

**PROCEEDINGS BEFORE
THE FEDERAL ENERGY REGULATORY COMMISSION**

Pumped Hydro Storage, LLC

Docket. No. P-15024-000

**Preliminary Permit Application for
Big Canyon Pumped Storage Project**

SUPPLEMENTAL COMMENTS OF THE NAVAJO NATION

On July 30, 2020, the Navajo Nation filed its Notice of Intervention pursuant to 18 CFR § 385.214(a)(2). The proposed Big Canyon Pumped Storage Project (“Project”) would be located entirely on Navajo Nation land and likely adversely impact the land, water, wildlife, and cultural resources of the Navajo Nation. The Commission’s new policy that it will not issue preliminary permits for projects proposing to use Tribal lands if the Tribe on whose lands the project is to be located opposes the permit is a significant recognition of Tribal sovereignty and a welcome change to past policy. In light of the new policy and the Commission’s February 15, 2024 Supplemental Notice Soliciting Comments, the Navajo Nation provides the following additional comments.

Adverse impacts to the Navajo Nation’s water and cultural resources must not be ignored. The applicant describes groundwater withdrawn adjacent to the Little Colorado River as the source of water for the Project. The Navajo Nation claims historic, appropriative, and reserved water rights to this water source, that is also subject to ongoing adjudication. Furthermore, the Navajo Nation has an interest in protecting the quality of its water resources and the protection, restoration, and preservation of the environment is a central component of the philosophy of the Navajo Nation. The Project may adversely impact the water rights of the Navajo Nation or the use of these waters, including ceremonial and medicinal use. As evidenced by its status as a traditional cultural property and filed public comments, the Little Colorado River and surrounding features hold significant cultural and historical value that must be recognized and preserved. *Diné* Natural Law, as codified law of the Navajo Nation, states animals, plant life, and other relatives of the natural world “have their own laws and have rights and freedoms to exist” and “[t]he *Diné* have a sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward for these relatives.” 1 N.N.C. § 205(C)–(D).

Relatedly, the proposed Project location has many environmental sensitivities, including but not limited to the designation as a Biological Preserve under Navajo law. As stated in the Navajo Nation’s Notice of Intervention, disturbance of the Little Colorado River habitat may adversely impact rare and culturally-important plant, fish, and wildlife species. These species include but are not limited to the Chuckwalla, Golden Eagle, Fickeisen Plains Cactus, Razorback Sucker, and Humpback Chub. The Little Colorado River is also the most important spawning area for the Humpback Chub and other native river fishes like the Bluehead Sucker and Flannelmouth Sucker. Many political subdivisions and individual tribal members of the Navajo Nation emphasize these adverse impacts in their public comments opposing the Project. In addition to the concerns raised by the Navajo Nation’s Department of Water Resources, Heritage and Historic Preservation Department, and Fish and Wildlife Department, the Navajo Nation acknowledges the concerns raised by its political subdivisions and individual tribal members.

Finally, the proposed Project location and water source have been overwhelmed by decades of drought, and the uncertain effects of climate change raise important questions of Project feasibility in an arid desert environment. The viability of pumped storage hydropower in a region with strained

surface water and groundwater supplies must be understood. The applicant must ensure the Navajo Nation is fully informed about the Project to determine whether the Navajo Nation is willing to consider Project development. As of the date of this filing, important questions remain unanswered.

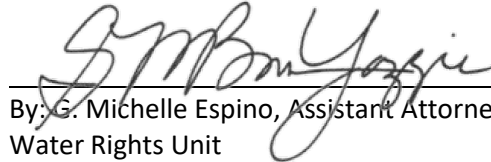
In the event the Navajo Nation's position in its Notice of Intervention was unclear, for the additional reasons set forth above, and pursuant to 18 CFR § 385.214(b)(1), the Navajo Nation opposes the preliminary permit application. To the extent necessary to comply with 18 CFR § 385.215, the Navajo Nation files these Supplemental Comments as an amendment to its Notice of Intervention and incorporates the same by reference herein.

Respectfully submitted this 12th day of March, 2024.

NAVAJO NATION DEPARTMENT OF JUSTICE



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person listed on the official service list in this proceeding.

Dated this 12th day of March, 2024.



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