

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

Nevada Hydro Company, Inc.
Lake Elsinore Advanced Pumped Storage Project

Docket No. P-14227-000

**Motion/Notice of Intervention and Comments of the Center for Biological Diversity
Regarding The Nevada Hydro Company’s Application for a Preliminary Permit**

Pursuant to 18 C.F.R. section 385.212 (FERC Rule 212), and 18 C.F.R. section 385.214 (FERC Rule 214), the Center for Biological Diversity (the “Center”) submits this motion to intervene in the license application proceedings for the Lake Elsinore Advanced Pumped Storage (“LEAPS”) Project on Lake Elsinore and the Cleveland National Forest in California (P-14227-000). A license application was submitted for the LEAPS Project by the Nevada Hydro Company, Inc (“TNHC”). The Center seeks to intervene to assert environmental concerns in the proceedings. In support of this motion to intervene, the Center states as follows:

I. STATEMENT OF FACTS

On February 2, 2004, the Elsinore Valley Municipal Water District (“EVMWD”) and the Nevada Hydro Company, Inc. filed an application for an original hydropower license with the Federal Energy Regulatory Commission (“FERC”) for construction and operation of the 500-megawatt LEAPS Project (P-11858). The LEAPS Project is proposed to be located on Lake Elsinore, the Cleveland National Forest, and adjacent public and private lands in and around the City of Lake Elsinore in Riverside County, California. The Project consists of an upper dam and reservoir, powerhouse, and over thirty miles of transmission lines that traverse lands managed by

the Forest Service in the Cleveland National Forest, Camp Pendleton Marine Base, and lands managed by the Bureau of Land Management.

In 2006, FERC issued the Draft Environmental Impact Statement (“EIS”) for the LEAPS Project that evaluates the co-applicants’ proposal and a FERC staff alternative for licensing the LEAPS Project pursuant to the National Environmental Policy Act (“NEPA”). In 2007, FERC issued the Final EIS for the LEAPS Project.

TNHC has also filed several applications with the California Public Utilities Commission (“CPUC”) for the transmission line component of the LEAPS Project—The Talega Escondido/Valley Serrano 500kV Interconnect Project. (“TE/VS”).¹ From 2007 to 2009 TNHC filed a series of draft and incomplete applications that were reviewed repeatedly by CPUC staff for corrections and additions.² Because TNHC continually failed to provide the required environmental documents the CPUC eventually dismissed both the 2007 and 2009 TE/VS applications without prejudice.³

TNHC once again applied to the CPUC for the TE/VS project in 2010.⁴ The 2010 TE/VS application is also in question because of incomplete testimony, questions regarding financial viability and costs, and the ability of the TNHC to recoup costs associated with the TE/VS Project through the California Independent System Operator (“CAISO”) process.⁵ TNHC has applied for and withdrawn the TE/VS project from the CAISO process prompting to the CAISO

¹ CPUC, Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500-kV Interconnect, A0710005 (Filed October 9, 2007); Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500-kV Interconnect, A0902012 (Filed February 20, 2009); Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500-kV Interconnect, A1007001 (Filed July 6, 2010).

² CPUC A0902012, Decision Dismissing Application Without Prejudice, Decision 09-04-006 (Filed April 16, 2009) available at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/99913.htm .

³ *Id.*

⁴ CPUC, A1007001, available at <http://docs.cpuc.ca.gov/published/proceedings/A1007001.htm> .

⁵ CPUC, A1007001, Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application (Issued

to leave the TE/VS project out of the transmission planning process.⁶ TNHC also failed to provide the bond for the TE/VS Project as required by the CPUC.⁷ In December of 2011

Administrative Law Judge Angela K. Minkin stated the following

Given the many questions that have arisen, as well as the significant resources that have already been devoted to this proceeding, rather than continuing to grant stays and delays in this proceeding, I am inclined to recommend that the Commission dismiss this application.⁸

The decision on whether to dismiss the 2010 CPUC application is still pending.

Beginning in 2005 THNC also began to file and withdraw several applications before the California State Water Resources Control Board (“State Board”) for water quality certification associated with the LEAPS-TE/VS Project.⁹ On October 1, 2009, the State Board denied the application for water quality certification associated with the LEAPS-TE/VS Project.¹⁰ TNHC then filed suit against the State Board for their denial and sought a writ of mandate to direct the State Board to set aside its order and either allow Nevada Hydro to withdraw and resubmit its application or hold an adjudicatory hearing.¹¹ TNHC also has outstanding debt obligations associated with that State Board filing that it has refused to repay.¹²

In addition, TNHC has been in an ongoing dispute with its former co-applicant for the LEAPS-TE/VS Project, EVMWD.¹³ This ongoing dispute led to the termination of the 14 year

December 1, 2011), available at <http://docs.cpuc.ca.gov/efile/RULINGS/154509.pdf> .

⁶ California Independent System Operator, 2010 Final California ISO Transmission Plan (April 7, 2010), at 362-363 available at <http://www.caiso.com/2771/2771e57239960.pdf> .

⁷ CPUC, A1007001, Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application (Issued December 1, 2011).

⁸ *Id.*

⁹ FERC, Order Denying Rehearing, Project No. 11858-004 (Issued November 17, 2011) available at http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20111117-3026 .

¹⁰ *Id.*

¹¹ *Id.*; *The Nevada Hydro Company v. State Water Resources Control Board*, San Diego Superior Court No. 37-2011-00088797-CU-WM-CTL (Filed April 1, 2011).

¹² CPUC, A1007001, Comments by Elsinore Valley Municipal Water District In Response to Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application (filed December 16, 2011) at 3, available at <http://docs.cpuc.ca.gov/efile/CM/156036.pdf> .

¹³ FERC, Order Denying Rehearing, Project No. 11858-004 (Issued November 17, 2011).

old Development Agreement between THNC and EVMWD.¹⁴ It also prompted the dismissal previous dismissal of this same Project, Project No. 11858.¹⁵

The LEAPS Project has also come under financial scrutiny. In 2006 an independent economic analysis conducted on the Project on behalf of EVMWD revealed that the Project was not economically viable¹⁶ and that TNHC had not produced economic studies justifying development of LEAPS or TE/V.S.¹⁷ TNHC's bidding, contracting, and transparency with the LEAPS-TE/V.S Project was also the subject of a Grand Jury proceeding in the Riverside County Superior Court.¹⁸ A 2009 Grand Jury Report noted that two economic evaluations that concluded the LEAPS-TE/V.S project was "not economically viable."¹⁹ The Grand Jury Report also resulted in three major recommendations: 1) EVMWD must require due diligence in establishing future contracts such as LEAPS, in order to avoid relying on sole bidders for contracts;²⁰ the LEAPS project is not economically viable;²¹ EVMWD should provide an itemized accounting of the four million dollars in ratepayer funds spent on the LEAPS Project.²²

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¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ LEAPS Economic Evaluation (Feb 7, 2006), available at <http://docs.cpuc.ca.gov/efile/CM/156150.pdf> . A summary of key findings of the LEAPS Economic Evaluation are: when revenue and cost factors are considered the LEAPS project, as a merchant plant, is not viable at this time; Nevada Hydro's spreadsheet dated July 20, 2005 assumed an on-peak price of \$65 per MWh and an off-peak price of \$25 per MWh. Although these price assumptions might be reasonable under different circumstances, since the California energy crisis ended in 2001, such a high differential has existed on only a few days, and the average differential is far lower; based on 2005 actual prices, in our base case we project that LEAPS would have had annual net energy sales of just \$0.3 million, instead of the \$54.6 million Nevada Hydro calculated.

¹⁷ *Id.*

¹⁸ 2008-2009 Grand Jury Report on the Elsinore Valley Municipal Water District: Lake Elsinore Advanced Pumped Storage Project, Riverside County Superior Court (February 23, 2009), available at http://www.riverside.courts.ca.gov/grandjury/09elsinorevalley_muniwaterdistrict.pdf .

¹⁹ *Id.* at 3.

²⁰ *Id.* at 1, 5.

²¹ *Id.* at 5.

²² *Id.* at 5.

II. STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION

The Center for Biological Diversity is a non-profit, public interest environmental organization with more than 320,000 members and online activists dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center's membership includes individuals who regularly use and enjoy the lands that will be affected by the LEAPS Project, including the Cleveland National Forest, Lake Elsinore, and surrounding areas, for hiking, backpacking, hunting, fishing, photography, wildlife viewing, scientific study, and other recreational, aesthetic, and educational purposes.

Based on the information in the 2007 Final EIS and elsewhere in the FERC docket for this and the previous application, the interests of the Center, and their individual members will be adversely affected by the LEAPS Project. In particular, the Center has an interest in avoiding or minimizing the LEAPS Project's impacts on sensitive species of plants, fish, and wildlife; avoiding or minimizing the Project's impacts to Lake Elsinore and other waterbodies; avoiding or minimizing the Project's impacts on public lands, including the Cleveland National Forest; and promoting alternatives to the proposed action that would minimize environmental harm. These interests may be directly affected by the outcome of this proceeding if FERC approves a license for the LEAPS Project.

The Center has a statutory right to intervene. 18 C.F.R. section 385.212 (FERC Rule 212), 18 C.F.R. section 385.214 (FERC Rule 214). In addition, the Center's environmental interests described above may be directly affected by outcome of the proceeding if FERC licenses the LEAPS Project. The Center's participation is justified because of this potential adverse effect. 18 C.F.R. § 385.214(b)(2)(ii). Moreover, the Center seeks to intervene in this proceeding to assert their environmental interests on behalf of the public. The Center will

attempt to limit the LEAPS Project's environmental harm and to protect public trust resources including the waters of Lake Elsinore, public lands in the Cleveland National Forest and elsewhere, and the plants, fish, and wildlife that will be affected by the Project. Accordingly, the Center's participation is justified because it is in the public interest. 18 C.F.R. § 385.214(b)(2)(iii).

A. A SUPPLEMENTAL EIS IS REQUIRED

The Center has a strong interest in assuring that the laws regarding analysis of projects that have significant impacts on the environment are followed and that the public and decision makers are fully informed of potential impacts to the environment. In the present case the Center has a strong interest in assuring that a supplemental EIS is prepared for the LEAPS Project because of the substantial changes and new circumstances that have occurred since the 2007 Final EIS for the previous LEAPS application. A supplemental EIS is required when there are substantial changes in the project, there are significant new circumstances relevant to environmental concerns, or a supplemental EIS will further the purposes of NEPA. 40 CFR § 1502.9(c)(1) & (2). Changes in applicable forest management and additional information regarding sensitive species and habitat standards that would be affected by the project require a supplemental EIS to be prepared. *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549 (9th Cir. 2006) (forest management plan amendment); *Friends of the Clearwater v. Dombeck*, 222 F.3d 549 (9th Cir. 2000) (new sensitive species designations and habitat standards).

1. The Application and EIS Fail to Adequately Describe the Changes to and Location of the Southern Terminus- the Case Springs Substation

The current application fails to provide the necessary details and description regarding the southern terminus of the Project where it would interconnect with the San Diego Gas & Electric system. The CPUC 2009 Decision Dismissing the Application Without Prejudice for the

TE/VS component of the LEAPS Project was based on the application's failure to provide the necessary details regarding the Case Springs Substation.²³

TNHC's CPUC application states that southern interconnection with San Diego Gas & Electric's ("SDG&E") grid will take place at a "new substation in the vicinity of United States Marine Corps (USMC) Camp Joseph H. Pendleton."²⁴ In early 2009 the USMC definitively denied clearance for the Case Springs substation site on Camp Pendleton when the USMC informed TNHC that "the case is closed on the LEAPS substation with respect to any possibility of it being sited anywhere within an active training area on the Base."²⁵

In light of this the TNHC changed the southern terminus and explained that the Case Springs Substation will be located "within land owned by the Fallbrook Land Conservancy (Conservancy), at MP 31.5."²⁶ However, the Fallbrook Land Conservancy has refused to allow any of the components of the Project on its property.²⁷ TNHC's failure to secure or describe a location for the Case Springs substation at the southern terminus and the crucial interconnection with the lines controlled by San Diego Gas & Electric leaves the Project description and design incomplete, inaccurate, and unstable and requires revision to the EIS.

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²³ CPUC A0902012, Decision Dismissing Application Without Prejudice, Decision 09-04-006 (Filed April 16, 2009), Attachment 5 at 1, available at <http://docs.cpuc.ca.gov/published/Graphics/99922.PDF>.

²⁴ Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500-kV Interconnect, A1007001 (Filed July 6, 2010) at 4, available at http://www.cpuc.ca.gov/Environment/info/aspen/nevadahydro/pea5/app/TNHC_CPCN_application.pdf.

²⁵ Supplemental Information submitted under P-11858, Copy of email from USMC to Applicant concerning the decision of Camp Pendleton to disallow the use of Camp Pendleton facilities for the LEAPS project southern substation (March 25, 2009), available at http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13701392.

²⁶ CPUC, A1007001, Proponent's Environmental Assessment at 3-89, 3-137, available at http://www.cpuc.ca.gov/Environment/info/aspen/nevadahydro/pea5/rev_ch3/ch3_proj_desc_REV0211.pdf.

²⁷ Letter from Fallbrook Land Conservancy to TNHC, April 28, 2011, available at <http://docs.cpuc.ca.gov/efile/CM/156151.pdf> (Attachment 4).

2. The Application and EIS Fail to Analyze the Changes in the Management of Sensitive Species in the Cleveland National Forest that Could be Affected by the LEAPS-TE/VS Project

The EIS relied upon valid management plans and Biological Opinions regarding the Cleveland National Forest where the reservoir and transmission lines will be located. However the Biological Opinion for the Cleveland National Forest has been ruled invalid, has been ordered revised, and is still in the process of completion.²⁸ The EIS must be supplemented to address the changed forest management regulations under the Endangered Species Act affecting sensitive species that would be impacted by the LEAPS-TE/VS project. *See e.g. Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549 (9th Cir. 2006).

3. The Application Proposed to Change the Dam Requirements for the Reservoir

A supplemental EIS is required because of the changes to the LEAPS project that are not analyzed in the 2007 Final EIS. The application for a preliminary permit states that the “proposed project is a pumped storage project and will not use a dam.”²⁹ However, the 2007 FEIS describes the dam as a critical part of the LEAPS project.³⁰ The Supplemental EIS must analyze the impacts of the LEAPS Project since it has changed to exclude the dam, including, but not limited to, how those changes will impact water quality resources and public health and safety.

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²⁸ *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, Case No. 08-cv-01278-MHP (Filed March 5, 2008).

²⁹ FERC, Application for a Preliminary Permit for the Lake Elsinore Advanced Pumped Storage Project (July 18, 2011) at 2, 5, 11.

³⁰ See Final Environmental Impact Statement, Lake Elsinore Advanced Pumped Storage Project, FERC Project No 11858 *e.g.* at xxiii, 2-2, 2-5, available at <http://www.ferc.gov/industries/hydropower/enviro/eis/2007/01-30-07.asp>.

4. The Application and EIS Fail to Disclose and Analyze Changes Resulting from the Sunrise Powerlink Project

The LEAPS-TE/VS project is an alternative to the San Diego Gas & Electric Company's ("SDG&E") Sunrise Powerlink Project in meeting electricity needs for SDG&E's territory. The Sunrise Powerlink has received all necessary approvals and is proceeding with construction.³¹ Once again, the assumptions and analysis in TNHC's application and the 2007 Final EIS are inaccurate and must be updated because the electrical infrastructure upon which the purpose and need is premised is incorrect and outdated. Evidence presented in the Sunrise Powerlink proceeding indicates that when the Sunrise Powerlink is built, import capability into the San Diego area under all-lines-in-service conditions will be increased from the current level of 2850 MW to 4200 MW. Because the Sunrise Powerlink will be placed in-service, TNHC's Base Case (without the TE/VS project) should model San Diego area all lines-in-service import capability at 4200 MW and analyze the Sunrise Powerlink as an alternative to the Project, and whether, with the Sunrise Powerlink, the Project is even necessary.

IV. CONTACT INFORMATION

The name, address, telephone number, and email address of the person representing the Center for Biological Diversity in this matter is:

Jonathan Evans
351 California St.
Suite 600
San Francisco, CA. 94619
415-436-9682 x318
jevans@biologicaldiversity.org

Please direct all communications regarding this proceeding to the above person.

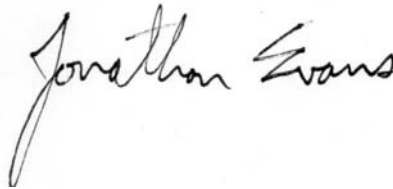
³¹ Decision Granting a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project, D0812058 (Issued December 24, 2008); see also

V. CONCLUSION

For the foregoing reasons, the Center for Biological Diversity respectfully moves FERC to grant leave to the Center to intervene in this proceeding as full parties with all rights and privileges thereof.

DATED: January 27, 2012

Jonathan Evans
CENTER FOR BIOLOGICAL DIVERSITY

A handwritten signature in black ink that reads "Jonathan Evans". The signature is written in a cursive style with a large, sweeping initial 'J'.

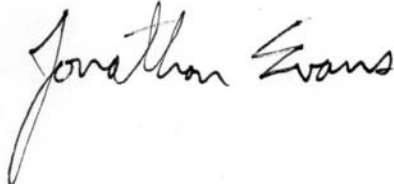
By:

JONATHAN EVANS
Attorney for Movant
CENTER FOR BIOLOGICAL DIVERSITY

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 the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the FERC's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at San Francisco, California this 27th day of January, 2012.

A handwritten signature in black ink that reads "Jonathan Evans". The signature is written in a cursive style with a long, sweeping tail on the letter 'J'.

Jonathan Evans
351 California ST, Suite 600
San Francisco, CA. 94104
(415) 436-9682 x318

Service List for P-14227-000 Nevada Hydro Company, Inc.

Contacts marked ** must be postal served

Party	Primary Person or Counsel of Record to be Served	Other Contact to be Served
FRONTLINES	Jacqueline Ayer 2010 West Avenue K #701 Lancaster, CALIFORNIA 93536 UNITED STATES AirSpecial@aol.com	
Individual	Martin Ridenour Individual 33628 Brand St. Lake Elsinore, CALIFORNIA 92530 UNITED STATES merllr@verizon.net	
Nevada Hydro Company, Inc.	David Kates Nevada Hydro Company, Inc. 2416 Cades Way Vista, CALIFORNIA 920817830 UNITED STATES DKates@sonic.net	**Rexford J Wait Vice President Nevada Hydro Company, Inc. 2416 Cades Way Vista, CALIFORNIA 920837830 San Diego
Nevada Hydro Company, Inc.	Patrick Morand Wright & Talisman, PC 1200 G street Washington, DISTRICT OF COLUMBIA 20005 UNITED STATES morand@wrightlaw.com	Arnold B Podgorsky Wright & Talisman, PC 1200 G Street, N.W., Suite 600 Washington, DISTRICT OF COLUMBIA 20005 podgorsky@wrightlaw.com
State Water Resources Control Board (CA)	Nathan Jacobsen Staff Counsel California Department of Water Resources 1001 I Street, 22nd Floor Sacramento, CALIFORNIA 95814 UNITED STATES njacobsen@waterboards.ca.gov	