

**PROCEEDINGS BEFORE
THE FEDERAL ENERGY REGULATORY COMMISSION**

Nature and People First Arizona PHS, LLS

Docket No. P-15233-000

**Preliminary Permit Application for
Black Mesa Pump Storage Project - North**

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.

Nature and People First Arizona PHS, LLC (NPFA), ("the Applicant") has applied for a preliminary permit from the Federal Energy Regulatory Commission for a proposed water storage reservoir, water conveyance conduits, generating facilities at off-channel locations and other associated infrastructure ("the Project") located on lands of the Navajo Nation in Navajo County, Arizona. The Project is intended to create a closed-loop pumped storage power plant facility with a capacity of 2,250 MW. The three filings referenced are various alternative designs but functionally are the same project scheme, scope and geographic area. The Project may adversely impact the land, water, Navajo Endangered and Threatened wildlife and plants including Federally listed species under the Endangered Species Act, and cultural resources of the Navajo Nation.

The Applicant has made attempts to contact the Navajo Nation and the local communities where the Project would be located for the use of the lands associated with the Project facilities. It is unclear to our offices, however, if the Applicant has directly reached out to the groups responsible for implementation of Navajo Nation permitting for Endangered Species and Biological Clearances (Navajo Natural Heritage Program), land-use permitting (General Land Development Department), water use permitting (Department of Water Resources) or cultural resources (Heritage and Historic Preservation Department). Rather, it appears the Applicant may have contacted local chapters and the Navajo Nation Office of the President and Vice President but failed to make necessary contact with the appropriate regulatory groups within the Navajo Nation Government. The above-named departments have significant concerns that the Project may adversely impact the use of these lands by the Navajo Nation and its members.

The application describes the Colorado River, San Juan River and two unnamed aquifers 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 natural resources through the Division of Natural Resources, Department of Fish and Wildlife, Department of Water Resources and the Navajo Natural Heritage Program. On September 10, 2008, the Resources and Development Committee of the Navajo Nation (RCS-44-08) approved a land-use and planning document that maps areas of Navajo Nation for high, medium and low wildlife value, including, community development areas and biological preserves. This land-use and planning document is known as the Biological Resource Land Use Clearance Policies and Procedures (RCP). Based on recommendations from the Navajo Department of Fish and Wildlife and Navajo Natural Heritage Program, the areas where the project is proposed are designated as RCP Area 1 (Highly Sensitive Area) and Area 3 (Less Sensitive Area). The designation of Area 1 habitat restricts all development within these areas unless there is a similar existing development scheme or area within 1/8 mile of the proposed location. The Biological Resource Land Use Clearance Policies and Procedures and maps are publicly available for viewing and downloading on the Navajo Natural Heritage Program website.

Finally, the Applicant has made no effort to request rare species information from the Navajo Natural Heritage Program regarding the Project. Our database has no indication of receiving any correspondence from the Applicant or any consultant firm related to the Project. In essence, the Applicant has not undertaken any meaningful consultation with our office regarding Biological Clearances and rare species known to occur within the project area. Any person can submit a request for data through an easy online submission of a data request letter that includes a project location, description and small filing fee. Such requests can be sent electronically and are typically responded to in two (2) business days. This information is publicly available on the Navajo Natural Heritage Program website.

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"), and 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 and the Colorado River for ceremonial use. The downstream effects of water diversion from these rivers into the proposed project would adversely impact these cultural resources by altering water flows, flow volumes and ground water discharge critical for aquatic fauna, riparian habitats and the formation of dripping salt in areas away from the project location. 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. It is unclear to our Departments the level of meaningful consultation that has occurred between the Applicant and Navajo Nation or its political subdivisions.

2. The Applicant did not seek the consent of the Navajo Nation or procure the required clearances and permits for preliminary biological investigations or 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 Colorado River and San Juan River systems, and two unnamed aquifers and their sources.
5. The Project may adversely impact the wildlife and plant resources of the Navajo Nation, including but not limited to the habitat of Mexican Spotted Owls and Golden Eagles.
6. The Project may adversely impact Colorado River and San Juan River fish resources of the Navajo Nation including but not limited to the habitat of Humpback Chub, Razorback Sucker, Colorado Pikeminnow, Roundtail Chub and Bluehead Sucker.
7. The Project may adversely impact the cultural resources of the Navajo Nation.

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 30th day of December, 2022.

NAVAJO NATION DEPARTMENT OF JUSTICE



By: Veronica Blackhat, Assistant Attorney General
Natural Resources Unit
veblackhat@nndoj.org

G. Michelle Brown-Yazzie, Assistant Attorney General
Water Rights Unit
myazzie@nndoj.org


Navajo Nation Department of Justice
Post Office Drawer 2010
Window Rock, Navajo Nation (AZ) 86515
(928) 871-6347

Attorneys for the Navajo Nation

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 30th day of December, 2022.



Veronica Blackhat, Assistant Attorney General
Navajo Nation Department of Justice
Post Office Drawer 2010
Window Rock, Navajo Nation (AZ) 86515
(928) 871-6347
veblackhat@nndoj.org

Document Content(s)

Motion to Intervene P-15233.pdf.....1