

UNITED STATES OF AMERICA
THE FEDERAL ENERGY REGULATORY COMMISSION

Pumped Hydro Storage, LLC

Project No. 15024-000

NOTICE OF INTERVENTION BY THE NAVAJO NATION

The Navajo Nation, an Indian tribe with authority to issue a water quality certification pursuant to the Clean Water Act and the Safe Drinking Water Act, gives notice of its intervention in this proceeding pursuant to 18 C.F.R. § 385.214(a)(2).

On June 2, 2020, the Federal Energy Regulatory Commission (FERC) accepted for filing an application for a preliminary permit by Pumped Hydro Storage LLC, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of Big Canyon Pumped Storage Project¹ to be located about 23 miles west of Tuba City, Arizona, within the Bodaway-Gap Chapter of the Navajo Nation.

The proposed project (“Project”) would be located entirely on Navajo Nation land and consist of the following new facilities: (1) a 450-foot-long, 200-foot-high concrete arch dam (Upper West Dam), a 1,000-foot-long, 150-foot-high earth filled dam (Middle Dam), and a 10,000-foot-long, 200-foot-high concrete arch dam (Upper East Dam), each of which would impound three separate upper reservoirs with a combine surface area of 400 acres and a total storage capacity of 29,000 acre-feet at a normal maximum operating elevation of 5,390 feet average mean sea level (msl); (2) a 600-foot-long, 400-foot-high concrete arch dam (Lower Dam) that would impound a lower reservoir with a surface area of 260 acres and a total storage capacity of 44,000 acre-feet at a normal maximum operating elevation of 3,790 feet msl; (3) three 10,000-foot-long, 30-foot-diameter reinforced concrete penstocks; (4) a 1,100-foot-long, 160-foot-wide, 140-foot-high reinforced concrete powerhouse housing nine 400-kilowatt pump-turbine generators; (5) a 1,000-foot-long, 120-foot-wide, 40-foot-high reinforced concrete tailrace; (6) three water supply wells with a capacity of 700 horsepower each and a 1,800-foot-long, 36-inch-diameter well water supply pipeline; (7) two new double circuit 500-kilovolt (kV) electric transmission lines that connect the project switchyard to the existing 500-kV and 345-kV transmission lines located 14 miles east of the proposed project; and (8) appurtenant facilities. The estimated annual power

¹ The original project was designated as the “Navajo Nation Big Canyon Pumped Storage Project;” however, FERC re-designated the project as the “Big Canyon Pumped Storage Project.” correctly noting that the proposed project is not in any way affiliated with the Navajo Nation and the Nation has played no role in the development of this project.

generation at the Navajo Nation Big Canyon Pumped Storage Project would be 7,900 Gigawatt-hours.

The June 2, 2020 notice by FERC recognizes that the “preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners’ express permission.” The proposed Project would be located entirely on Navajo Nation land, and the Nation has not authorized the permit holder to enter upon the lands of the Navajo Nation or to use its waters.

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. The Project would likely adversely impact the land, water, wildlife, and cultural resources of the Navajo Nation. The Nation’s interests include, but are not limited to the following.

A. Land Resources

The Project may adversely impact the use of these lands by the Navajo Nation and its members. The use and disposition of the lands of the Navajo Nation is subject to 16 Navajo Nation Code, Chapter 7. Those land users with customary use rights where the Project would be located are entitled to compensation for the use of their lands pursuant to 16 Navajo Nation Code, Chapter 13. The Applicant has not sought the consent of the Navajo Nation, the local community (Bodaway-Gap Chapter), or the individuals with customary use rights where the Project would be located for the use of the lands associated with the Project facilities.

B. Water Resources

The Project may adversely impact the water rights of the Navajo Nation or the use of its waters. The application describes groundwater withdrawn adjacent to the Little Colorado River as the source of water for the Project. In addition to groundwater, the three upper reservoirs and the lower reservoir in Big Canyon would impound surface water runoff above these impoundments. The Navajo Nation claims historic, appropriative, and reserved water rights to all surface and ground waters on the Navajo Nation 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 use of water resources on the Navajo Nation is subject to the Navajo Nation Water Code, 22 Navajo Nation Code, Chapter 11. All uses of water by the Project must be permitted and subject to an assessment for the water used pursuant to 22 Navajo Nation Code §§ 1306 and 1304, respectively. The implementation of the Code requires consideration of how a proposed water use affects “entities presently using water, or [] threaten[s] degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values.” 22 Navajo Nation Code § 1501(B).

C. Fish & Wildlife Resources

The Project may adversely impact the fish and wildlife resources of the Navajo Nation within the gorge of the Little Colorado River. 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, which is responsible for the management and protection of the Navajo Nation’s fish and wildlife resources. The designation of a biological preserve, under 2 Navajo Nation Code §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 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 the Project.

D. Cultural Resources

The Project may adversely impact the cultural resources of the Navajo Nation within the gorge of the Little Colorado River. The Navajo Nation Heritage and Historic Preservation Department within the Division of Natural Resources is the Navajo Nation's agency responsible for the protection, preservation and management planning for the Navajo Nation's cultural resources. 16 Navajo Nation Code § 1004. 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

The Navajo Nation is uniquely affected by the application because the proposed Project would be located entirely on Navajo Nation land and would utilize the water resources of the Navajo Nation. Accordingly, the Navajo Nation’s interests would be directly affected by the outcome of this proceeding. Intervention is necessary so that the Nation can fully protect its interests. The Navajo Nation also 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.

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Respectfully submitted this 30th day of July, 2020.

NAVAJO NATION DEPARTMENT OF JUSTICE



By: Stanley M. Pollack, Contract Attorney
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Attorneys for the Navajo Nation

CERTIFICATE OF SERVICE

On this 30th day of July, 2020, the undersigned caused copies of the foregoing NOTICE OF INTERVENTION BY THE NAVAJO NATION were upon each person designated on the official service list compiled by the Secretary in this proceeding.



Stanley M. Pollack

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