

PROCEEDINGS BEFORE

THE FEDERAL ENERGY REGULATORY COMMISSION

Western Navajo Pumped Storage 2, LLC
Rye Development

Docket. No. P-15315-000

Preliminary Permit Application for
Western Navajo Pumped Storage 2 Hydroelectric Project

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 CFR § 385.214(b)(2), the Navajo Nation is a federally recognized Indian tribe with sovereign authority within its territorial jurisdiction that includes the project area in this application.

Western Navajo Pumped Storage 2, LLC, ("the Applicant") has applied for a preliminary permit from the Federal Energy Regulatory Commission for a proposed closed loop pumped storage hydroelectric generating facility, including the construction of new water storage, water conveyance, and generation facilities at off-channel locations ("the Project") located near the City of Page in Coconino County, Arizona, near the Colorado River. The Project would utilize water from Lake Powell to fill and periodically refill the project reservoirs, and the total installed generation capacity would be 396 MW with a hydraulic head of 1,000 feet. The Project may adversely impact the land, water, endangered and threatened wildlife and plants, and cultural resources of the Navajo Nation. The Nation's interests include, but are not limited to, the following.

The level of meaningful consultation that has occurred between the Applicant and the Navajo Nation, its political subdivisions, or the local communities where the Project would be located, for the use of the lands and tribal trust resources associated with the Project facilities is unclear. Furthermore, it is unclear if the Applicant has directly reached out to the Navajo Nation entities responsible for endangered species and biological clearances (Navajo Natural Heritage Program), land-use permitting (General Land Development Department), water-use permitting (Department of Water Resources), cultural resource clearances or mitigation planning (Heritage and Historic Preservation Department), or other environmental clearances (Navajo Nation Environmental Protection Agency). Rather, it appears the Applicant is aware the Project would be located on lands of the Navajo Nation, but they have failed to make necessary contact with the appropriate regulatory offices within the Navajo Nation Government. The above-named departments have significant concerns that the Project may adversely impact the use of the land, water, and other resources by the Navajo Nation and its members.

The Applicant describes Lake Powell 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. And the Navajo Nation has an interest in protecting the quality of its water resources as the protection, restoration, and preservation of the environment is a central component of the philosophy of the Navajo Nation. Also, water operations for Lake Powell are guided by legal and environmental commitments impacted by drought conditions and climate change. The Project may adversely impact the water rights of the Navajo Nation or the use of these waters.

Furthermore, the Navajo Nation has an interest in the protection of its natural resources through its Division of Natural Resources, Department of Fish and Wildlife, Navajo Natural Heritage Program. In 2008, the Resources and Development Committee of the Navajo Nation Council approved a land-use and planning document that maps areas of Navajo Nation for high, medium, and low wildlife sensitivity, including community development areas and biological preserves, known as the Biological Resource Land Use Clearance Policies and Procedures. The proposed Project location is in a Highly Sensitive Area, which restricts all development subject to certain exceptions. The Applicant has made no effort to request rare species information from the Navajo Heritage Program regarding the Project, an easy online data request, suggesting no meaningful consideration regarding biological clearances. The cited Policies and Procedures, and maps, are publicly available on the Navajo Natural Heritage Program website, and a Biological Evaluation is required for the Project.

Additionally, 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 Lake Powell and the Colorado River, and permits are required on all lands of the Navajo Nation. The Project may adversely impact Navajo Nation cultural resources, including plants for medicinal and domestic use.

POSITION OF THE NAVAJO NATION

Pursuant to 18 CFR § 385.214(b)(1), to the extent known by the Navajo Nation based on the Project application, the Nation opposes the application on various grounds including, but not limited to, the following.

1. The level of meaningful consultation that has occurred between the Applicant and the Navajo Nation, its political subdivisions, or the local community, is unclear.
2. The Applicant did not seek the consent of the Navajo Nation or procure the required clearances and permits for preliminary biological, cultural, or archeological investigations or environmental clearances for the Project.
3. The Project may adversely impact the use of the natural and cultural resources of the Navajo Nation.
4. The Project may adversely impact the water rights of the Navajo Nation or the use of the waters of the Colorado River system.
5. The Project may adversely impact rare and endangered wildlife and plant resources of the Navajo Nation, including but not limited to the Humpback Chub, Golden Eagle, Southwestern Willow Flycatcher, and Peregrine Falcon.
6. The Project may adversely impact protected fish resources of the Navajo Nation, including but not limited to the habit of the Humpback Chub, Razorback Sucker, and Colorado Pikeminnow.
7. The Project may exacerbate drought conditions or adverse effects of climate change.

The Navajo Nation's interests would be directly affected by the outcome of this proceeding. Accordingly, the Navajo Nation moves to intervene as a matter of right so 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.

Respectfully submitted this 17th day of November, 2023.

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 17th day of November, 2023.



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