

**PROCEEDINGS BEFORE
THE FEDERAL ENERGY REGULATORY COMMISSION**

**In re Application for Navajo Nation Salt Trail Canyon
Pumped Storage Project by Pumped Hydro Storage, LLC**

P-14992-000

MOTION TO INTERVENE OF THE NAVAJO NATION

The Navajo Nation moves to intervene in this application as a matter of right.

INTERESTS OF THE NAVAJO NATION

Pursuant to 18 C.F.R § 385.214(b)(2), the Navajo Nation is a federally recognized Indian tribe with sovereign authority within its territorial jurisdiction which includes the project area in this application.

Pumped Hydro Storage, LLC, (“the Applicant”) applied for a preliminary permit from the Federal Energy Regulatory Commission for a proposed 1,500 MW pumped storage hydroelectric project (“the Project”) located on lands of the Navajo Nation located in Coconino County Arizona on and adjacent to the Little Colorado River. The Project would likely adversely impact the land, water, wildlife, and cultural resources of the Navajo Nation.

The Applicant has not sought the consent of the Navajo Nation or the local communities (chapters) where the Project would be located for the use of the lands associated with the Project facilities. The Project may adversely impact the use of these lands by the Navajo Nation and its members.

Cameron Chapter, one of the local communities adjacent to the proposed project location, passed the attached resolution CAMNOV-20-19 #6 “To Deny a Request by Pump Storage, LLC, Steve Irwin, 6514 S. 41st Lane, Phoenix, Arizona, 85041, Regarding a Proposed Feasibility Study on Possible Development on Four (4) Dams, Four (4) Reservoirs, Water Conveyance and Power Generation Facilities, Access Road and Transmission Line Within the Little Colorado River Gorge in Cameron, Coconino County, Navajo Nation, Arizona, Permit Numbers 14992-000 and 14994-000 (Nov. 21, 2019).”

The application describes the Little Colorado River and its tributaries as the source of water for the Project. The Navajo Nation claims historic, appropriative, and reserved water rights to these sources of water and is a party to the ongoing adjudication of those waters in the Superior Court of the State of Arizona in and for the County of Apache, *In re the General Adjudication of All Rights to the Use of Water in the Little Colorado River System and Source*, Case No. CV-6417. The Project may adversely impact the water rights of the Navajo Nation or the use of these waters.

The Navajo Nation has an interest in the protection of its fish and wildlife resources through the Division of Natural Resources, Department of Fish and Wildlife. In 2008, the Little Colorado River gorge was designated as a Biological Preserve by the Resources and Development

Committee of the Navajo Nation (RCS-44-08) based on recommendations from the Navajo Department of Fish and Wildlife. The designation of a biological preserve, under Navajo Nation Code 2 N.N.C. §695[b], restricts all development within these areas that is not compatible with management goals for the preserve. The following paragraph from the management plan for the Little Colorado River Preserve summarizes the biological reasons that a preserve was created:

Currently, 7 species from the Navajo Endangered Species List (NESL) occur in the LCR [Little Colorado River] preserve. An additional 8 NESL species have potential to occur but have not been observed there yet. Of these 15 species protected by the NESL, 7 are also protected by federal wildlife laws such as the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act. There are 8 species from the Navajo sensitive species list within the LCR, 5 big game species, numerous small game and non-game animals, and a robust native fish community. The LCR is a large, rugged area with no paved roads and very little human disturbance. This lack of fragmentation, along with a diversity of habitats and the presence of perennial surface water in some areas, makes the LCR of high habitat value for many wildlife species.

(Hazelton *et al*, 2011, pg. 1). Given the high quality habitat that the Little Colorado River provides for a number of rare and culturally-important plant and wildlife species, disturbance of this habitat may jeopardize the continued existence of these species. Project activities occurring upstream of the Little Colorado River Biological Preserve still have the potential to impact wildlife and plants occurring in the preserve by changing natural hydrological regimes, increasing sedimentation, blocking migration, etc. In particular, the project may will likely adversely impact the fish and wildlife resources of the Navajo Nation, including the habitat for the Humpback Chub, a federally recognized endangered fish, as well a species on the Navajo Endangered Species List.

For many years, the Little Colorado River has been known as the stronghold for this species, and any impacts to its spawning habitat with the Little Colorado River, or the fish's movements to/from the spawning habitat will greatly threaten the species as a whole. Other federally and tribally listed species occur in this area and are expected to be greatly impacted by such a project.

The Navajo Nation has an interest in the protection of its cultural resources through the Division of Natural Resources, Heritage and Historic Preservation Department. The Heritage and Historic Preservation Department list of Traditional Cultural Properties includes the confluence of the Little Colorado River with the Colorado River in the Grand Canyon ("the Confluence"), the Salt Trail to access the Salt Mine south of the Confluence and Ashii Naali ("dripping salt") north of the confluence, and the complex of springs feeding the Little Colorado River known as "Blue Springs." The Salt Trail, and other trails into the Little Colorado are also used to collect waters of the Little Colorado River and the Colorado River for ceremonial use. The Project may adversely impact these and other cultural resources including plants for medicinal and domestic use.

POSITION OF THE NAVAJO NATION

Pursuant to 18 C.F.R § 385.214(b)(1), to the extent known by the Navajo Nation based on the application, the Nation opposes the application on various grounds, including but not limited to:

1. The Applicant has not engaged in meaningful consultation with the Navajo Nation or its political subdivisions, including the local Chapters that where the Project would be located.
2. The Applicant did not seek the consent of the Navajo Nation or procure the required clearances and permits for construction of the Project.
3. The Project may adversely impact the use of these lands by the Navajo Nation and its members.
4. The Project may adversely impact the water rights of the Navajo Nation or the use of the waters of the Little Colorado River system and source.
5. The Project may adversely impact the fish and wildlife resources of the Navajo Nation, including the habitat for the Humpback Chub.
6. The Project may adversely impact the cultural resources of the Navajo Nation, including the Traditional Cultural Properties of the Confluence and Blue Springs.

The Navajo Nation moves to intervene as a matter of right and requests meaningful government-to-government consultation with the Federal Energy Regulatory Commission before any formal action is taken pursuant to the disposition of the application.

Respectfully submitted this 22nd day of November, 2019.

NAVAJO NATION DEPARTMENT OF JUSTICE



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CAMERON CHAPTER

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CAMERON CHAPTER
RESOLUTION OF CAMERON CHAPTER

CAMNOV-20-19 # 6 RESOLUTION OF CAMERON CHAPTER TO DENY A REQUEST BY PUMP HYDRO STORAGE, LLC., STEVE IRWIN, 6514 SOUTH 41ST LANE PHOENIX, ARIZONA 85041, REGARDING A PROPOSED FEASIBILITY STUDY ON POSSIBLE DEVELOPMENT ON FOUR (4) DAMS, FOUR (4) RESERVOIRS, WATER CONVEYANCE AND POWER GENERATION FACILITIES, ACCESS ROAD AND TRANSMISSION LINE WITHIN THE LITTLE COLORADO RIVER GORGE IN CAMERON, COCONINO COUNTY, NAVAJO NATION, ARIZONA. PERMIT NUMBERS 14992-000 AND 14994-000.

1. Pursuant to 26 N.N.C., Section 3 (A), the Cameron Chapter is a duly recognized certified Chapter of the Navajo Nation government, as listed under 11. N.N.C., Part 1, Section 10 and;
2. Pursuant to 26 N.N.C., Section 1 (B), the Cameron Chapter is vested with the authority to review all matters affecting the community and to make appropriate correction when necessary and make recommendations to the Navajo Nation and other local agencies for appropriate actions, and;
3. The Cameron Chapter denies the request to Steve Irwin of Pump Hydro Storage, LLC., address above, by the Cameron community the proposed feasibility study for the requested permit numbers 14992-000 and 14994-000, and;
4. The Cameron Chapter has not been officially notified of the above-mentioned undertaking, and;
5. The Cameron Chapter, within the chapter boundaries has a well-known Traditional Cultural Property known as the Little Colorado River (LCR), and;
6. The Cameron Chapter has been notified of the LCR's significant role in Navajo ceremonial realm, which are still utilized in today's ceremony, and;
7. The Cameron Chapter has been notified of LCR's active Traditional Cultural Property status, and;
8. The Cameron Chapter has knowledge of the TCP significance from the headwaters in the White Mountains to the main stem of the Colorado River also known as the Confluence, and;
9. The Cameron Chapter has been notified by the Navajo Nation Department of Fish and Wildlife of the biological preserve within the LCR gorge as well as the LCR rim, and;
10. The Cameron Chapter has knowledge of the endangered cactus Fickeisen plain cactus plant, and;
11. The Cameron Chapter has knowledge of the endangered species humpback chub, and;
12. The Cameron Chapter has knowledge of the entire LCR being a biological preserve from the headwaters to the main stem of the Colorado River also known as the confluence, and;

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13. Mr. Irwin has not engaged in meaningful consultation with the Navajo Nation or its political subdivisions, including the local Chapters that where the permits would be located, and;
14. Mr. Irwin did not seek the consent of the Navajo Nation or procure the required clearances and permits for construction of the permits, and;
15. The permits may adversely impact the use of these lands by the Navajo Nation and its members, and;
16. The permits may adversely impact the water rights of the Navajo Nation or the use of the waters of the Little Colorado River system and source, and;
17. The permits may adversely impact the fish and wildlife resources of the Navajo Nation, including the habitat for the Humpback Chub, and;
18. The permits may adversely impact the cultural resources of the Navajo Nation, including the Traditional Cultural Properties of the Confluence and Blue Springs, and;

THEREFORE BE IT RESOLVED THAT:

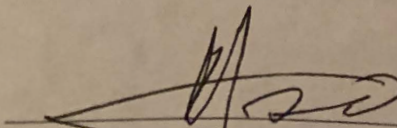
The resolution of Cameron Chapter to deny a request by Pump Hydro Storage, LLC., Steve Irwin, 6514 South 41st Lane Phoenix, Arizona 85041, regarding a proposed feasibility study on possible development on four (4) dams, four (4) reservoirs, water conveyance and power generation facilities, access road and transmission line within the Little Colorado River Gorge in Cameron, Coconino County, Navajo Nation, Arizona. Permit Number 14992-000 and 14994-000.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Cameron Chapter at a duly called regular meeting at Cameron Chapter, Navajo Nation, Arizona, at which a quorum was present and at the same time was passed by a vote of 36 in favor, 0 opposed and 5 abstained, on this 20 day of November 2019.

Motioned by: Marilyn Reed

Seconded by: Jean Bighorse


Chapter President