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EDMUND G. BROWN, Jr., Governor
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September 21, 2017

Ms. Kimberley D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

SUBJECT: ADDITIONAL COMMENTS FROM THE 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 PUMPED STORAGE PROJECT (FERC PROJECT No. 14227)

Dear Secretary Bose:

The California Department of Fish and Wildlife (Department) previously provided comments on the Nevada Hydro Company's May 31, 2017 Notification of Intent to File Original License Application (NOI) for the Lake Elsinore Advanced Pumped Storage (LEAPS) Project, FERC Project No. 14227, in a letter dated July 19, 2017 (enclosed). Since this date Nevada Hydro Company transmitted a copy of the Draft License Application and NOI Attachments to the Department. The Department has since completed a cursory review of these documents. The Department requests that FERC consider the Department's original comments submitted July 19, 2017, in addition to the comments contained in this letter in its consideration of Nevada's Hydro's notice of intent and request to waive pre-filing requirements.

AUTHORITIES

The Department is the relevant State fish and wildlife agency for resource consultation pursuant to the Federal Power Act Section 10(j) (16 U.S.C. section 803 (j)). The fish and wildlife resources of the State of California are held in trust for the people of the State by and through the Department (Fish & G. Code § 711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (Fish & G. Code § 1802). The mission of the Department is to manage California's diverse fish, wildlife, and plant resources, and the habitats on which they depend, for their ecological values and for their use and enjoyment by the public.

ADDITIONAL COMMENTS ON THE NOI

1. The biological resources information included in the NOI is outdated. Studies included in the NOI were completed between 2001 and 2006; more than 11 years has elapsed since these dates. The Department recommends that all biological data be updated. The Department also recommends the incorporation of new sources of data and recent studies, where available (for example, the multi-year Southern California Mountain Lion Study being conducted by University of California, Davis). Further, as the Department is California's Trustee Agency for fish and wildlife resources, and holds those resources in trust by statute for all the people of the state (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) we request that Nevada Hydro consult with the Department prior to completing refreshed studies.
2. The NOI and associated documents do not clarify whether Nevada Hydro will request take coverage through the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). Because the proposed CEQA lead agency (i.e., the CPUC) is not a permittee to the MSHCP, in order to participate in the MSHCP, the CPUC/Nevada Hydro would need to act as a Participating Special Entity (PSE). If the CPUC/Nevada Hydro chooses to act as a PSE and obtain take through the MSHCP all applicable MSHCP policies and procedures will apply. If the project is not processed through the MSHCP for covered species, then the project may be subject to the Federal Endangered Species Act (FESA) and/or CESA for threatened, endangered, and/or candidate species. The Department recommends that Nevada Hydro contact the Riverside County Regional Conservation Authority to arrange a meeting to discuss the proposed project.
3. Based on review of the proposed project, the project has the potential to impact conserved mitigation lands. For example, the transmission alignment is proposed to traverse a portion of the Estelle Mountain Reserve, and project operations may decrease the long term conservation value of mitigation lands within and adjacent to Lake Elsinore. The Department recommends that potential impacts to conserved lands within and adjacent to the project be addressed.
4. The NOI identifies impacts to areas subject to section 1600 et seq. of the Fish and Game Code. Because the Department has not had the opportunity to review or consult on these areas, we cannot, at this point in time, comment on the impact calculations included in the NOI. The project will require notification to the Department pursuant to section 1602 of the Fish and Game Code.
5. Significant development has occurred within the project vicinity. The Department recommends that the NOI and all associated environmental documents be revised to adequately assess the impact of the proposed project.

6. The Department has not had the opportunity to comment on study plans and studies, and has not participated in a site visit of the proposed project.

CONCLUSION

Based on the lack of recent environmental studies and consultation with wildlife agencies, the Department recommends that FERC not waive the Integrated Licensing Process (ILP) pre-licensing activities for this project.

Further, as previously stated (enclosed), the Department does not have a clear understanding of the status of the CEQA document that will be relied on by Nevada Hydro for this project. Because the project will, at a minimum, require the issuance of a Lake or Streambed Alteration Agreement, the Department will act as a responsible agency pursuant to CEQA. As a responsible agency, the Department must actively participate in the lead agency's CEQA process, review the lead agency's CEQA document, and use that document when making a decision on the project.

If you have questions regarding the contents of this letter further, please contact Joanna Gibson at joanna.gibson@wildlife.ca.gov or (909) 987-7449.

Sincerely,

for 

Bruce Kinney
Environmental Program Manager

Enclosure: CDFW July 19, 2017 letter.

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Joanna Gibson, CDFW, joanna.gibson@wildlife.ca.gov



July 19, 2017

Ms. Kimberley D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

SUBJECT: COMMENTS FROM THE 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 PUMPED STORAGE PROJECT (FERC PROJECT No. 14227)

Dear Secretary Bose:

The California Department of Fish and Wildlife (Department) is providing the comments contained herein on the Nevada Hydro Company's May 31, 2017 Notification of Intent to File Original License Application (NOI) for the Lake Elsinore Advanced Pumped Storage (LEAPS) Project, FERC Project No. 14227.

AUTHORITIES

The Department is the relevant State fish and wildlife agency for resource consultation pursuant to the Federal Power Act Section 10(j) (16 U.S.C. section 803 (j)). The fish and wildlife resources of the State of California are held in trust for the people of the State by and through the Department (Fish & G. Code § 711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (Fish & G. Code § 1802). The mission of the Department is to manage California's diverse fish, wildlife, and plant resources, and the habitats on which they depend, for their ecological values and for their use and enjoyment by the public.

COMMENTS ON THE NOI

1. The NOI (Page 5) states “The Company [Nevada Hydro Company] is distributing this notification of intent to the appropriate Federal, state, and interstate resource agencies, Indian tribes, local governments, and members of the public likely to be interested in this proceeding.” The Department has not received a copy of the entire NOI. Documentation from Nevada Hydro Company

has not been received directly by the Department; either in digital or hardcopy format.

2. The NOI states (Page 1): "The Company here is providing evidence of the significant amount of work it has undertaken to keep the information and consultation efforts fresh..." The Department has not been provided information or participated in consultation efforts since 2011/2012.
3. The NOI states (Page 7): "...the Company has effectively combined pre-filing consultation with scoping conducted by a number of agencies, including the Commission. This also has effectively increased agency and public participation in the Company's ongoing pre-filing consultation efforts." As previously stated, the Department has not been provided recent information on the project. The last time the Department participated in consultation efforts regarding this project was at least five years ago.
4. The NOI states (Page 7): "...the Company has developed a significant public record of relevant new detailed Project information since the Commission issued the Final EIS... [including]:
 - Extensive relevant information the Company has developed in connection with its application to the California Public Utilities Commission ("CPUC") in their role as lead agency for analysis of the Project under the California Environmental Quality Act ("CEQA").
 - CEQA analysis and conclusions regarding the Project, published by the CPUC in a final CEQA and NEPA report.
 - Updated environmental analysis.
 - Results of detailed relevant consultation between the Company and the US Forest Service in connection with the Project's proposed use of lands of the Cleveland National Forest ("Forest").
 - Executed interconnection agreements describing the scope and cost of connecting the project to the region's high voltage grid.
 - Extensive, multi-year, consultation by the Company with resource agencies and other stakeholders."

As previously mentioned, the Department has not had the opportunity to consult on this project since 2011/2012. In 2011 the Department submitted a comment letter on the CEQA Notice of Preparation of a Draft Environmental Impact Report for the TEVS [Talega-Escondido/Valley-Serrano] 500 kV Interconnect Project (State Clearinghouse Number 2011031037). As far as the Department is aware a Draft Environmental Impact Report is still outstanding, and certainly the Department is unaware of the existence of a "final CEQA...report" associated with State Clearinghouse No. 2011031037, and/or "published by the CPUC." This fact can be readily verified by consulting the CPUC's website regarding the project:

http://www.cpuc.ca.gov/Environment/info/aspen/Nevadahydro/Talega_escondido_valley_serrano.htm

The CPUC's website states that "On May 24, 2012 The Nevada Hydro Company's (TNHC) TEVS 500 kV Interconnect Project Application (A. 10-07-

001) was dismissed without prejudice by the California Public Utilities Commission (CPUC). Currently, there is no application before the Commission for this project.”

5. The Department is unclear regarding which CEQA document The Nevada Hydro Company proposes to use for this project. Section 3.1.2 of the NOI references both Application No. A. 10-07-001 and Application No. 06-08-010 (the San Diego Gas & Electric Company’s Sunrise Powerlink Transmission project). As stated previously, Application No. A. 10-07-001 was dismissed by the CPUC in 2012. Also, Application 06-08-010 appears to be limited to Imperial and San Diego Counties, and the City of San Diego. No reference is provided to the City of Lake Elsinore, Riverside County, or Orange County: the locations of this proposed project. A final CEQA document was completed by the Elsinore Valley Municipal Water District (filed with the State Clearinghouse on January 4, 2005) for the Lake Elsinore Advanced Pumped Storage Project and Talega-Escondido/Valley-Serrano 500kV Interconnect Project (State Clearinghouse No. 2004091057), but as Elsinore Valley Municipal Water District was the lead agency for this project (and not CPUC), the Department assumes that this is not the “final” environmental document being referenced.
6. Section 3.1.3 of the NOI references an updated environmental assessment and updated impact analysis. The Department has not received this information.
7. Section 3.2 of the NOI states that “extensive consultation has occurred...” As stated previously, the Department has not consulted on this project in the last five years. The Department will be acting as both a trustee and responsible agency for this project under CEQA. The Nevada Hydro Company will need to notify the Department per section 1602 of the Fish and Game Code, and will need to consult with the Department regarding the project’s consistency with the policies and procedures of the Western Riverside County Multiple Species Habitat Conservation Plan. Recent consultation with the Department has not occurred.
8. The Department is unclear regarding the particulars of The Nevada Hydro Company’s statement (page 12 of the NOI) that “The Company also worked closely with representatives of the regional state Fish and Wildlife office in connection with the designation of land near project facilities for species protection purposes.” The Department is unaware of the “designation of land” related to this project, where this land is located, or the species that will be conserved through these proposed land protection activities.
9. The Department has not received copies of the Study Plans and Studies, and has not had the opportunity to review or comment on these documents.

As previously stated, the Department has jurisdiction over the conservation, protection, and management of wildlife, native plants, and habitat necessary to maintain biologically sustainable populations. As a trustee for these resources, the Department provides the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities and identifies ways to avoid or reduce environmental impact. With respect to its trustee agency status, the Department always serves in that capacity under the Fish and Game Code with regard to the

State's fish and wildlife resources. For the purposes of CEQA, the Department serves as a trustee agency whenever a project affects fish and wildlife resources, regardless of whether those effects are significant.

In addition to the Department's role as a trustee agency, the Department also takes on the role of responsible agency when a lead agency's decision will result in a project that requires the issuance of a Department permit, such as a California Endangered Species Act Incidental Take Permit or a Lake or Streambed Alteration Agreement. This project will, at a minimum, require the issuance of a Lake or Streambed Alteration Agreement. As a responsible agency, the Department must actively participate in the lead agency's CEQA process, review the lead agency's CEQA document, and use that document when making a decision on the project.

The Department does not have a clear understanding of the status of the CEQA document that will be relied on by The Nevada Hydro Company for this project. As previously stated, in 2011 the Department submitted a comment letter on the CEQA Notice of Preparation of a Draft Environmental Impact Report for the Nevada Hydro Company's Talega-Escondido/Valley-Serrano 500 kV Interconnect Project, with the CPUC acting as the CEQA lead agency (State Clearinghouse No. 2011031037). However, a subsequent environmental document (e.g., Draft Environmental Impact Report) was never circulated. The Department currently does not have an understanding of the specific project elements or environmental impacts associated with this project, and has not been recently (within the last five years) consulted on this project. Further, the Department has not been consulted on the development of Study Plans and Studies.

The Department looks forward to being contacted by The Nevada Hydro Company regarding this project in the near future, and provided with a complete copy of the NOI.

If you have questions regarding the contents of this letter further, please contact Joanna Gibson at joanna.gibson@wildlife.ca.gov or (909) 987-7449.

Sincerely,


Leslie MacNair
Regional Manager

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