

Project No. 14227-003 – California
Lake Elsinore Advanced Pumped
Storage Project

April 30, 2019

VIA ELECTRONIC FILING

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

Re: Request for Extension of Time of HPMP-Workplan Submission Deadline

Dear Secretary Bose:

On January 22, 2019, the Federal Energy Regulatory Commission (Commission) staff issued a letter to The Nevada Hydro Company, Inc. (Nevada Hydro) requesting that Nevada Hydro submit a revised Historic Properties Management Plan (HPMP-Workplan) for the Lake Elsinore Advanced Pumped Storage Project, FERC Project No. 14227 (the Project) by June 30, 2019 (January 22 Letter). Among other things, the January 22 Letter requested that Nevada Hydro address comments of the Pechanga Band of Luiseño Indians (the Tribe), a federally recognized Indian tribe and sovereign government. The January 22 Letter also informed Nevada Hydro that the proposed Project's area of potential effects (APE) may need modifications upon further discussion with the Tribe.

On April 8, 2019, the Tribe requested a 90-day extension of an April 17, 2019, deadline for additional comments on the HPMP-Workplan set by Nevada Hydro's consultant Garcia and Associates (GANDA) (April 8 Letter) (attached for reference). The April 8 Letter sets out the reasons for the extension request as summarized below:

- The Tribe disagrees with GANDA's position that the APE has already been determined and therefore is fixed.
- The information provided by GANDA depicting the visual APE does not include any analysis justifying the derivation of the boundary and excludes basic consideration for topography in this mountainous region. Instead, the indirect visual APE appears as a 5-mile line drawing around the LEAPS project – such that the total approximate acreage of the APE has now increased to 204,800 acres from 5,992 acres.
- The 5-mile visual APE encompasses several additional Traditional Cultural Properties (TCPs) and is adjacent to the Tribe's reservation land held in trust, in addition to the four

TCPs and a Traditional Cultural Landscape that the Tribe previously identified as being impacted by the Project.

- The visual APE must be extended to 10 miles. Two empirical studies conducted in the western U.S. evaluated the visual prominence of 500-kV transmission structures, which appear comparable to those proposed by the Project. Those studies recommended that 10 miles be set as the minimum distance from such transmission structures for visual impact analysis. A similar 10-mile distance threshold was used by the U.S. Department of Energy in a 2017 report.
- Without a clearly and appropriately defined APE, meaningful engagement in the Section 106 process cannot occur.
- The Tribe has identified a large number of historic properties within the APE and additional consultation with the Tribe will be necessary. Proper and meaningful identification of historic properties is required before agreement on processes for determining the possible effects this Project will have on historic properties can be negotiated.

On April 17, 2019, GANDA, on behalf of Nevada Hydro, notified the Tribe of its rejection of the 90-day extension request. GANDA offered half of the requested time, stating that it must have the information by June 1 instead of July 15 so that it could submit the revised HPMP-Workplan by June 30. GANDA also stated, “if the Tribe provides responsive information to NHC after [June 30], NHC will integrate the information into the revised draft [HPMP-Workplan] and resubmit it to FERC.”

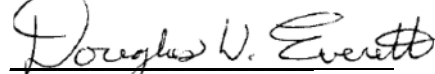
On April 23, 2019, the Tribe informed GANDA that the 45-day deadline would not work and that the Tribe would seek a 45-day extension of the June 30 filing deadline to August 15 from the Commission staff (correspondences attached).

The instant request for an extension of time of the June 30 HPMP-Workplan submission deadline is consistent with the direction of the Commission staff. Specifically, in the March 18, 2019 government-to-government consultation, the Commission staff indicated that the Tribe should submit an extension of time request of the June 30 deadline to the Commission staff if Nevada Hydro denied the Tribe’s request for any needed additional time.

For all of the aforementioned reasons, the Tribe respectfully requests an extension of time until August 15, 2019, for Nevada Hydro to submit the revised HPMP-Workplan. This extension will allow the Tribe and Nevada Hydro to have meaningful opportunity to work through the HPMP-Workplan, the APE, and to allow for consultation.

Please let me know if you have any questions or require additional information respecting this request for extension of time.

Regards,



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Email: deverette@btlaw.com

*Attorney for the Pechanga Band of Luiseño
Indians*

Enclosures

cc: James Fargo (FERC)
Elizabeth Molloy (FERC)
Rexford Wait (Nevada Hydro)
David Kates (Nevada Hydro)
Rachael Nixon (GANDA)



PECHANGA INDIAN RESERVATION
Temecula Band of Luiseño Mission Indians

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April 8, 2019

Rexford Wait
David Kates
The Nevada Hydro Company, Inc.
2416 Cades Way
Vista, CA 92086

Re: Request for Extension of Time and Consultation

Dear Mr. Wait and Mr. Kates:

This correspondence is submitted on behalf of the Pechanga Band of Luiseño Indians, a federally-recognized sovereign Indian tribe (Tribe). For the reasons below, the Tribe requests a ninety (90) day extension of time to provide information relevant to the second draft of the LEAPs HPMP-Workplan that Nevada Hydro's consultant, Garcia and Associates (GANDA) distributed on March 18, 2019. GANDA has requested comments to be submitted by April 17, 2019. If the extension is agreed to, the Tribe will submit its information and comments by July 16, 2019.

Additionally, the Tribe requests an in-person consultation at a mutually agreeable time, preferably at Pechanga's tribal facilities, during April or May. Tribal consultation is an iterative process with the underlying mandate of consulting parties in good faith attempting to reach agreement. Since Nevada Hydro has been delegated these responsibilities by FERC, the purpose of the in-person meeting will be to attempt to come to some agreement on outstanding major issues with the document rather than simply lodging our disagreement with no true discussion and conferral on the issues at hand.

Request for Extension of Time

On February 20, 2019, Rachael Nixon of GANDA requested that the Tribe submit information for inclusion in the second draft HPMP-Workplan by March 5th. On February 22, 2019, the Tribe's outside FERC counsel, Douglas Everette, discussed with Ms. Nixon the Tribe's concern about the short time period imposed by GANDA and suggested that additional time to complete the HPMP-Workplan could be requested of FERC. Also reiterated was the Tribe's concern that Nevada Hydro was to work with the Tribe in addressing all of the issues identified in the Tribe's September 7, 2018 comment letter to the HPMP-Workplan, including the development of the APE. Indeed, this action is mandated by FERC as set forth in FERC's letter of January 22, 2019.

Respecting the APE, the Tribe understands that Ms. Nixon indicated that the APE had already been set, as it was approved by the SHPO. The Tribe disagrees with GANDA's position that the APE has already been determined and therefore is fixed. Indeed, the SHPO simply stated in its September 7, 2018 letter that the "APE appears sufficient at this time." Moreover, subsequent to the SHPO's letter, FERC directed Nevada Hydro to work with the Tribe in developing the APE. Certainly, Nevada Hydro does not take the position that the public does not have the right to define an APE, specifically an indirect visual APE that informs the areas of significant negative visual impacts of the LEAPS project's 200 feet high transmission facilities affecting the public's enjoyment and sense of place.

Furthermore, the Tribe did not receive the shapefile for the indirect (visual) APE boundary until February 25, 2019. Upon review, the information does not appear to convey any analysis justifying the derivation of the boundary and excludes basic consideration for topography in this mountainous region. Instead, the indirect visual APE appears as a 5-mile line drawn around the LEAPS project – such that the total approximate acreage of the APE has now increased to 204,800 acres from 5,992 acres. The Tribe has already determined that the 5-mile visual APE encompasses several additional TCPs and is adjacent to the Tribe's reservation land held in trust, in addition to the four TCPs and TCL that the Tribe has previously identified as being impacted by the LEAPS project.

Additionally, it is the Tribe's view that the indirect (visual) APE must be extended to 10 miles. At least two empirical studies conducted in the western U.S. have evaluated the visual prominence of transmission structures. See, Driscoll, Jr., Edward C., Brian A. Gray, William G. E. Blair, and John F. Ady., 1976, "Measuring the Visibility of High Voltage Transmission Facilities in the Pacific Northwest"; Sullivan, Robert G., Jennifer M. Abplanalp, Sherry Lahti, Kevin J. Beckman, Brian L. Cantwell, and Pamela Richmond, 2014, "Electric Transmission Visibility and Visual Contrast Threshold Distances in Western Landscapes." Both studies found transmission structures comparable to those proposed by the LEAPS project had the potential to be detected past 10 miles. However, and specifically for 500-kV transmission tower facilities, 10 miles was set as the recommended minimum distance from such facilities for visual impact analysis. This was the distance at which a facility would likely be easily visible to anyone looking briefly in the general direction of the facility, without foreknowledge or active looking.

We also note that similar 10-mile distance thresholds are used for accessing visual adverse effects of transmission projects across the U.S. See, e.g., "Visual Impact Assessment: A Technical Report for the Northern Pass Transmission Line Project Final Environmental Impact Statement," 2017 (visual impact assessment for the Northern Pass Transmission Line Project prepared for the U.S. Dept. of Energy). Using what appears to be the normal distance for visual APE's involving 500-kV transmission towers, it appears that more than a dozen additional TCPs and the aforementioned reservation area all fall within the 10-mile indirect (visual) APE. Obviously, participation of the THPO may be required. Without a clearly and appropriately defined APE, meaningful engagement in the Section 106 process cannot occur.

Request for Consultation

In addition to the concerns about the APE, the Tribe has identified a large number of historic properties within the APE and wishes to emphasize that additional consultation with the Tribe will be necessary to best establish and implement an identification action plan. Proper and meaningful identification of historic properties is required before agreement on processes for determining the possible effects this project will have on historic properties can be negotiated. As previously mentioned, the Tribe wishes to consult with Nevada Hydro at a mutually agreeable place and time, preferably at Pechanga's tribal facilities during April or May. Please contact our outside FERC counsel, Douglas Everette at (317) 231-7764 or deverette@btlaw.com regarding the aforementioned requests for extension of time and consultation.

Sincerely,



Steve Bodmer
General Counsel

cc: Pechanga Tribal Council
Pechanga Cultural Department
Douglas Everette, Counsel for Pechanga
Laura Miranda, Counsel for Pechanga

Everette, Douglas

From: Everette, Douglas
Sent: Tuesday, April 23, 2019 4:07 PM
To: 'Rachael Nixon'
Cc: 'rwait@controltechnology.org'; David Kates; Marcy Hernandez; Steve Bodmer; Michele Fahley; Laura Miranda; Sam Dunham
Subject: RE: Pechanga Band's Request for Extension of Time and Consultation re Second Draft of the LEAPs HPMP-Workplan

Rachael,

Extension of Time

In order for the Tribe to have a meaningful opportunity to provide its comments and to engage in ongoing consultation with NHC, on April 8, the Tribe requested a 90-day extension of GANDA's April 17 deadline for comments on the HPMP-Workplan. In response, NHC only granted a 45-day extension. The 45-day extension proposed by NHC will not work. We understand that the FERC's June 30 deadline for the HPMP-Workplan may constrain NHC's ability to grant the Tribe's 90 day extension request. However, NHC does not suggest that it will seek any extension of the June 30 deadline from FERC to accommodate the Tribe's concerns. As such, we intend to seek from FERC a 45-day extension of the June 30 deadline to August 15. This will allow the Tribe and NHC time to work through the HPMP-Workplan, the APE, and to allow for consultation.

Section 106 Consultation

Please remit an executed version of the non-disclosure agreement at your earliest convenience or let me know if you have any questions. The Tribe would like to schedule an in-person meeting with NHC at the Tribe's facilities.

Regards,
Douglas

Douglas Everette | Of Counsel
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From: Rachael Nixon <rnxion@garciaandassociates.com>
Sent: Wednesday, April 17, 2019 5:56 PM
To: Everette, Douglas <DEverette@btlaw.com>
Cc: 'rwait@controltechnology.org' <rwait@controltechnology.org>; David Kates <David@leapshydro.com>; Marcy Hernandez <mhernandez@pechanga-nsn.gov>; Steve Bodmer <sbodmer@pechanga-nsn.gov>; Michele Fahley <mfahley@pechanga-nsn.gov>; Laura Miranda <lmiranda@pechanga-nsn.gov>; Sam Dunham <sdunham@garciaandassociates.com>
Subject: [EXTERNAL]RE: Pechanga Band's Request for Extension of Time and Consultation re Second Draft of the LEAPs HPMP-Workplan

Hello Douglas,

David Kates requested that I respond on behalf of the Nevada Hydro Company (NHC) regarding the extension requested. NHC has been working hard since filing its license application to respond to FERC's requests for additional information and NHC is striving to file all outstanding FERC information/study requests by June 30. Given the need to integrate information about TCPs/TCL and the Project's potential effects on them into the next FERC submission, which

is due by June 30, NHC is willing to agree to an extension until June 1. Note that while NHC intends to timely file a response to FERC's [Request for Additional Information and Comments on Study Plans] letter by June 30, if the Tribe provides responsive information to NHC after this date, NHC will integrate the information into the revised draft HPMP and resubmit it to FERC.

In the meantime, we welcome the opportunity for a meeting in person to discuss [the Pechanga Tribe's TCPs and TCL and the Project's potential effects to these resources]. Please provide meeting dates that work for you.

Sincerely,

Rachael Nixon MA, RPA

Senior Archaeologist

Cultural Resources Group Manager

Garcia and Associates (GANDA)

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rnixon@garciaandassociates.com

<http://www.garciaandassociates.com>

From: Everette, Douglas <DEverette@btlaw.com>

Sent: Monday, April 15, 2019 11:54 AM

To: David Kates <David@leapshydro.com>; 'rwait@controltechnology.org' <rwait@controltechnology.org>

Cc: Marcy Hernandez <mhernandez@pechanga-nsn.gov>; Steve Bodmer <sbodmer@pechanga-nsn.gov>; Michele Fahley <mfahley@pechanga-nsn.gov>; Laura Miranda <lmiranda@pechanga-nsn.gov>

Subject: RE: Pechanga Band's Request for Extension of Time and Consultation re Second Draft of the LEAPs HPMP-Workplan

Mr. Wait and Mr. Kates,

I am following up to learn your response to the letter we sent last week respecting the requests for extension of time and consultation (attached for reference). Please let me know your thoughts at your earliest convenience. The Tribe continues working through the HPMP-Workplan to provide relevant information. Thank you.

Regards,

Douglas

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From: Marcy Hernandez <mhernandez@pechanga-nsn.gov>

Sent: Monday, April 8, 2019 6:35 PM

To: 'David@leapshydro.com' <David@leapshydro.com>; 'rwait@controltechnology.org' <rwait@controltechnology.org>

Cc: Steve Bodmer <sbodmer@pechanga-nsn.gov>; Michele Fahley <mfahley@pechanga-nsn.gov>; Everette, Douglas <DEverette@btlaw.com>; Laura Miranda <lmiranda@pechanga-nsn.gov>

Subject: [EXTERNAL]Pechanga Band's Request for Extension of Time and Consultation re Second Draft of the LEAPs HPMP-Workplan

Good afternoon Mr. Wait and Mr. Kates, attached please find the Pechanga Band's letter requesting an extension of time and consultation pertaining to the above-referenced matter. Thank you.

Marcy Hernandez
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