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## State Water Resources Control Board

AUG 14 2017

Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Mr. Rexford Wait  
The Nevada Hydro Company, Inc.  
2416 Cades Way  
Vista, CA 92083

Dear Secretary Bose and Mr. Wait:

COMMENTS ON NOTICE OF INTENT FOR LAKE ELSINORE ADVANCED PUMPED STORAGE PROJECT; FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 14227; RIVERSIDE COUNTY

On June 1, 2017, Nevada Hydro Company, Inc. (Applicant) filed a notice of intent (NOI) to file a license application and a draft license application with the Federal Energy Regulatory Commission (FERC) for the proposed 500-megawatt Lake Elsinore Advanced Pumped Storage Project (LEAPS or Project). In its NOI, the Applicant requests that FERC's pre-filing licensing requirements be waived to allow it to proceed directly to filing a final license application (FLA). The Applicant did not distribute the NOI to state agencies, including the State Water Resources Control Board (State Water Board), as required by Code of Federal Regulations, title 18, section 5.5 (c). Because the environmental studies and existing documents are not recent and may not accurately reflect the potential Project impacts, State Water Board staff strongly recommends that FERC not waive the Integrated Licensing Process (ILP) pre-licensing activities.

In accordance with Item 5 of the *Pre-Application Filing Activities Under the ILP* section of the memorandum of understanding<sup>1</sup> (MOU) executed between the FERC and the State Water Board, State Water Board staff will work with FERC staff to set up a time to discuss the needs of our respective agencies related to the FERC's issuance of a license and the State Water Board's issuance of a water quality certification.

The comments provided in this letter by State Water Board staff are in accordance with Item 4 of the *Pre-Application Filing Activities Under the ILP* section of the MOU and should be considered by the Applicant when developing the Final License Application.

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<sup>1</sup> Memorandum of Understanding Between the Federal Energy Regulatory Commission and the California State Water Resources Control Board Concerning Coordination of Pre-application Activities for Non-federal Hydropower Proposals in California. A copy of the MOU is available online at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/ferc\\_mou/docs/mou\\_111913.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/ferc_mou/docs/mou_111913.pdf)

### Regulatory Authority and General Comments

The Applicant must obtain water quality certification from the State Water Board, pursuant to Section 401(a)(1) of the Federal Clean Water Act (CWA) (33 U.S.C. §1341(a)(1)). Section 401 of the CWA requires any applicant for a federal license or permit, which may result in any discharge to navigable waters, to obtain water quality certification (certification) from the state in which the discharge originates that the discharge will comply with the state's water quality standards and other appropriate requirements of state or federal law. The State Water Board is the certifying agency under Section 401 for the Project. Accordingly, the State Water Board may set conditions implementing CWA requirements, including the requirements of Section 303 of the CWA for water quality standards and implementation plans, or to implement "any other appropriate requirement of State law." (33 U.S.C. § 1341(d).)

The California Regional Water Quality Control Boards adopt, and the State Water Board approves, water quality control plans (basin plans) for each watershed basin in the State. The basin plans designate the beneficial uses of waters within each watershed basin, and water quality objectives designed to protect those uses pursuant to Section 303 of the Clean Water Act. (33 U.S.C. S 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans and state and federal anti-degradation requirements constitute California's water quality standards.

The California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Regional Water Board) adopted, and the State Water Board and United States Environmental Protection Agency approved, the *Water Quality Control Plan for the Santa Ana River Basin* (Basin Plan). The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses. The Basin Plan lists the following beneficial uses for Lake Elsinore in the San Jacinto River Basin: water contact recreation; non-contact water recreation; warm freshwater habitat; and wildlife habitat.

California Code of Regulations, title 23, section 3833.1, subdivision (b)(2)(A) identifies that review in anticipation of consideration of certification is initiated when a NOI is filed pursuant to Code of Federal Regulations, title 18, sections 5.5 or 16.6. The Applicant's June 1, 2017 NOI, marks the beginning of the review process for certification and related proceedings. Annual fees for the proposed Project are applicable starting Fiscal Year 2016/2017. (Cal. Code Regs. tit. 23, § 3833.1, subd. (b)(1).)

The Applicant must file an application for water quality certification once FERC issues the Notice of Ready for Environmental Analysis. A complete application for water quality certification must include a description of any steps that have been, or will be taken to avoid, minimize, or compensate for loss of, or significant adverse impacts to beneficial uses of water. (Cal. Code Regs. tit. 23, § 3856, subd. (h)(6).) If the Project will adversely affect water quality, then the Applicant must describe the actions that the Applicant will take to bring the Project into compliance with applicable water quality requirements, including water quality objectives established in order to protect and maintain the beneficial uses of the state's waters. During the licensing process, State Water Board staff will act in an advisory role to inform the Applicant of the requirements of a complete application for water quality certification. State Water Board staff cannot prejudge the outcome of any proceeding before the State Water Board acts on an application for water quality certification.

State Water Board staff intends to use the information developed in this licensing process to develop conditions in the water quality certification to ensure compliance with the CWA and with

other requirements of state law. It is essential that the licensing process consider all available technical information.

Additionally, the Applicant must consult with the State Water Board's Division of Water Rights prior to submitting the FLA and describe in the FLA any water rights needs for the Project. Construction and operation of the Project must not affect existing water right holders. The Applicant should investigate if the Project will conflict with any water rights holders and the FLA should include a discussion of such water right holders and any agreements necessary to mitigate for any potential impacts during the initial impoundment of water.

If you have questions regarding this letter, please contact me at (916) 323-9397 or by email at oscar.biondi@waterboards.ca.gov. Written correspondence should be directed to:

State Water Resources Control Board  
Division of Water Rights  
Water Quality Certification Program  
Attn: Oscar Biondi  
P.O. Box 2000  
Sacramento, CA 95812

Sincerely,

ORIGINAL SIGNED BY:

Oscar Biondi, P.E.  
Water Resource Control Engineer  
Water Quality Certification Program

cc: Mr. Tomas Torres, Director  
U.S. EPA, Region 9  
Water Division  
75 Hawthorne Street  
San Francisco, CA 94105

Ms. Hope A. Smith  
Executive Officer  
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