



San Bernardino Valley  
Audubon Society



*via FERC docket*

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

August 7, 2017

**RE: Lake Elsinore Advanced Pumped Storage Project Number P-14227  
Comments on The Nevada Hydro Company's May 31, 2017 Notification of Intent to File  
License Application**

Dear Secretary Bose:

The Center of Biological Diversity, San Bernardino Valley Audubon Society, and Endangered Habitats League, and Audubon California submit this letter regarding The Nevada Hydro Company's (Nevada Hydro) May 31, 2017 Notification of Intent to File License Application (NOI) for the Lake Elsinore Advanced Pumped Storage Project (LEAPS), Project Number 14227. While we strongly support environmentally beneficial methods of energy storage in support of renewable energy our organizations are deeply concerned about the impacts to wildlife, the environment, and the 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. This project will be extremely detrimental to wildlife, including threatened and endangered species, and the citizens who enjoy hiking, backpacking, photography, wildlife viewing, scientific study, and living in the area.

Nevada Hydro's FERC application must be denied for three reasons: 1) the 2007 Environmental Impact Statement (EIS) Nevada Hydro intends to rely upon is outdated and does not reflect the current environmental, socioeconomic, legal, and jurisdictional circumstances affecting the area, 2) Nevada Hydro has not been able to meet the legal standards under CEQA and obtain a water quality permit from the State Water Resources Control Board and, 3) Nevada Hydro no longer possesses any contractual or recognized water rights necessary for the project. To allow Nevada Hydro to move forward with this contentious project in light of the numerous legal deficiencies, overwhelming environmental and financial constraints, and lack of the

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necessary permitting and licenses, would be a substantial waste of time and resources for all parties involved. We urge FERC to immediately reject the application and LEAPS project.

## **I. THE EIS IS OUTDATED AND CANNOT BE RELIED UPON**

Nevada Hydro incorrectly asserts that the original project p-11858 is almost entirely “identical” to the current project P-14227.<sup>1</sup> Therefore, the company claims that “because extensive consultation occurred in this previous docket culminating with the issuance of the FEIS, and because little in the region has changed,” Nevada Hydro will only need to “refresh” the relevant information in order to update its 2007 EIS.<sup>2</sup>

This argument is inaccurate on two grounds. First, the current project is significantly different from project P-11858. Second, the environmental, social, and economic conditions in the area have changed dramatically since 2007. Under NEPA, 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). For the reasons discussed in detail below, Nevada Hydro must complete a full supplemental EIS, rather than merely “refreshing” their outdated information.

### ***A. The Project is Different***

According to the Elsinore Valley Municipal Water District (EVMWD), the previous co-applicant of project P-11858, the original project proposed a 500-megawatt hydroelectric facility and “the potential construction” of two transmission lines, one that would carry power south to SDG&E’s Talega-Escondido transmission line, and one that would carry power north to SCE’s Valley-Serrano transmission line.<sup>3</sup> The description of project P-11858 was extremely unclear on whether one or both segments of the Talega-Escondido/ Valley-Serrano transmission line (TE/VS) would be built and whether they would be built simultaneously, or over time.<sup>4</sup> The 2007 EIS that was completed for the LEAPS Project only included the 500-megawatt hydroelectric facility, as defined in the February 2, 2004 Application submitted by co-applicants EVMWD and Nevada Hydro.<sup>5</sup>

The current project P-14227 submitted by Nevada Hydro includes both the original

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1 The Nevada Hydro Company, LAKE ELSINORE ADVANCED PUMPED STORAGE PROJECT NUMBER 14227 NOTIFICATION OF INTENT TO FILE LICENSE APPLICATION 8 (May 31, 2017). ([https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14587694](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14587694))

2 The Nevada Hydro Company, DRAFT FINAL APPLICATION FOR LICENSE OF MAJOR UNCONSTRUCTED PROJECT, DETAILED DESCRIPTION OF CONSULTATIONS EFFORTS AND RESULTS 1 (May 2017). (Consultation.PDF [https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14577052](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14577052))

3 Elsinore Valley Municipal Water District, INADEQUACY OF THE 2007 ENVIRONMENTAL IMPACT STATEMENT FOR CONSIDERATION OF LEAPS LICENSE APPLICATION (PROJECT NO. P-14227) 4-5 (May 6, 2014). ([https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14213761](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14213761))

4 Cross- Complaint at 3, *The Nevada Hydro Company, Incorporated v. Elsinore Valley Municipal Water District*, No. 2012- 00057077-CU-BC-NC (Nov. 1, 2012). ([https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14588122](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14588122))

5 Elsinore Valley Municipal Water District, Inadequacy of the 2007 EIS at 4-5.

LEAPS Project as well as a separate TE/VS transmission line.<sup>6</sup> However, Nevada Hydro has yet to acknowledge this major change from the original project and incorrectly maintains that the “only difference between the proposal described in the current draft application and that considered previously under P-11858 would be the location of a substation.”<sup>7</sup> This assertion is false. In a recent letter from FERC to Nevada Hydro, FERC states that the project description *still* does not clearly state how the project’s transmission lines will connect or operate: “The previous project proposal contemplated combining the transmission lines to carry system load in excess of the power generated by the LEAPS Project. Exhibit A of the draft license application, however, makes no reference to this aspect of the prior proposal.”<sup>8</sup> Nevada Hydro has yet to disclose the entire parameters of its project and should not be allowed to downplay the significant differences between the original and current projects.

Because P-14227 is substantially different from P-11858, Nevada Hydro cannot rely on the original 2007 EIS because this evaluation excluded an analysis of the environmental impacts from both the LEAPS project and its TE/VS powerline. Nevada Hydro must analyze the environmental impacts of the entire project in order to ensure the public is provided with adequate information and sufficient environmental and public protections.

### ***B. Environmental Conditions are Different***

Not only have there been substantial changes to the project, the environmental and socioeconomic conditions surrounding the project are very different from those in 2007. Nevada Hydro inaccurately believes that “not much has changed” in the ten years since the EIS was finalized.<sup>9</sup> This belief has no basis in reality.

First, there has been rapid development and significant population growth within the project area.<sup>10</sup> Lake Elsinore is one of the fastest growing cities in the entire state. The population has maintained a growth increase of 3.74% to 7.42% per year since 2000.<sup>11</sup> This population increase has been coupled with tremendous commercial and residential development. It is highly unlikely that an EIS prepared in 2007 would accurately reflect the environmental impacts of a population that has increased in an amount over 10,000 new residents in the City of Lake Elsinore alone. Wildomar, neighboring the LEAPS project, incorporated into a city, and the surrounding areas of the Temescal Valley and Alberhill have also experienced substantial population increases in the past ten years.<sup>12</sup>

Second, as of the 2007 EIS, 11 federally listed plant species and 8 federally listed wildlife species were found to occur or had been documented to occur in the project area.<sup>13</sup> This

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6 Elsinore Valley Municipal Water District, Inadequacy of the 2007 EIS at 5-6.

7 Federal Energy Regulatory Commission, Letter to Rexford Wait 2 (Jul. 24, 2017). ([https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14589966](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14589966))

8 FERC Letter to Rexford Wait at 2.

9 The Nevada Hydro Company, Notification of Intent to File at 16.

10 Elsinore Valley Municipal Water District, Inadequacy of the 2007 EIS at 6.

11 Population of Lake Elsinore, <http://population.us/ca/lake-elsinore/> (last visited Aug. 2, 2017).

12 Paul Bandong, *Lake Elsinore is Exploding Part 3, Residential growth expands* (Mar. 16, 2017) (<http://myvalleynews.com/business/lake-elsinore-exploding-part-3-residential-growth-expands/>)

13 Federal Energy Regulatory Commission, FINAL ENVIRONMENTAL IMPACT STATEMENT LAKE ELSINORE

conclusion is based on outdated field studies conducted between 2001 and 2005.<sup>14</sup> Today, there are 42 federally listed species that are known to or are believed to occur in Riverside County, where the project will be located.<sup>15</sup> Additionally, it is highly likely the locations of endangered or threatened species and their critical habitat have changed since 2001.<sup>16</sup> Further, the surveys have not accounted for the many wildfires that have ravaged the area since the last survey was completed.<sup>17</sup> Nor do the previous surveys contain an analysis of impacts to the Decker Canyon watershed and groundwater levels since California experienced one of the most severe droughts in history.<sup>18</sup> It is clear that new surveys in compliance with the Endangered Species Act are required.

Third, the 2007 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 was later ruled invalid and ordered revised. The most recent Biological Opinion was completed in July 2010.<sup>19</sup> Therefore, 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/VIS project.<sup>20</sup>

Finally, as pointed out by EVMWD, the 2007 EIS, if reissued today, would not be in compliance with NEPA, as the 2007 EIS predates much of the information now available regarding the Project's greenhouse gas emissions.<sup>21</sup>

Nevada Hydro claims to have conducted "extensive, multi-year" consultation with numerous local agencies in order to keep their application up to date.<sup>22</sup> In reality, much of Nevada Hydro's consultations are outdated and any efforts to "refresh" them have been severely inadequate. For example, the California Department of Fish and Wildlife (CDFW) has not had the opportunity to consult on the project since 2011/2012.<sup>23</sup> This is extremely problematic because CDFW will be acting as both a trustee and responsible agency for the project under CEQA.<sup>24</sup> Not only has Nevada Hydro failed to consult with CDFW, but it has not even provided enough information for the Department to understand the parameters of the project. CDFW states

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ADVANCED PUMPED STORAGE PROJECT 3-124 (Jan. 2007).

(<https://www.ferc.gov/industries/hydropower/enviro/eis/2007/01-30-07.asp>)

14 Final EIS at 3-124.

15 U.S. Fish and Wildlife, Endangered Species, <https://www.fws.gov/endangered/>

16 Elsinore Valley Municipal Water District, Inadequacy of the 2007 EIS at 5-6

17 The Nevada Hydro Company, Consultations Efforts at 7.

18 The Nevada Hydro Company, Consultation Efforts at 7.

19 Biological Evaluation for Regional Forester's Sensitive Plant and Wildlife Species on the Cleveland National Forest for the Sunrise Powerlink Project (Jul. 2010).

([https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5323385.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5323385.pdf))

20 See e.g. *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549 (9th Cir. 2006).

21 Elsinore Valley Municipal Water District, Inadequacy of the 2007 EIS at 6.

22 Nevada Hydro, Notification of Intent at 7.

23 California Department of Fish and Wildlife, COMMENTS FROM CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ON NEVADA HYDRO COMPANY'S MAY 31, 2017, NOTIFICATION OF INTENT TO FILE ORIGINAL LICENSE APPLICATION FOR THE LAKE ELSINORE ADVANCED PUMP STORAGE PROJECT 2 (Jul. 19, 2017).

([https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14589124](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14589124))

24 CDFW Comments on Notification of Intent to File at 3.

that it is unaware of the designation of land related to the project, where the land is located, or the species that will be conserved through any proposed land protection activities, as well as any Study Plans or Studies.<sup>25</sup>

Further, both the City of Lake Elsinore and the EVMWD are opposed to the project and have not been recently consulted. Currently, Nevada Hydro is fully engaged in extensive litigation with its former co- applicant, EVMWD over its termination of the contract that once granted the Nevada Hydro the right to use Lake Elsinore for the LEAPS project. The NOI is devoid of any mention of the pending lawsuit.<sup>26</sup> Nevada Hydro has also failed to consult in any form with the City of Lake Elsinore which is 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.<sup>27</sup> Nevada Hydro did not even send a copy of its NOI to the city.<sup>28</sup> Rather, the city learned of the NOI from a citizen. Due to their complete lack of consultation with the City, the City has stated that it “has no intention of facilitating the regulatory appropriation of its most treasured recreational asset for the benefit of a private company.”<sup>29</sup>

Nevada Hydro should not be permitted to merely refresh their outdated EIS. The environmental, socioeconomic, legal, and jurisdictional conditions surrounding the project changed dramatically since 2007. Further, the project itself now includes the poorly defined TE/VS lines which were never considered in the original EIS. Finally, Nevada Hydro’s has demonstrated inadequate consultation effort by failing to obtain input from several of the most important local agencies.

## **II. NEVADA HYDRO DOES NOT HAVE SECTION 401 WATER QUALITY CERTIFICATION OR WATER RIGHTS**

For over a decade, Nevada Hydro has been unsuccessfully attempting to obtain the necessary water certification and water rights for the LEAPS project. Due to its inadequate CEQA analysis and a contentious legal battle with EVMWD, it is even more unlikely the company will be able to obtain these water rights or certification in the future. Without any contractual rights or legal authorization to remove water from the lake, the 500-megawatt hydroelectric facility simply cannot function.

Nevada Hydro and prior co-applicant EVMWD filed and withdrew several applications with the State Water Resources Control Board (State Water Board) in an attempt to obtain water quality certification under Section 401 of the Clean Water Act (CWA).<sup>30</sup> The fifth and final application filed by the applicants on January 21, 2009 was ultimately dismissed without

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25 CDFW Comments on Notification of Intent to File at 3.

26 City of Elsinore, LAKE ELSINORE ADVANCED PUMPED STORAGE PROJECT NUMBER 14227 COMMENTS TO THE NEVADA HYDRO COMPANY’S MAY 31, 2017 NOTIFICATION OF INTENT TO FILE LICENSE APPLICATION 1 (Jul. 14, 2017). ([https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14588122](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14588122))

27 City of Elsinore Comments on Notification of Intent at 1.

28 City of Elsinore Comments on Notification of Intent at 1.

29 City of Elsinore Comments on Notification of Intent at 2.

30 Center for Biological Diversity, MOTION/NOTICE OF INTERVENTION AND COMMENTS OF THE CENTER FOR BIOLOGICAL DIVERSITY REGARDING THE NEVADA HYDRO COMPANY’S APPLICATION FOR A PRELIMINARY PERMIT 3 (Jan. 27, 2012). ([https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=13991686](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=13991686))

prejudice by the State Water Board on October 1, 2009.<sup>31</sup> The dismissal was based on a failure to provide the State Water Board with documentation adequately analyzing the LEAPS Project's environmental impacts under the California Environmental Quality Act, which is a pre-requisite to State Water Board certification. 23 Cal. Code Regs., § 3856(f).<sup>32</sup> Nevada Hydro petitioned the San Diego Court for a Writ of Mandamus directing the State Water Board to vacate its order or allow the company to resubmit its application.<sup>33</sup> However, Nevada Hydro ultimately abandoned this suit.

Today, Nevada Hydro has still yet to publish an adequate CEQA document. Nevada Hydro claims in its NOI that it has worked to develop “a significant public record of relevant new detailed Project information since the Commission issued the Final EIS... [including] . . . CEQA analysis and conclusions regarding the Project, published by the CPUC in a final CEQA and NEPA report.”<sup>34</sup> However, it appears there is no existence of a final CEQA report associated with State Clearinghouse No. 2011031037 or published by the CPUC.<sup>35</sup> According to the CPUC website, there is currently no application before the Commission for this project.<sup>36</sup> With no environmental impact analysis under CEQA, there is no possibility of Nevada Hydro obtaining water quality certification from the State Water Board.

In addition to the company's lack of 401 certification, Nevada Hydro does not have the water rights necessary to execute the project due to the termination of the contract with EVMWD in 2011. Since then, EVMWD has consistently disavowed any involvement in the project.<sup>37</sup> Nevada Hydro states in its consultation effort summary document that the “[a]pplicant will obtain all necessary property rights including water rights to construct, operate and maintain the Project as will be required by the FERC license.”<sup>38</sup> However, Nevada Hydro fails to explain how they plan on obtaining these rights without EVMWD or the City of Lake Elsinore's support or participation. With *Nevada Hydro v. EVWMD* set to begin jury trial September 22, 2017 and expected to last over a month due to the deep nature of dispute, it is extremely unlikely Nevada Hydro will be able to obtain the necessary water rights in any reasonable timeframe.<sup>39</sup>

### III. CONCLUSION

FERC should not allow Nevada Hydro's to move forward with the LEAPS project. Not only does the company continue to attempt to skirt its legal requirements under NEPA, CEQA, and the CWA, the project itself remains ill-defined and lacking in fundamental support from numerous agencies and local governments. After almost a decade, Nevada Hydro still does not have any of the necessary permitting or property rights and has not presented any clear plan as to how it plans to obtain them. Further, without a viable CEQA or NEPA analysis, there is no

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31 Cross Complaint at 5.

32 Cross Complaint at 5.

33 Center for Biological Diversity Motion/Notice of Intervention at 3.

34 CDFW Comments on Notification of Intent to File at 2.

35 CDFW Comments on Notification of Intent to File at 2.

36 CDFW Comments on Notification of Intent to File at 3.

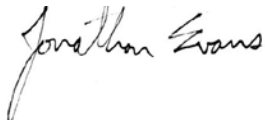
37 City of Elsinore Comments on Notification of Intent at 3.

38 Nevada Hydro Consultation Efforts at 11.

39 City of Elsinore Comments on Notification of Intent at 2.

possibility of the company obtaining them in the future. In short, the LEAPS project has been and continues to be a major waste of time and resources. If permitted, the project would pose significant detrimental harm to the environment, local species, and citizens. For these reasons, we respectfully request that FERC deny the P-14772 application.

Sincerely,



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