishing
- Wading
- Swimming
- Camping
- On-shore beach recreation (sunbathing, picnics, group gatherings)

Finally, the City urges that the Commission prepare an EIS that finally and definitively takes on the impacts of the Project to the Lake’s shoreline private property owners. The Commission has received many individual comments from this passionate constituency. And they are right to be frustrated by this Project; there has not been a shred of substantive analysis done in 20 years of project licensing that attempts to understand the Project’s impacts on recreation use currently enjoyed by shoreline property owners. The licensing process truly falls short when so many people are to be impacted in, literally, their own backyards by a multibillion-dollar project. As noted above, mapping of the “mud zone” created by the tidal action within the Lake caused by the Project’s daily operations is an important first step. The City recommends mapping simulations of the mud zones at elevation 1,235 msl, 1,240 msl and 1,247 msl.

Other commenters have noted that these mud zones will be unusable for recreation and, perhaps more troubling, may serve as a large and heretofore unknown expansive breeding grounds for insects.¹³ Accordingly, in addition to mapping these mud zones and analyzing the impact to recreational uses, the EIS should contain an assessment of the potential health impact of these mud zones. We discuss potential health impacts in section 3 below.

2. Water Quality

The EIS must rigorously evaluate the Project’s impact to the Lake’s water quality. Last 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”).¹⁴

Following the City’s initial review of Final Report, the City retained Stillwater Sciences, Inc. to conduct a peer review of the Final Report. The Stillwater Sciences Technical Memorandum, (the “Stillwater Technical Memorandum”) submitted to the Commission on August 2, 2019, found material deficiencies throughout the Final Report.¹⁵ Stillwater noted the following deficiencies with respect to the Final Report:

“The following information is necessary to determine AEM3D model performance for estimating water quality conditions under LEAPS operations scenarios, to evaluate the potential impacts of LEAPS operations scenarios on water quality in Lake Elsinore, and to identify lake elevations when significant negative impacts would occur:

- A summary of the spatial variability in observed Lake Elsinore water quality data.
- A table summarizing the available observed water quality data, including location(s) it was measured, typical frequency of measurement, period of record, and the number of measurements within the period of record.
- A map specifying the locations where Lake Elsinore observed water quality data was measured and the location(s) where model results are shown (e.g., TMDL Site E2).
- Comparison of observed and predicted water quality calibration results at multiple locations within Lake Elsinore to evaluate the range of model performance at different locations within the lake, if sufficient spatial data is available during the modeling period (i.e., February 8, 2016 to August 31, 2018).
- Model calibration results for NH₄-N and PO₄-P concentrations along with the model performance statistics for these water quality parameters.
- Calculation of the model performance statistics percent bias and Nash-Sutcliffe Efficiency for each water quality parameter in addition to the RMSE.
- Model validation analysis for each water quality parameter predicted using data not included in the calibration process.
- Discussion of the spatial variability in each water quality parameter, including plots showing the range of spatial variability across Lake Elsinore.
- Discussion of the model uncertainty during the presentation of model results, especially when making conclusions about the impacts of LEAPS operations on Lake Elsinore water quality.
- Quantification of the change in frequency Lake Elsinore water quality parameters exceed the relevant water quality thresholds (e.g., Basin Plan objectives) between native conditions and the various LEAPS operations scenarios.
- A more detailed analysis of the potential for a curtain to reduce transport of *Microcystis aeruginosa* and microcystin between the Upper Reservoir and Lake Elsinore, if a curtain is being considered for use to mitigate potential impacts under LEAPS operations scenarios.
- Quantification of the water quality of the initial SWP supplementation into Lake Elsinore after it has been routed through Canyon Lake and the San Jacinto River or a more detailed explanation of why it is reasonable to assume the water quality of the SWP supplementation does not change during transport from Canyon Lake to Lake Elsinore.

- Simulations of water quality that separate SWP supplementation from LEAPS operations. This could be accomplished by modeling Lake Elsinore without LEAPS but considering SWP supplementation, by modeling LEAPS with water quality of the supplemented water matching existing conditions, or through a longer-term reservoir simulation with results examined after an equilibration period (e.g., 10 years) using hydraulic residence time or estimates of the characteristic times of other water quality determinants.”¹⁶

The Lake will also be used to store Nevada Hydro’s purchased water which will be purchased from a third party and conveyed to the Lake. This is contemplated in both the “Consent Judgment” entered into between Nevada Hydro and the Elsinore Valley Municipal Water District (“EVMWD” or “District”) and the related settlement agreement. The Consent Judgment provides:

“The Water Management Services to be provided by the District shall include facilitating, at Hydro’s cost ..., the purchase, importation, and storage of fifteen thousand acre feet (15,000 AF) of water to be introduced into Lake Elsinore”¹⁷

That intent to use the Lake to store Nevada Hydro’s water is also evidenced in the Settlement Agreement. “Exhibit 2” to the Settlement Agreement includes the “term sheet” for Nevada Hydro’s storage of its water in the Lake. The term sheet provides for a:

“proposed Water Supply and Storage Agreement which would allow Hydro to purchase, import, and store 15,000 AF of water in Lake Elsinore”¹⁸

Nevada Hydro’s stated plan is to purchase State Water Project water.¹⁹ While we assume this water will be of potable quality at its release point above Canyon Lake reservoir, it will be far from that quality upon reaching the Lake. Water will flow through two impaired water resources, the first being Canyon Lake reservoir which will in turn release water at the dam to flow through the San Jacinto River channel. Historically, this sort of “first-flush” water through the river channel has proved to be highly polluted and can carry invasive fish species into the Lake.

The impacts of importing 15,000 acre feet (“AF”) of polluted water into the Lake has yet to be analyzed because the Final Report on water quality imagines the purchased water will magically arrive at the Lake in the same quality as it left the State Water Project spigot above Canyon Lake.²⁰

The Lake is not simply a sump for which others should be allowed to add to an already threatened water quality problem. The EIS must address this planned importation of 15,000 AF of water into the Lake and provide concrete mitigation measures to ensure water added to the Lake is of high quality. Additionally, annual “make-up” water to offset the Project’s annual evaporative losses must be addressed in terms of potential water quality impairment to the Lake.

There are other questions that also need to be addressed when it comes to the import of project water into the Lake. The License Application has failed to address the applicant’s contingent future obligation to replace its initial 15,000 AF of water for LEAPS operations if (and when) the Lake floods. While the Project has been analyzed as a “closed system,” that is not entirely accurate. When the Lake floods, heavy flows move through the Temescal Wash. This last happened over 30 years ago. After the initial 15,000 AF makes its way through the Lake’s outflow during a flood event, the water will travel north and empty into the Santa Ana River (and from there, the Pacific

Ocean). Does the applicant have any obligation to restore that 15,000 AF baseline contribution once the Lake recedes to the more typical 1,240 msl elevation (less any waters held back in the upper reservoir during the flood)? Or, having made a one-time 15,000 AF commitment, is the applicant then free to use natural Lake water for its project? Moreover, the City remains concerned that the Project could present additional flood issues at the Lake if releases at the Upper Reservoir are necessary to prevent a breach of the dam at Decker Canyon.

We urge FERC to consider commissioning an independent assessment of Project impacts to water quality in the Lake as part of the EIS process rather than relying on the flawed analysis contained in the applicant's Final Report. The City's water quality concerns have been echoed by the Santa Ana Regional Water Quality Control Board²¹ and all parties are aware that the Project will require a water quality certification for the Project under Section 401 of the federal Clean Water Act from the State Water Resources Control Board. It is time that decision-makers and stakeholders alike have a water quality report that takes the necessary "hard look" at the Project's impacts to Lake water quality from both daily operations and from the proposed additions of supplemental water.

3. Health Impacts

a. Sensitive receptors

As disclosed in SD1, the proposed Santa Rosa powerhouse will be located on or at least near land currently housing the Santa Rosa Villas Apartments, thereby necessitating that the applicant purchase that property and displace those residents. However, other adjacent nearby users will not be bought out. The powerhouse is near the Copper Canyon Villas neighborhood and the multi-use Lakeland Village Community Center. Traditional suburban neighborhoods lie within easy walking distance to the northwest and the southeast. Lakefront homes are situated just across the street on Grand Avenue.

We know that FERC is aware that the Project will involve a massive level of excavation. Indeed, powerhouse construction will involve the excavation of an underground cavern the size of a football field (375 feet long, 85 feet wide, 175 feet high), 330 feet below the existing surface.²²

Sensitive receptors include children, the elderly, the sick, and the athletic. Land uses associated with sensitive receptors include residences, schools, playgrounds, childcare centers, athletic facilities, long-term health care facilities, rehabilitation centers, convalescent centers, and retirement homes.²³ The surrounding residents are easily viewed on Google Earth and meet the criteria for sensitive receptors. Additionally, the Project's proximity to the Lakeland Village Community Center deserves additional consideration.

The Lakeland Village Community Center (lying just beyond the City's municipal boundaries but regularly utilized by City residents) is home to the Boys & Girls Club of Southwest Riverside County, provides a community gathering place for local clubs, provides adult recreation and learning classes, and includes a multipurpose room which serves a rental venue and community theater. A playground with multiple outdoor basketball courts is located on the north side of the complex. Iglesia Del Lago offers religious services on-site on Sunday mornings; Calvary Chapel Casa de Pan offers religious services on-site on Sunday afternoons.

This rather long-list of users at the community center share a common characteristic: they are also sensitive receptors.

Sensitive receptors like the Lakeland Village Community Center, Copper Canyon Villas and nearby neighborhoods will bear the impact of multiple sources of pollution from the construction of the powerhouse.

NEPA provides a strong legal basis for the inclusion of information in an EIS concerning the health effects of a project, generally through a health impact assessment (“HIA”) or the somewhat narrower health risk assessment (“HRA”). Two provisions of NEPA facilitate the integration of an HIA into an EIS: (1) Council for Environmental Quality (“CEQ”) regulations requiring the agency to respond to substantive public comments on health concerns, and (2) NEPA’s stated purpose and language embracing consideration of health impacts. 40 CFR § 1503.4; 42 USC §§ 4231,4331. n Accordingly, where significant public comments involve health impacts, CEQ regulation requires some health impact analysis, and potentially an HIA.

Areas of particular concerns included diesel emissions from heavy equipment and truck traffic, particle generation from massive blasting and other excavation activities, and the potential for traffic injuries from the trucking traffic. Additional potentially significant health effects may result from the Project’s noise impacts, access to community services, access to community recreation facilities and construction conditions that may deprive community members for access to social networks provided through the Community Center.

b. Creation of habitat for vectors and others pests

Above, the City requested a study detailing the effect of daily Lake elevation fluctuations on existing recreation facilities. In addition, individual community commenters have raised concerns that new, large mud zones will be breeding grounds for insects.²⁴

Nevada Hydro’s consultant “crudely approximated” the mud zone in 2006 at elevation 1,242, showing some rather large mud zones in the southern reaches of the Lake along with the “T” peninsula that appear to be potentially suitable for mosquito breeding, especially considering that the 1.7 feet drop in Lake elevation will typically only occur once per week while most other days will see a recurring oscillation in the Lake level of about 1-foot.²⁵ The potential for standing water remaining undisturbed in the mud zones for a week or more poses a potential vector threat.

The Project will result in a vast expansion of mud zones around the Lake and, in turn, potentially become a vast breeding ground for pests and potential vectors far exceeding existing conditions. Accordingly, significant health effects may result from the Project’s operations by creating a condition suitable for pests and potential vectors which directly impact the health of the community. These potential impacts should be analyzed by an entomologist and other competent professionals and, to the extent potentially significant impacts exist, mitigation measures must be imposed.

4. Aquatic Resources

The EIS should 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.

The City also notes that a long-time Lake stakeholder has reported encountering turtles along the Lake shore.²⁶ Such sightings have been rare in the past although turtle populations may enjoy a level of resurgence due to the general stabilization of the Lake level during the past 30 years. Given the environmental protections accorded the Western Pond Turtle and its potential range of habitat in Southern California, the City requests the EIS include a focused survey to determine if the Lake is currently home to Western Pond Turtles.

5. Avian Resources

Lake Elsinore is the permanent and seasonal home to more than 200 species 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, along with the mud zone caused by the 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 EIS should address impacts of the Project on the Lake's avian resources.

6. Fire Hazards

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 U.S. Forest Service has required the applicant prepare an updated Fire Study, the EIS should also address the Project's impacts on regional fire management operations.

7. Traffic

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.²⁷ The primary access roads to and from the Project's construction sites are along busy, two lane roadways. The EIS must address and develop appropriate mitigations measures to reduce the impacts of Project traffic.

8. Noise and Vibration

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 EIS must address avoidance and minimization measures.

9. 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 U.S. Forest Service 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.”²⁸ Despite this, the Project has proceeded without detailed fault studies that are clearly necessary.

Fundamentally, the EIS should accord municipal territories the same treatment as federal lands when it comes to assessing these hazards. Accordingly, the EIS should address the Project’s geological and seismic hazards outside of the National Forest which remain largely unknown.

10. Property Values

The Project is distinguished by the powerhouse location in an urbanized and largely residential area when compared to *all* of the advanced storage projects previously approved by FERC, as demonstrated in detail by at least one community commenter.²⁹ Those previously approved projects are located in non-urban settings, and, in most instances, remote area with little or no nearby housing.

That is not, however, the setting of the LEAPS Project. The proposal to locate a massive underground powerhouse next to an existing neighborhood and large community center, and within a short walking distance of traditional suburban neighborhoods, is unprecedented. Homeowners and businesses within the Project’s impact areas will endure a multiyear construction period with a host of construction related negative impacts. Above, we discussed long-term impacts to private riparian rights. Because so many private property owners will be directly impacted by this Project, the EIS should also provide a meaningful and detailed economic analysis to properly inform citizens of the economic impacts to property values posed by the LEAPS Project.

11. Developmental Resource Impacts

The EIS must include a critical examination of the need for the Project and its impacts on existing energy infrastructure and resources, with particular emphasis on market effect and the benefits of the Project as compared to the No Action Alternative.

As it turns out, FERC already has an extensive evidentiary record showing the Project's staggering expense compared to its marginal benefits. On June 17, 2019, Nevada Hydro filed a complaint with FERC (Docket No. EL19-81-000) alleging that the California Independent System Operator Corporation ("CAISO") failed to follow its tariff in studying the LEAPS Project as a transmission facility in the CAISO's 2018-2019 transmission planning process.³⁰ This heated battle played out over five months with CAISO ultimately carrying the day.

CAISO filings with FERC presented both compelling facts and persuasive arguments. Accordingly, what CAISO has to say about the LEAPS Project should inform the Commission as it considers whether the environment should suffer the Project's significant impacts in the face of a mountain of evidence that the Project is too expensive and, equally important, unnecessary.

CAISO analyzed LEAPS as a potential reliability, public policy, and economic project as part of its 2018-2019 and concluded that "LEAPS was not a needed transmission solution during this planning cycle..."³¹ In justifying this conclusion, CAISO explained that "CAISO's comprehensive reliability analysis did not identify a need for any new transmission projects to address reliability issues because the CAISO determined that they would be mitigated by existing solutions, such as previously approved demand response and battery storage (either already in-service or under-development) and operational measures."³²

LEAPS fared no better in terms of cost effectiveness. CAISO found that:

"LEAPS would not produce economic benefits that would justify its construction. Among other factors, the CAISO analyzed whether LEAPS would produce benefits including 'reduction in production costs, congestion costs, transmission losses, capacity, or other electric supply costs resulting from improved access to cost-efficient resources,' and compared LEAPS' cost/benefit ratio to other proposed projects and initially identified solutions. LEAPS' benefit-to-cost ratio in all three configurations the CAISO studied was far below 1:1..."³³

Moreover, "CAISO has not identified a transmission need for LEAPS." CAISO concludes that:

"most of the benefits LEAPS would provide stem from the pumped storage unit's ability to earn market revenues by providing services such as load following, ancillary services, flexible ramping, and energy arbitrage. Even though these are benefits common to generation facilities, the CAISO's cost/benefits analysis gave LEAPS the full benefit of *all* the services it would provide and functions it could perform, including those associated with market services. *LEAPS still did not have*

a benefit-to-cost ratio anywhere near 1:1 even when assessed in the most favorable light possible.”³⁴

In its October 17, 2019 order, the Commission denied Nevada Hydro’s complaint.³⁵

5. Concurrent CEQA Compliance

The City joins the County of Riverside’s call in its scoping comments that the Project environmental document should be a combined EIR/EIS³⁶ and also calls the Commission’s attention to the scoping comments filed by Forest Residents Opposing New Transmission Lines (“FRONTLines”) which unequivocally demonstrate that the transmission lines will carry electricity between SCE and SDGE facilities.³⁷

While everyone agrees that the required State Water Resources Control Board proceedings for water quality certification for the Project under Section 401 of the federal Clean Water Act will require CEQA compliance, the transmission of electricity between SCE’s and SDGE’s existing facilities through the Project’s transmission lines likewise triggers California Public Utilities Commission jurisdiction and, in turn, compliance with CEQA. FERC’s past decisions to facilitate the applicant’s permitting “segmentation” is truly inconsistent with the comprehensive “hard look” mandated by NEPA. Accordingly, we urge the Commission to reconsider its past decision to separate its license approval from the necessary State licensing/permit approvals.

C. Alternatives

1. Project With Minimum Operating Lake Level of 1,240 MSL

Last year, the Commission instructed Nevada Hydro to revise its project description to allow for the Project to operate when the Lake is below elevation 1,240 msl. The Commission’s January 22, 2019 Request for Additional Information states, in part:

“In response to item 6, you [Nevada Hydro] state that the proposed LEAPS Project would be capable of operating when extended drought conditions result in water levels in Lake Elsinore to fall below 1,240 mean sea level (msl), because the project’s intake/outlet facilities would be able to intake water at a range of water levels below 1,235. This response appears to change the proposed project operation
....”³⁸

The Commission then instructed Nevada Hydro to “amend your FLA by filing a revised Exhibit A that reflects your new minimum operating level and a revised Exhibit B that states your new proposal to operate during both normal and drought conditions.”³⁹ Nevada Hydro dutifully submitted revised Exhibits A and B on February 19, 2019.⁴⁰

The City requests that the EIS include as an alternative project imposing a minimum operating level of 1,240 msl. As shown below, operation of the Project below Lake elevation 1,240 msl is not legally feasible for this applicant.

Under Article 5 of the Federal Power Act, a licensee must acquire and retain sufficient control over all property and/or rights necessary or appropriate to construct, operate, and maintain a

project. Nevada Hydro lacks the right to withdraw water from the Lake once it reaches elevation 1,240 msl and the Commission lacks the power under the Federal Power Act to condemn the City's property right to that water.

The City's ownership of the real estate comprising the Lake was granted by the State of California in 1993:

“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.]”⁴¹ (hereinafter the “Quitclaim Deed”).

The vast real estate interest granted the City is burdened with a water storage easement granted by the State to EVMWD. To EVMWD, the State reserved an “Easement Deed for Flood and Water Storage and Related Appurtenances” (hereinafter the “Water Storage Easement”) 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”⁴²

Nevada Hydro's derives its rights to utilize the Lake for the “lower reservoir” from the Water Storage Easement and, as noted above, intends to store 15,000 AF of water which will be purchased from a third party and transported to the Lake.

The decision to use the Lake to store Nevada Hydro's purchased water has a significant consequence: EVMWD's Water Storage Easement does not allow for *withdrawal* of that stored water when the Lake is below elevation 1,240 msl.⁴³

The right to withdraw stored water from the Lake *below elevation 1,240 feet* is a right held by the City of Lake Elsinore as the repository of all rights in the Lake granted under the Quitclaim Deed, excepted only by those limited rights specifically granted to EVMWD. In recasting the LEAPS Project's “lower reservoir” operating level from a minimum of 1,240 feet to a minimum of 1,235 feet, the license application for the first time went beyond the water withdrawal rights held by EVMWD under its Water Storage Easement.

Moreover, given the Lake was part of the California's State Park System prior to the passage of Energy Policy Act of 1992 and the State's 1993 grant to the City requires the continued use of the Lake for “public park and recreation purposes,” the City emphasizes that its property interest in the Lake is not subject to condemnation by the applicant under Section 21.⁴⁴

It is worth noting that in the prior iteration of the LEAPS Project, the “Final Application for License of Major Unconstructed Project (Project No. 11858) Lake Elsinore Advanced Pumped Storage Project,” the LEAPS Project hemmed tightly to EVMWD's rights under its Water Storage Easement. Then, the proposed lowest operating level of the Project was preserved at Lake elevations 1,240 msl far into the licensing process,⁴⁵ thereby not exceeding EVMWD's Water Storage Easement to “receive, use, store withdraw and sell and any and all waters above the water level elevation 1240 feet”

The City cannot put it more directly: neither Nevada Hydro nor EVMWD possess the legal right to withdraw stored water from the Lake below elevation 1,240 feet msl. For that reason, the City requests that the EIS consider a project alternative or otherwise condition the Project with a narrower operating range consistent with EVMWD's legal rights and, further, condition the applicant to provide supplemental water to the Lake as needed to maintain elevation 1,240 msl.

2. Project with Water Treatment Enhancements

With the exception of the initial importation of 15,000 AF of potentially polluted water into the Lake necessary to prime the Project, the Project applicant had steadfastly avoided proposing proactive measures to improve the Lake's water quality. The Elsinore is an impaired waterbody that is highly eutrophic. It suffers from regular algae blooms, high nutrient levels, low dissolved oxygen and regular fish die offs. The applicant seeks to use a public resource – the Lake – free of ongoing water quality costs and has supported that position with a Final Report that fundamentally defaults to a conclusion that LEAPS will not make the Lake any worse than it already is. The City submits that is simply not good enough.

Modern *advanced* pumped storage projects regularly include *advanced* water quality treatment methods. FERC need look no further than the Eagle Mountain Pumped Storage Project, FERC Project No. P-13123. This remote project will enjoy the benefits of a newly constructed 15.5-mile pipeline assuring that clean ground water used to prime that system remains in pristine conditions traveling to the reservoir. But the Eagle Mountain project did not stop there. The project license requires a reverse osmosis system as part of a robust water treatment system.⁴⁶ This process applies pressure to contaminated water to force it through a semipermeable membrane, which in turn “filters” out contaminants allowing only uncontaminated water (permeate) to pass.

Characteristic of the history of this Project, even modest water quality enhancements have failed to make their way into the applicant's project description.

Nevada Hydro's water quality consultant poses that injection of “liquid oxygen” into the flows returning to the Lake from Project operations could achieve material gains in dissolved oxygen levels and, in turn, the Lake's water quality.⁴⁷ However, basic improvement methods such as 24/7 water circulation to actually preserve the heightened dissolved oxygen levels that may be achieved during releases from the upper reservoir have not been integrated into the Project even while the Lake suffers under an existing circulation system that is rapidly reaching its useful life. FERC could require the applicant to participate financially in the heavy cost currently shouldered by the City and EVMWD to establish a larger pool of funds for water quality improvements. But no such enhancements, either by way of physical infrastructure and systems integrated into the Project, separate funding to support current water treatment efforts, or preferably both, has been proffered by the applicant. The applicant is, indeed, content for the City and EVMWD to pay for the cost of operating the Lake.

The City requests that the EIS consider a project with integrated water quality treatment components benefitting the Lake.

D. Response to Request for Additional Information

Section 5.0 of SD1 requests interested parties to “to forward to the Commission any information that will assist us in conducting an accurate and thorough analysis of the project-specific and cumulative effects associated with licensing the LEAPS Project.” The City notes three additional sources of information that may assist the Commission:

- East Lake Specific Plan EIR. The City prepared and certified an Environment Impact Report regarding an area known as the East Lake Specific Plan (“ELSP”). The ELSP is directly adjacent to the Lake and includes a portion of the historic San Jacinto River (the primary source of water for the Lake) along with several hundred acres of land set aside for conservation purposes. The EIR can be found at:
<http://www.lake-elsinore.org/city-hall/city-departments/community-development/planning/ceqa-documents-available-for-public-review/east-lake-specific-plan-amendment-no-11>
- Diamond Specific Plan EIR. The City prepared and certified an Environment Impact Report regarding an area known as the Diamond Specific Plan (“DSP”). The DSP is also adjacent to the Lake. The EIR can be found at:
<http://www.lake-elsinore.org/city-hall/community-development/planning/ceqa-documents-available-for-public-review/the-diamond-specific-plan>
- Elsinore Valley Municipal Water District. While SD1 does not mention EVMWD in the Project description, the Project could not go forward were it not for EVMWD’s water storage easement along its water operations management responsibility. After nearly 30 years of being directly involved in the management of the Lake, EVMWD’s institutional knowledge of the Lake is considerable. This knowledge base should be – but, sadly is not – readily available for consultation by the Commission in connection with preparation of the EIS. The reason is Nevada Hydro has effectively forbidden EVMWD from participating in these proceedings in a meaningful way. By way of an agreement titled “Agreement for Settlement and Release of Claims,” EVMWD has been muzzled:

“3.01 No Affirmative Opposition or Interference. At no time shall EVMWD directly or indirectly oppose, interfere with, or cause any third party to oppose or interfere with, any effort or proceeding to entitle, develop or construct the Project, including without limitation, the pending FERC application for Project No. 14227, State Water Resources Control Board proceedings for water quality certification for the Project under Section 401 of the federal Clean Water Act (‘401 Certification’), or proceedings before the United States Forest Service; nor shall EVMWD directly or indirectly prevent any consultant,

lobbyist, or other third party from engaging or working with Hydro on the LEAPS Project.”⁴⁸

We urge the Commission to consider if the measured and thoughtful environmental review envisioned by SD1 can be accomplished while EVMWD remains silenced by Nevada Hydro.

III. CONCLUSION

The City continues to believe that additional analysis is required to provide the Commission with the quality and quantity of information necessary to take a hard look at the Project and its impacts. Accordingly, we urge the Commission to require the investment in effort and resources to fully understand and evaluate the impacts of this Project.

Thank you for considering our position on these important issues facing the Lake and the Lake Elsinore community.

Sincerely,



David H. Mann
Assistant City Attorney

cc: Mayor Tisdale and Members of the City Council
Grant Yates, City Manager
Kyle Olcott, FERC (via overnight delivery)
Rexford Wait, Nevada Hydro Company, Inc. (via overnight delivery)

¹ Stillwater Sciences' report, entitled Technical Memorandum, is attached as Attachment A to City's August 2, 2019 comments letter, FERC eLibrary Accession No. 20190805-5007. The applicant's Final Report on water quality can be found at FLA V18 E1 1-Study 4 & 7.

² City Request for Additional Studies, FERC eLibrary Accession No. 20171201-5362.

³ FLA, Vol. 1, Ex. E, Section E-2, p. 23.

⁴ Technical Analysis of the Potential Water Quality Impacts of the Leaps Project on Lake Elsinore, Michael Anderson, January 1, 2006, pp. 2-4 [FLA V11, Ch. 5].

⁵ *Id.*

⁶ See FERC eLibrary Accession No. 20190221-4001 [FLA V18 E1 1-Study 4 & 7]

⁷ See fn. 4, *supra*.

⁸ Commission Response to Additional Study Request, FERC eLibrary Accession No. 2080615-3002, p. 36.

⁹ FERC eLibrary Accession No. 20190607-5132 [FLA V20, 1.0 A-Study 29 – Recreational Study Plan].

¹⁰ USDA Forest Service Comments on the License Application [etc.], FERC eLibrary Accession No. 201009-5023.

¹¹ *Id.*, at p. 18.

¹² *Id.*, at pp. 18-19.

¹³ *See, e.g.*, Scoping Comments of John Pecora, FERC eLibrary Accession No. 20200731-5315.

¹⁴ *See* FERC eLibrary Accession No. 20190221-4001[FLA V18 E1 1-Study 4 & 7]

¹⁵ Stillwater Sciences' report, entitled Technical Memorandum, is attached as Attachment A to City's August 2, 2019 comments letter, FERC eLibrary Accession No. 20190805-5007.

¹⁶ *Id.*, at p. 8.

¹⁷ City Comment Letter, FERC eLibrary Accession No. 20190726-5002, Attachment B, p. 5, ¶ 2, italics added.

¹⁸ *Id.*, Attachment C, p. 37, ¶ 1.

¹⁹ FERC eLibrary Accession No. 20190221-4001[FLA V18 E1 1-Study 4 & 7].

²⁰ FERC eLibrary Accession No. 20190221-4001[FLA V18 E1 1-Study 4 & 7].

²¹ City Comment Letter, FERC eLibrary Accession No. 20171204-5007.

²² FERC eLibrary Accession No. 20190221-4001 [FLA V18 SA 1 – Revised FLA Exhibit A, p. A-5 and A-12].

²³ While a set definition of “sensitive receptors” is generally not found in federal regulations, the term used is used in context. For example, there are references to sensitive receptors when addressing noise issues. In 49 CFR § 1105.7:

“Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: ... (ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.”

40 C.F.R. § 270.10, address administration of solid waste, is another example:

“The Director shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors: (1) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.”

²⁴ *See* fn. 4, *supra*.

²⁵ *See* Technical Analysis of The Potential Water Quality Impacts of the Leaps Project on Lake Elsinore, Michael Anderson, January 1, 2016, p. 4 [V11, Ch. 5].

²⁶ Email from Pete Dawson to author, dated July 31, 2020.

²⁷ *See* FERC eLibrary Accession No. 20190221-4001 [FLA V18 E1 3 – Study 31 – Traffic Report].

²⁸ *See* City Request for Additional Studies, FERC eLibrary Accession No. 20171201-5362, pp. 1-3.

²⁹ Scoping Comments of John Pecora, FERC eLibrary Accession Nos. 20200629-5213 & 20200811-5072.

³⁰ Complaint of the Nevada Hydro Company, Inc. [etc.], Docket No. EL19-81-000, FERC eLibrary Accession No. 20190617-5229.

³¹ Answer of [CAISO] to Complaint, Docket No. 19-81-000, FERC eLibrary Accession No. 20190722-5139, p. 2.

³² *Id.*, at pp. 2-3.

³³ *Id.*, at p. 3.

³⁴ *Id.*, at p. 112, italics added.

³⁵ Commission Order Denying Complaint, Docket No. EL19-81-000, FERC eLibrary Accession No. 20191017-3044.

³⁶ FERC eLibrary Accession No. 202008814-5224.

³⁷ FERC eLibrary Accession No. 20200803-5036.

³⁸ FERC eLibrary Accession No. 20190122-3014, Schedule A at A-1.

³⁹ *Id.*

⁴⁰ FERC eLibrary Accession No. 20190221-4001 [V18 SA 1 – Revised FLA Exhibit A; V18 SA 1 – Revised FLA Exhibit B].)

⁴¹ City Comment Letter, FERC eLibrary Accession No. 20190726-5002, Attachment A, p. 1.

⁴² *Id.*, Attachment A, pp. 10-11.

⁴³ *Id.*, Attachment A, p. 11, providing an easement to “receive, use, store withdraw and sell any and all waters above water level elevation 1240 feet above sea level”

The City acknowledges that the State of California separately quitclaimed to EVMWD the “water rights” in the Lake. (See Attachment A, pp. 20-21, “Quitclaim Deed for Water Rights.”) That water right encompasses the naturally occurring water within the Lake and does *not* include a specific lake level restriction. However, the LEAPS Project does not propose to use *that* water; Nevada Hydro and EVMWD have agreed that Nevada Hydro will purchase water from a third party and store *Nevada Hydro’s* water in the Lake which squarely falls under the Water Storage Easement. (See Attachment A, pp. 10-11.)

⁴⁴ The adoption date of the Energy Policy Act of 1992 (Pub. L. No. 102-486, 106 Stat. 2776) sets the cutoff date on a licensee’s ability to use eminent domain on state and local park lands:

“...no licensee may use the right of eminent domain under this section to acquire any lands or other property that, prior to the date of enactment of the Energy Policy Act of 1992 [enacted Oct. 24, 1992], were owned by a State or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under State or local law.” (18 U.S.C. § 814.)

⁴⁵ The Final Environmental Impact Statement for Project No. 11858 stated that “the co-applicants propose to operate the lower reservoir (Lake Elsinore) between 1,240 and 1,247 feet msl.” (FERC eLibrary Accession No. 20070130-4000 [08 LEAPS Section 3 Environmental Analysis, p. 3-39].)

⁴⁶ Order Issuing Original License, Project No. 13123-002, FERC eLibrary Accession No. 20140619-3017, pp. 6-7.

⁴⁷ Technical Analysis of The Potential Water Quality Impacts of the LEAPS Project on Lake Elsinore, Michael Anderson, January 1, 2016, pp. 65-66 [FLA V11, Ch. 5].

⁴⁸ City Comment Letter, FERC eLibrary Accession No. 20190726-5002, Attachment C, pp. 5-6.

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.

Dated at Irvine, California, this 17th day of August, 2020.



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