

# United States Senate

WASHINGTON, DC 20510

May 7, 2024

The Honorable Willie L. Phillips, Allison Clements, Mark C. Christie  
Commissioners  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 2042

**RECEIVED**

*By The Federal Energy Regulatory Commission Office of External Affairs at 3:44 pm, May 08, 2024*

Re: Pensacola Hydroelectric Project, FERC No. 1494

Dear Chairman Phillips and Commissioners Clements and Christie:

I am writing to you today regarding the Pensacola Hydroelectric Project No. 1494 (Project), a vitally important hydropower project and flood control facility on the Grand (Neosho) River in Oklahoma. With this letter, I express concern regarding two aspects of the Federal Energy Regulatory Commission's recent oversight activities at this Project and urge the Commission to take immediate corrective action to address these concerns.

First, I have reviewed the Commission's recently issued Order on Remand, 186 FERC ¶ 61,045 (2024), and discovered the Commission has reinterpreted language from over 85 years of precedent and multiple Acts of Congress—beginning with the Flood Control Acts of 1938 and 1941 and continuing most recently in the National Defense Authorization Act for 2020—firmly establishing that the costs associated with the U.S. Army Corps of Engineers' (Corps) flood control activities, including property acquisitions, must be borne by the public as a whole. It is unacceptable the Commission in its Order on Remand unilaterally upended this established mandate, by placing the immense burden of property acquisition upon the shoulders of very few. I understand the flooding in Miami must be fixed and want to ensure this problem is properly addressed. I am committed to working with all stakeholders involved to craft a solution. But the Commission's decision in its Order on Remand to potentially place this burden solely upon the Grand River Dam Authority's (GRDA) ratepayers—many of whom are rural, low-income, and Native American citizens—is unacceptable, particularly since the Commission has determined that it bears no regulatory responsibility over flood control at the Project. The Commission must correct this significant error on rehearing.

Second, I am concerned the Commission, in its long-running relicensing of the Project, is now considering whether to direct GRDA to conduct studies related to transport of contaminated sediment, possibly leading to expensive and burdensome remedial measures in the new license issued by the Commission. As you know, Congress recently appropriated funds to the Environmental Protection Agency (EPA) for its ongoing investigations and remedial work within Tri-State Mining District (TSMD), and particularly the Tar Creek Superfund Site (TCSS). To be clear, I am aware of both the health and environmental concerns associated with historic mining activities within the TSMD and am committed to supporting long-standing efforts to understand and address these challenges. While I am committed to continuing efforts to address the challenging environmental and technical issues for remediation of TSMD and TCSS, historically

EPA has maintained jurisdiction over this matter under the Comprehensive Environmental Response, Compensation, and Liability Act. It is my understanding that GRDA did not contribute to the cause or release of contaminants at TSMD and TCSS and has not been identified by EPA as a Potentially Responsible Party. As such, the Commission must not allow its ongoing relicensing efforts to inappropriately expand into areas in which Congress has historically delegated oversight and responsibility to EPA.

I appreciate your service as Chairman and Commissioners at FERC and your consideration of the concerns raised in this letter, which are of great importance to my home state. I ask that you please keep my office informed of your progress in remedying these concerns. Please contact my office should further elaboration on these matters be needed. I look forward to working together on these and other important issues in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Markwayne Mullin", is written over a horizontal line.

Markwayne Mullin  
United States Senator