



File Code: 2770
Date: February 23, 2018

David Kates
The Nevada Hydro Company
2416 Cades Way
Vista, CA 92083

CERTIFIED MAIL RECEIPT: #7016 3560 0001 0536 2841

Response to Questions Regarding Inventoried Roadless Areas and Lake Elsinore Advanced Pumped Storage Project FERC No. 14227

Dear Mr. Kates,

I am responding to your February 15, 2018 letter, which raised questions about The Nevada Hydro Company's (TNHC's) proposed Lake Elsinore Advanced Pumped Storage Project (LEAPS) Federal Energy Regulatory Commission (FERC) No. 14227, Inventoried Roadless Areas Designations (IRAs) within the Cleveland National Forest, and Forest Service request to file an updated Special Use Permit for the Project.

Inventoried Roadless Areas

It appears that you may have misinterpreted statements in our November 30, 2017 filing to FERC regarding LEAPS and the Roadless Area Conservation Rule (RACR) to suggest that hydroelectric facilities are prohibited in IRAs. In your conclusions you reference our statement which reads, *Under the RACR, new road construction and reconstruction are generally prohibited in Inventoried Roadless Areas (IRAs), and timber harvest is only permitted under a few limited exceptions. The proposed Decker Canyon reservoir site, which includes permanent access roads, is located within an IRA and would not be consistent with the regulation. Any Forest Service decision regarding proposed uses in an IRA, such as this new proposed major unconstructed project, is subject to and must be consistent with the RACR. The proposed alternative Morell Canyon reservoir site is located within the same IRA and suffers the same inconsistency with RACR. The applicant will be required to develop alternatives that are consistent with RACR before the Forest Service can accept an application for special use permit.* [Emphasis added]

Specifically, you question whether hydro projects that don't require these (roads or timber harvest) could still be possible, even in an IRA where road construction is prohibited. We believe you may have mistaken our statement about the development of alternatives that are consistent with RACR as a request to develop alternatives to LEAPS itself, or a suggestion that IRAs prohibit the Commission from issuing a license or exemption for a hydroelectric project within federal lands similar to prohibitions established under the Wild and Scenic Rivers Act or for Wilderness Areas. To be clear, IRAs do not prohibit the development of hydroelectric projects



within their boundaries. Rather, as TNHC proposes to build and operate Decker Canyon with permanent access roads within an IRA where road construction is prohibited, we are requesting from TNHC information about how it would develop and operate Decker Canyon Reservoir without the construction and use of these roads. Such information could include a construction and operation plan to include the use of helicopters or other construction and access methods that would be consistent with RACR.

In response to your questions about the Land Management Plan for the Cleveland National Forest and 2014 Plan Amendment, neither the Plan nor the Amendment affect IRA boundaries. IRAs were established in a separate 2001 rule making process. State maps of IRA designations, including those that pertain to LEAPS can be found at the website link:

<https://www.fs.usda.gov/detail/roadless/2001roadlessrule/maps/?cid=stelprdb5400183>.

You provide a select map of IRA for the Cleveland National Forest in Figure 2 of your letter and ask whether roads are allowed per the separate categories that appeared in the legend. While the map you copied shows the correct location of IRA for the Decker Canyon site, the interpretation of the legend is incorrect. The legend distinguishes between areas that already had road construction prohibitions in place (Forest Plan direction or other management restrictions) as “Inventoried Roadless Areas where road construction is not allowed” and those areas that did not have existing prohibitions in place prior to RACR as “Inventoried Roadless Areas where road construction is allowed.” Both areas are under the RACR prohibitions. The federal register published on Friday January 12, 2001; Roadless Area Conservation, Final Rule (Vol. 66, No. 9); included responses to comments received on the DEIS. In particular, page 3252 provided a response to a comment regarding whether the Forest Service had the authority to prohibit road construction through the rule making process. The response explains the decision to prohibit road construction and reconstruction in IRAs. Thus, for the proposed Decker Canyon site, the Reservoir and planned access road(s) do not fall under a unique or distinct category of IRA where road construction is allowed. We hope that this explanation helps alleviate any confusion over this matter.

Special Use Application for LEAPS

Per your letter, you object to our request that TNHC submit an application for special use permit for LEAPS. It is your belief that TNHC is not required to submit a new updated application for LEAPS, subject to the special use application screening criteria, because: 1) the current LEAPS project is “identical to the project identified in FERC’s (2007) FEIS and we are now proposing to the Commission” – and thus requires no new or additional analysis. 2) Both the “FS and Commission has concluded it (LEAPS) is in the public interest” and we should defer to the Commission’s and other agencies findings regarding LEAPS to advance the project to “level two screening.” 3) Our most recent request for TNHC to submit a special use application for the project stems from our staff’s lack of knowledge regarding the lengthy LEAPS project record and prior submittals TNHC has made. 4) Further, you assert that we should accept a prior application submitted in connection with TNHC’s proposal to permit the TE/VS component of LEAPS as a standalone transmission component before the CPUC.

The following responses are provided to address the statements numbered above.

1) The current LEAPS project is “identical to the project identified in FERC’s (2007) FEIS

and we are now proposing to the Commission” – and thus requires no new analysis.

The Forest Service disagrees with TNHC’s assessment that the project identified in FERC’s 2007 FEIS is identical to that which you are now proposing before the Commission. Indeed TNHC presents conflicting arguments regarding this matter. Your letter states that TNHC has updated LEAPS to address issues raised during the prior project’s dismissal before FERC due to numerous technical and procedural deficiencies. These issues were raised after FERC issued the FEIS, and therefore would not have been scoped or analyzed in that proceeding. This view conflicts with TNHC’s argument that the project is identical and therefore the Forest Service should accept an application submitted under the prior proceeding. As we have already stated in our November 30, 2017 submittal to FERC, our review of your proposal suggests there are substantial changes to the proposed action in your filing under P-14227 that are relevant to environmental concerns, and significant new circumstances that have a bearing on the proposed action and its impacts. For example, see our comments above regarding IRA and Decker Canyon. Lastly, the 2007 FEIS described and analyzed a LEAPS Project that heavily emphasized a transmission interconnection component as a core element of its stated purpose and need. This transmission component was not under FERC’s jurisdiction, and was dismissed before the CPUC as a standalone project. Use of the prior FEIS would therefore require us to accept a project for which one of the primary purposes is no longer applicable.

2) Both the “FS and Commission has concluded it (LEAPS) is in the public interest” and therefore the Forest Service should defer to the Commission’s and other agencies findings regarding LEAPS to advance the project to level two screening.

The Forest Service has not made any conclusions or endorsements regarding LEAPS. All applications for Special Use are reviewed against the first and second level screening criteria 36 CFR 251.54(e) and consistency with their respective Forest Plan. With respect to the submission of 4(e) conditions, the Forest Service submits conditions to be included in a FERC license, necessary for the protection and utilization of the affected National Forest System lands. Conditions are based on the Forest Service review of the application, extensive coordination with Federal and State agencies and other members of the public, public comment, review of any alternative license conditions, and consultation with the Licensee. Conditions submitted in connection with the prior LEAPS proceeding should not be considered an endorsement of LEAPS, and may not be applicable to the current process, as the proposed action, environmental concerns, and significant new circumstances that have a bearing on the proposed action and its impacts have changed.

3) Our most recent request for TNHC to submit a special use application for the project stems from our staff’s lack of knowledge regarding the lengthy LEAPS project record and prior submittals TNHC has made.

The Forest Service staff participating in the current proceeding are familiar and knowledgeable about the lengthy record regarding LEAPS, including your prior efforts before FERC, CPUC, and California Independent System Operator. The Forest Service has requested TNHC to submit a new special use application, because issuance of a Special Use Permit is a discretionary action and the prior applications were never able to be completed due in large part to TNHC’s failure to secure other necessary permits and authorizations.

4) Further, you assert that we should accept a prior application submitted in connection with TNHC's proposal to permit the TE/VS component of LEAPS as a standalone transmission component before the CPUC.

As described above, TNHC's current LEAPS proposal differs from that which they had previously submitted before FERC and the CPUC, therefore use of these outdated, inaccurate, and incomplete applications would result in rejection before us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D Vance', with a large, stylized initial 'D'.

DARRELL VANCE
District Ranger

cc: Alvarez, Dawn -FS <dalvarez@fs.fed.us>; Heys, Jeffrey A -FS <jaheys@fs.fed.us>;
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