

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

The Nevada Hydro Company, Inc.)

Project No. 14227-003

**REQUEST FOR REHEARING OR, IN THE ALTERNATIVE, MOTION FOR
TEMPORARY STAY OF DISMISSAL OF LICENSE APPLICATION OF THE
NEVADA HYDRO COMPANY, INC.**

Pursuant to Section 313(a) of the Federal Power Act (“FPA”)¹ and Rules 212 and 713 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure,² The Nevada Hydro Company, Inc. (“Nevada Hydro”) hereby files this Request for Rehearing of the Commission Staff’s December 9, 2021 letter order (“December 9 Letter Order”) dismissing Nevada Hydro’s license application for the Lake Elsinore Advanced Pumped Storage (LEAPS) Project No. 14227 (“Project”).³ Nevada Hydro asks that the Commission reinstate its license application based on the new information provided in this Request for Rehearing.⁴

Alternatively, Nevada Hydro moves for a temporary stay until July 1, 2022 of the December 9 Letter Order. This will give new management of the company time to evaluate and discuss potential alternative Project configurations with the U.S. Forest

¹ 16 U.S.C. § 825l(a) (2018).

² 18 C.F.R. §§ 385.212 and 385.713 (2021).

³ Letter from Vince Yearick, Director, FERC Division of Hydropower Licensing, to Rexford Wait, Nevada Hydro Company, Inc., Project No. 14227-003 (issued Dec. 9, 2021) (“December 9 Letter Order”).

⁴ Nevada Hydro recognizes that the Commission generally disfavors inclusion of information presented for the first time on rehearing. *See Nev. Power Co.*, 111 FERC ¶ 61,111 at P 10 (2005). However, in this case, Nevada Hydro’s change in management, a commitment to court-supervised funding of the Project by a Nevada Hydro shareholder and Project lender, and recent communications with the U.S. Forest Service, are all new factual developments and reflect changes in material circumstances; no other party will be prejudiced by Nevada Hydro’s inclusion of this new information.

Service (“Forest Service”) to address Forest Service concerns, and to complete certain studies necessary for the Forest Service to be a cooperating agency with FERC on the Environmental Impact Statement (“EIS”) that will satisfy the Forest Service’s National Environmental Policy Act (“NEPA”) obligations for its issuance of a special use authorization under the Federal Land Policy and Management Act (“FLPMA”).⁵ As explained below, since issuance of the December 9 Letter Order, Forest Service staff has indicated a willingness to work with Nevada Hydro’s new management to identify potential Project alternatives and complete the necessary studies.⁶

I. SPECIFICATION OF ERROR

Rule 713(c)(1) requires that a request for rehearing state precisely the alleged error in the final order being challenged. Nevada Hydro does not allege that Commission Staff erred in its December 9 Letter Order based on the information before it at the time. However, had Commission Staff not summarily dismissed Nevada Hydro’s license application without advance warning, Nevada Hydro would have had an opportunity to update the Commission on its change of circumstances, including a Nevada state court-supervised change of management and that new management’s commitment to address the Forest Service’s information needs in order to advance the license application.

Because of the summary dismissal and ensuing developments, this is Nevada Hydro’s first opportunity to apprise the Commission of this new information. The December 9 Letter Order was predicated on a statement by the Forest Service in its filing of November 15, 2021, that Nevada Hydro was unwilling to complete studies requested

⁵ See *Skagit River Hydro*, 85 FERC ¶ 61,384 (1998) (staying dismissal of license application for six months pending further discussions between applicant and Forest Service), *order lifting stay and reinstating license application*, 95 FERC ¶ 61,014 (2001).

⁶ See Section III.C, *infra*.

by the Forest Service, and that as a result the Forest Service was unable to continue as a NEPA cooperating agency. Nevada Hydro now has both the intention and means to proceed with the Forest Service's requests. Thus, it is no longer the case that the Forest Service is prevented from continuing as a NEPA cooperating agency.

Accordingly, the relief sought by Nevada Hydro here is appropriate. Granting Nevada Hydro's rehearing request of the December 9 Letter Order and reinstating its license application or, alternatively, staying the dismissal of the license application until July 1, 2022, will allow Nevada Hydro's new management to continue its efforts to address the Forest Service's study issues and other concerns with the Project.

II. STATEMENT OF ISSUES

Rule 713(c)(2) requires that a request for rehearing set forth a numbered list of the issues on which rehearing is sought. Nevada Hydro does not allege legal error based on the facts before Commission Staff when it issued its December 9 Letter Order. The new information in this rehearing request presents the following issues:

1. Whether the Commission's action would be arbitrary and capricious, in violation of the Administrative Procedure Act,⁷ in dismissing Nevada Hydro's license application based on now outdated factual assertions of the Forest Service, and without taking into account relevant, new information from Nevada Hydro?⁸

⁷ 5 U.S.C. §§ 551 et seq. (2018).

⁸ *Butte Cnty, Cal. v. Hogen*, 613 F.3d 190, 194–95 (D.C. Cir. 2010) (“...[a]n agency's refusal to consider evidence bearing on the issue before it constitutes arbitrary agency action within the meaning of [Administrative Procedure Act] § 706.”)

2. Whether the Commission would deny Nevada Hydro due process of law under the Fifth Amendment to the U.S. Constitution⁹ by summarily dismissing its license application without notice or the opportunity to present new, relevant facts regarding the status of its discussions with the Forest Service?¹⁰

Again, these issues are easily addressed by either granting Nevada Hydro's rehearing request of the December 9 Letter Order and reinstating its license application, or temporarily staying the dismissal of the license application to allow Nevada Hydro's new management to continue its efforts with the Forest Service.

III. BACKGROUND

A. Nevada Hydro's License Application

On October 2, 2017, Nevada Hydro filed a license application for the Project,¹¹ a proposed 500-megawatt pumped storage project that would pump water from a lower reservoir, the existing Lake Elsinore in Southern California, to a new, upper reservoir at Decker Canyon. Decker Canyon and a portion of the Project transmission line would be located within the Cleveland National Forest. The Project will be an important addition to the California grid which is particularly needed at this time. Renewable energy development in California will continue to grow exponentially in the coming decades. Large-scale, long-duration energy storage is essential for successful integration of

⁹ U.S. Const. amend. V.

¹⁰ See *Hicks v. Comm'r of Soc. Sec.*, 909 F.3d 786, 797–99 (6th Cir. 2018) (finding violation of procedural due process where Social Security beneficiaries were not allowed to present evidence of their eligibility for benefits after their earlier eligibility determinations were reversed as a result of their attorney's fraudulent conduct).

¹¹ FERC dismissed an earlier license application for the Project due to unresolved disputes over the scope of the Project between the then co-applicants. *Lake Elsinore Advanced Pumped Storage Project*, 136 FERC ¶ 62,033, *reh'g denied*, 137 FERC ¶ 61,133 (2011).

variable energy resources while maintaining reliable grid operations. Pumped storage hydroelectric generation is recognized as commercially feasible “bulk storage,” long-duration technology. The Project will use off-peak or excess energy to pump water from the lower reservoir to the upper reservoir during periods of low electrical demand or high intermittent generation supply. It will provide an eight-hour storage product versus the current four-hour capability of battery storage. The Project will provide an economical supply of peaking capacity, as well as ancillary services including load following, system regulation through spinning reserve, and immediately available standby generating capacity.

The Project also will develop, conserve, and utilize in the public interest the water resources of the region. The Project offers an opportunity to materially enhance the multipurpose use of Lake Elsinore as a flood control, recreation, water storage, and waterpower facility. The Project is expected to provide revenues to the lake management agencies that will allow them to meet conditions already imposed on their operations, while making a significant contribution to the energy and load following needs of the region as intermittent renewable energy resources reach higher degrees of penetration and grid dependency.

In addition to a FERC license, the Project will require a special use authorization from the Forest Service under FLPMA. As a large infrastructure project requiring multiple federal approvals, the Project was approved to be a “covered project” under the Fixing America’s Surface Transportation Act, Title 41 (“FAST-41”),¹² intended to improve consultation and coordination among government agencies for such

¹² Pub. L. No. 114-94, tit. XLI, 129 Stat. 1312, 1741-62 (Dec. 4, 2015) (codified at 42 U.S.C. § 4370m et seq.).

infrastructure projects, increase transparency through the publication of project-specific timetables with completion dates for all federal environmental reviews and authorizations, and increase accountability through consultation and reporting on delayed projects.

On August 27, 2020, the Commission issued a Notice of Anticipated Schedule for Lake Elsinore Advanced Pumped Storage Project which indicated that the Commission anticipated issuing a Notice of Ready for Environmental Analysis (“REA Notice”) by December 11, 2020.¹³ Issuance of the REA Notice means that the Commission has the information it needs to proceed with its NEPA analysis.¹⁴

On December 11, 2020, the Commission issued its Scoping Document 2 for the Project.¹⁵ In the SD2, FERC noted that the environmental review process was paused pending Nevada Hydro’s completion of several studies that the Forest Service required to analyze the proposed Project, and stated that upon completion of the studies, the environmental review process would resume with the issuance of the REA Notice and an updated process schedule.¹⁶

B. Forest Service Studies and the December 9 Letter Order

As recounted in the December 9 Letter Order, in a letter filed October 9, 2019, the Forest Service identified additional information that it required to assess the effects of the Project proposal on the Cleveland National Forest, which included recreation, groundwater, and seismic and geotechnical studies, a roadless area construction plan, and

¹³ Notice of Anticipated Schedule for Lake Elsinore Advanced Pumped Storage Project, Project No. 14227-003 (issued Aug. 27, 2020).

¹⁴ See 18 C.F.R. § 5.22.

¹⁵ Scoping Document 2 for Lake Elsinore Advanced Pumped Storage Project, Project No 14227-003 (issued Dec. 11, 2020) (“SD 2”).

¹⁶ *Id.* at 58.

documentation of the State Historic Preservation Office's concurrence with Nevada Hydro's draft Historic Properties Management Plan. On November 22, 2019, Commission Staff issued a letter requiring Nevada Hydro to develop a plan and schedule for providing the Forest Service's requested information, as well as monthly progress reports. On April 10, 2020, Commission Staff issued a letter to Nevada Hydro requesting additional detail regarding the Forest Service studies, including detailed study plans that describe the goals and level of effort for each study, and the month and year that each study would be completed and study reports filed with the Commission. On April 29, 2021, Commission staff issued a letter to Nevada Hydro and the Forest Service requesting an update and noting concern with the lack of progress in developing the requested information. Throughout this time, Nevada Hydro submitted progress reports based on its continued discussions with and submission of information to the Forest Service.

On November 15, 2021, the Forest Service filed a letter reiterating its need for the information it requested in its October 9, 2019 filing, and stating that the information is necessary for it to analyze the proposed Project's effects on National Forest lands. The Forest Service stated that while it had held multiple meetings with Nevada Hydro to seek resolution and completion of the required studies, Nevada Hydro ultimately informed the Forest Service that it did not intend to perform the studies and provide the remaining information prior to the Commission's issuance of any license for the Project. The Forest Service further stated that without this information, it was unable to meet obligations under NEPA in its consideration of whether to issue a special use authorization for the project under FLPMA or to amend the 2005 Cleveland National Forest Land

Management Plan to accommodate the Project. The Forest Service did not request dismissal of the application in its letter.¹⁷

On the basis of the assertions in the Forest Service letter, Commission Staff issued its December 9 Letter Order dismissing Nevada Hydro's license application "without prejudice." The December 9 Letter Order stated that "Nevada Hydro may refile the application with all requested information."¹⁸

C. Nevada Hydro Change of Management, Funding Commitment and Forest Service Outreach

Pursuant to orders of the Nevada District Court, Clark County, Nevada,¹⁹ Nevada Hydro has been placed in receivership and the Receiver authorized to conduct all ordinary-course business activities including development and advancement of the Project.²⁰ Following Commission Staff's issuance of the December 9 Letter Order, the Court authorized the Receiver to retain counsel and consultants on an emergency basis to appeal the December 9 Letter Order and attempt to preserve the Project license application, which is Nevada Hydro's principal asset. The net effect of the receivership, especially following FERC's December 9 order of dismissal, is that the Court is supervising the efforts to move the Project forward. One of the Project shareholders has

¹⁷ On December 8, 2021, the California State Water Resources Control Board ("State Board") filed a letter with the Commission asking that the proceeding be put on hold pending the license applicant's commitment to cooperate with the State Board in funding necessary studies for the Project's water quality certification under Section 401 of the Clean Water Act. Letter from Ann Marie Ore, State Water Resources Control Board, to Kimberly Bose, Federal Energy Regulatory Commission, Project No. 14227-003 (filed Dec. 8, 2021). Like the Forest Service, the State Board did not request dismissal of the license application.

¹⁸ December 9 Letter Order at 3.

¹⁹ The Nevada proceeding is related to separate litigation arising out of disputes between the shareholders of Nevada Hydro over ownership and management of the company as well as funding of the Project.

²⁰ See Interim Order (1) Confirming Appointment of Receiver and Designating Responsibilities; (2) Authorizing Advances of Funds As Administrative Expenses of Estate; (3) Approving Compensation for Receiver; and (4) Approving Engagement of Counsel (Nov. 19, 2021); Order Regarding Status Reports (Dec. 22, 2021), *Daytona Power Corp. v. Hydro Co. et al.*, Case No. A-21-839925-B (Nev. 8th Jud. Dist. Ct.). The orders are attached hereto as Attachment 1.

committed to funding the receivership, which will allow the studies requested by the Forest Service to be performed under the Court's supervision. This will allow Nevada Hydro, with Court interest and oversight, to address the specific concerns raised by the Forest Service.

Since FERC's issuance of the December 9 Letter Order, Nevada Hydro has conducted the following outreach to the Forest Service and U.S. Department of Agriculture ("USDA"):

- 10-Dec-2021** Mr. Mario Loyola on behalf of Nevada Hydro's new management contacted Mr. Scott Vandegrift, Forest Service Chief Environmental Review and Permitting Officer and signer of the Forest Service's November 15, 2021 letter, and Mr. Tristan Leong, Hydroelectric Coordinator of Forest Service Region 5, to explore the possibility of resolving outstanding issues with the Forest Service.
- 13-Dec-2021** Nevada Hydro representative Mr. Paul Anderson and shareholder representative Mr. David Pfeiffer met with Mr. Joseph Kulikowski and Dr. Soma Balachandran of GENTERRA Geotechnical Consultants to discuss a work plan to address the geophysical and geotechnical information requirements of the Forest Service.
- 14-Dec-2021** Messrs. David Pfeiffer, Mario Loyola and Paul Anderson met with Mr. Leong to discuss resolution of the numerous and long-standing issues identified by the Forest Service regarding the Project.
- 15-Dec-2021** Mr. Loyola forwarded a memo to Mr. Leong summarizing Nevada Hydro's commitments made during the previous day's meeting and identifying the resolutions to outstanding issues discussed during the meeting. Mr. Leong responded to the memo thanking the Nevada Hydro team for a productive meeting, in which he had indicated his willingness to keep moving forward with the Project on the basis of the understandings reached on key issues. That memorandum and Mr. Leong's acknowledgement are attached hereto as Attachment 2.

- 16-Dec-2021** Mr. Loyola met with Mr. Vandegrift to debrief on the conversation with Mr. Leong and discuss next steps. Mr. Loyola stated that new management at the company is eager to be responsive and satisfy all outstanding study requests, and that Region 5 Forest Service staff appear willing to move forward with the regulatory process on that basis. Mr. Loyola expressed his view that the Forest Service should therefore be able to proceed as a NEPA cooperating agency with FERC.
- 19-Dec-2021** GENTERRA provided a proposed workplan, schedule and budget to address outstanding geotechnical and geophysical information requirements. The workplan and schedule are attached hereto as Attachment 3.
- 21-Dec-2021** Via email, Mr. Loyola updated the staff of the Federal Permitting Improvement Steering Council on the recent interactions with the Forest Service.
- 3-Jan-2022** Nevada Hydro's counsel Alan Mintz spoke with a senior Forest Service official who expressed no objection to FERC's reinstatement of Nevada Hydro's license application.
- 4-Jan-2022** Nevada Hydro retained GENTERRA to perform the geotechnical and geophysical studies.
- 4-Jan-2022** Nevada Hydro retained GridBright, Inc. to conduct a study of alternative transmission line configurations.
- 6-Jan-2022** Nevada Hydro sent a letter to Mr. Vandegrift formalizing the commitments made in the December 14 meeting, and providing an update on subsequent progress on an alternative transmission line study, geotechnical and seismic studies, water quality impacts, and cultural resources. A copy of the January 6 letter is attached as Attachment 4.

As noted, Nevada Hydro has now retained GENTERRA, which is currently working on development of a detailed work plan that Nevada Hydro will provide to the Forest Service for review and comment. Nevada Hydro also has retained GridBright, Inc. to undertake a study of alternative transmission line configurations for the Project. Nevada Hydro is in the process of addressing the Forest Service's other information needs as well, as documented in Nevada

Hydro's January 6 letter to Mr. Vandegrift. Nevada Hydro believes it will be able to supply the Forest Service with all of the outstanding information the Forest Service has previously identified for its NEPA analysis of the Project by July 1, 2022.

IV. REQUEST FOR REHEARING

The Commission should grant rehearing of the December 9 Letter Order and reinstate Nevada Hydro's license application. Nevada Hydro has invested over \$30 million in the license application process and related costs in the years it has been attempting to develop the Project. The license application is Nevada Hydro's principal asset. That is why the Nevada District Court directed the Receiver for Nevada Hydro to take emergency measures to appeal the dismissal of the license application. Dismissal of the license application threatens to squander Nevada Hydro's multi-million dollar investment as well as years of effort on the part of Nevada Hydro, the Commission, state and federal resource agencies, and other stakeholders.

The December 9 Letter Order offers that Nevada Hydro can reapply once it has completed the studies the Forest Service requires.²¹ While Nevada Hydro appreciates that FERC appears willing to pick up the processing of the license application where it left off, with the next step being issuance of its REA Notice, the December 9 Letter Order's offer is not the lifeline it appears. Upon denial of rehearing the site will be open for development. Any third party could file an application for preliminary permit and, if it obtains the permit, tie up the site for up to eight years.²² Nevada Hydro could file its own, competing permit application but there is no guarantee it would be successful in

²¹ December 9 Letter Order at 3.

²² 16 U.S.C. § 798.

obtaining a permit.²³ On the other hand, the Commission will not accept an application for a preliminary permit that would develop, conserve, and utilize the same water resources for which a development application has been filed.²⁴

The court-supervised change in management of Nevada Hydro and commitment to fund the studies required by the Forest Service are material changes to the facts on which Commission Staff relied in the December 9 Letter Order. So are the recent communications between Nevada Hydro and the Forest Service indicating Nevada Hydro's commitment to evaluate alternative Project configurations and satisfy the Forest Service's study needs, and the Forest Service staff's openness to working with Nevada Hydro in light of those commitments. The December 9 Letter Order was predicated on a statement by the Forest Service that Nevada Hydro was unwilling to do the studies for purposes of the EIS but would only do the studies post-license, and that as a result the Forest Service was unable to continue as a NEPA cooperating agency. Nevada Hydro through its Receiver has authorization from the Nevada District Court to take steps necessary to move the licensing of the Project forward including funding of required studies. Given the court-supervised funding commitment and willingness of Nevada Hydro's new management to complete the studies, the position of Nevada Hydro has changed which should now enable the Forest Service to continue as a NEPA cooperating agency.

²³ Given the advanced state of Nevada Hydro's license application, Nevada Hydro believes this would be an absurd result and not in the public interest. The Commission could alleviate Nevada Hydro's concern in this regard by affirming that it would dismiss any preliminary permit application filed on the site once Nevada Hydro refiled its license application. All these complications can be avoided, however, either by reinstating Nevada Hydro's license application now or granting a temporary stay of the dismissal, as requested herein.

²⁴ 18 C.F.R. § 4.33(a)(3).

Reinstating Nevada Hydro's license application would not mean an irrevocable commitment on the part of the Commission to keep processing the application no matter what. If the Commission determined that Nevada Hydro's new management was not living up to its commitment to perform the necessary studies in a timely fashion, or the Forest Service and Nevada Hydro for some reason never reach agreement on the Project proposal or details of the studies to be done, the Commission would have the option of dismissing the application then. However, allowing Nevada Hydro's new management a reasonable opportunity to course correct the situation with the Forest Service seems a fair and reasonable outcome given the company's enormous investment in the Project over the years. On the other hand, allowing the application to be dismissed despite the recent, material changes in circumstances set forth in this Rehearing Request would be an unreasonably harsh decision.

Nevada Hydro expects that if the Commission agrees to reinstate its license application, such reinstatement will not be unconditional. Nevada Hydro is more than willing to provide progress reports to the Commission on a monthly or other basis. Nevada Hydro also is willing to provide the Commission by a date certain with a plan and schedule, agreed to by the Forest Service, for completing all necessary studies for the Forest Service. Based on its recent discussions with Forest Service staff, Nevada Hydro believes it will be able to complete the outstanding studies previously requested by the Forest Service by July 1, 2022.

It is Nevada Hydro's understanding that the Forest Service is expecting to update FERC on the material changes in circumstances with the Project should the Commission inquire directly of the Forest Service as part of the Commission's consideration of this

rehearing request. Nevada Hydro thus encourages the Commission to confirm with the Forest Service whether the Forest Service now believes it will now be able to go forward as a cooperating agency with FERC on the EIS, given Nevada Hydro's willingness to evaluate alternative Project configurations and perform the required studies.

V. MOTION FOR TEMPORARY STAY

Alternatively, the Commission could stay the dismissal of the license application until July 1, 2022, to allow Nevada Hydro's new management under the supervision of the Nevada Court to work through the outstanding Project and related study issues with the Forest Service. Staying the dismissal of the December 9 Letter Order would toll the 30-day statutory rehearing period.²⁵ If, at the end of that period, Nevada Hydro has not addressed the Forest Service study issues to the satisfaction of the Commission and the Forest Service, the Commission can lift the stay and allow the dismissal order to go into effect. However, if the Commission is satisfied with Nevada Hydro's progress to that point, the Commission can lift the stay and reinstate the license application. Nevada Hydro commits to filing progress reports with the Commission during the stay period, on a monthly or other basis as determined by the Commission.

In acting on stay requests, the Commission applies the standard test set forth in the Administrative Procedure Act,²⁶ i.e., the stay will be granted if "justice so requires."²⁷ Under this standard, the Commission considers a number of factors, such as whether the

²⁵ *Skagit River Hydro*, 85 FERC ¶ 61,384. We do not believe that *Allegheny Defense Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020), forecloses this option. If the Commission disagrees that granting a stay of the December 9 Letter Order would toll the period for the Commission to act on Nevada Hydro's rehearing request, Nevada Hydro asks that the Commission grant rehearing and reinstate the license application.

²⁶ 5 U.S.C. § 705 (2012).

²⁷ *Columbia Gulf Transmission Co.*, 37 FERC ¶ 61,003 (1986).

movant will suffer irreparable injury in the absence of a stay, whether the issuance of a stay would substantially harm other parties, and where the public interest lies.²⁸

Nevada Hydro clearly risks irreparable harm if the Commission denies rehearing and does not stay dismissal of the license application. Nevada Hydro does not own any of the real property on which the Project would be built. Its most substantial asset, and the collateral on which Project lenders and investors would rely, is the license application itself. Without the current application in place, Nevada Hydro may not be able to attract the additional funds needed to complete the licensing process.

As discussed above, dismissal of the license application opens up the Project site for development with no guarantee that Nevada Hydro will be able to secure the site with a preliminary permit while it completes the studies required by the Forest Service.²⁹ The only way to protect Nevada Hydro's more than \$30 million-dollar investment in the Project³⁰ is to keep the license application in place for a reasonable period of time while Nevada Hydro works to satisfy the Forest Service's study needs. In similar circumstances involving the Forest Service, the Commission has determined that justice requires staying dismissal of a license application.³¹

While vitally important to moving the Project forward and preserving Nevada Hydro's very substantial investment in the Project, temporarily staying the license application dismissal will not prejudice or adversely affect any other party. Nor would the

²⁸ *Boott Hydropower, Inc.*, 144 FERC ¶ 61,211 at P 9 (2013), *aff'd on other grounds*, *U.S. Dep't of the Interior v. FERC*, 876 F.3d 360 (1st Cir. 2015).

²⁹ This situation is distinguishable from the "series of hypotheticals" rejected as irreparable harm by the Commission in *Grand Coulee Project Hydroelectric Auth.*, 136 FERC ¶ 61,178 at P 11 (2011).

³⁰ While pecuniary loss, without more, is not normally sufficient to justify a stay, *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,254 at P 8 (2008), dismissal of Nevada Hydro's license application would also negate the many years of effort Nevada Hydro, licensing stakeholders, FERC, the Forest Service, and other agencies have invested in this Project. The loss would truly be irreparable.

³¹ *Skagit River Hydro*, 85 FERC ¶ 61,384 at p. 62,495.

public interest be harmed in any way. Pausing the dismissal of the application imposes no burden on the Commission. The Commission's information needs for its NEPA review have been satisfied. The December 9 Letter makes clear that it is the Forest Service's information needs that must be satisfied in order for the licensing process to advance. However, the Forest Service staff has indicated a willingness to work with Nevada Hydro's new management to resolve the study and other issues. In short, granting Nevada Hydro's request for a temporary stay would cost the Commission nothing, while denying rehearing or failing to grant a stay could cost Nevada Hydro everything.

VI. CONCLUSION

For all of the above reasons, Nevada Hydro respectfully requests that the Commission either (1) grant rehearing of the December 9 Letter Order and reinstate the license application, or (2) grant a temporary stay of the dismissal of the license application until July 1, 2022, to allow Nevada Hydro to complete the studies identified by the Forest Service, and thereby toll the statutory period for the Commission to rule on Nevada Hydro's rehearing request, after which time the Commission would lift the stay and reinstate Nevada Hydro's license application if Nevada Hydro makes sufficient progress during this period.

Respectfully submitted,

/s/ Michael A. Swiger

Michael A. Swiger
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW, 7th Floor
Washington, DC 20007
202-298-1800
mas@vnf.com

Counsel for The Nevada Hydro Company, Inc.

Dated: January 7, 2022

CERTIFICATE OF SERVICE

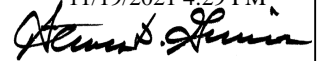
Pursuant to Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 7th day of January, 2022.

/s/ *Lorielle Morgan*

Lorielle Morgan
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, DC 20007
(202) 298-1800
lmorgan@vnf.com

Attachment 1



CLERK OF THE COURT

ORDR

Patrick J. Reilly
Nevada Bar No. 6103
William D. Nobriga, Esq.
Nevada Bar No. 14931
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135
preilly@bhfs.com
wnobriga@bhfs.com

Attorneys for Daytona Power Corp.

DISTRICT COURT

CLARK COUNTY, NEVADA

DAYTONA POWER CORP., a Nevada
corporation,

Plaintiffs,

v.

THE HYDRO COMPANY, a Nevada
corporation; REXFORD J. WAIT, an
individual,

Defendants.

Case No. A-21-839925-B

Dept. No. XVI

**INTERIM ORDER (1) CONFIRMING
APPOINTMENT OF RECEIVER AND
DESIGNATING RESPONSIBILITIES; (2)
AUTHORIZING ADVANCES OF FUNDS
AS ADMINISTRATIVE EXPENSES OF
ESTATE; (3) APPROVING
COMPENSATION FOR RECEIVER;
AND (4) APPROVING ENGAGEMENT
OF COUNSEL**

Hearing Date: November 16, 2021

Hearing Time: 9:00 a.m.

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On October 5, 2021, this Court entered its *Findings of Fact, Conclusions of Law, and Order Granting Plaintiff's Application for Appointment of Receiver* (the "Order Appointing Receiver") appointing Jeffrey Hunter ("Hunter" or the "Receiver") as receiver in the above-referenced matter. Thereafter, the Court, *sua sponte*, issued a minute order setting a status hearing for October 14, 2021 for the parties to address the amount of a bond that would be required to be posted by or on behalf of the Receiver as security for the faithful discharge of his duties in this matter. As a result of that hearing, the Court established a briefing schedule and set a hearing for December 1, 2021 at 9:00 a.m. to determine a bond amount. At the same hearing, the Court also directed the Receiver to propose an interim Order to provide further details regarding the execution of the Receiver's duties prior to the posting of a bond and thereafter.

This matter came on for hearing on November 16, 2021, at 9:00 a.m. The Court's minutes reflect the appearances of counsel, the parties, and/or the Receiver. After consideration of all briefing on this matter, and for good cause, **IT IS ORDERED AS FOLLOWS:**

PART I: RESPONSIBILITIES OF THE RECEIVER

A. **Confirmation of Appointment of Receiver.** The Court confirms that Mr. Hunter shall serve as Receiver over Defendant The Hydro Company, a Nevada corporation (the "Company"), subject to the terms of the October 5, 2021 *Order Appointing Receiver*, as supplemented by this Order. In the event of any inconsistency between this Order and the October 5, 2021 *Order Appointing Receiver*, this Order shall control.

B. **Authority to Act Prior to Posting Bond.** Pursuant to Nev. Rev. Stat. 32.275(4), the Receiver is authorized to act pursuant to this Order prior to the posting of a bond in an amount to be determined on or after December 1, 2021.

C. **Limitations on Liability.** The Receiver is acting solely in its capacity as an appointee of this Court and shall have no personal liability for any obligations or debts incurred in connection with the receivership estate (the "Receivership" or "Estate") established pursuant to this Order, except as provided under Nev. Rev. Stat. 32.325(2). In addition, and pursuant to Nev. Rev. Stat. 32.325(1), the Receiver is entitled to all defenses and immunities provide by the laws of this State other than Nev. Rev. Stat. 32.100 to 32.370, inclusive, for an act or omission within the scope

of the receiver's appointment. Such defenses and immunities include, but are not limited to, the following:

1. **Judicial Immunity.** In accordance with Nevada's adoption of the Uniform Commercial Real Estate Receivership Act (the "Uniform Act"), Nev. Rev. Stat. 32.010, *et seq.*, and pursuant to Official Comment No. 1 of the Uniform Act, the Receiver constitutes an officer of this Court and is shielded by judicial immunity for actions performed under the lawful authority of this Order.

2. **The Barton Doctrine.** Pursuant to Nev. Rev. Stat. 32.325(2), and Official Comment No. 3 of the Uniform Act, and as recognized in *Barton v. Barbour*, 104 U.S. 126, 129, 26 L.Ed. 572 (1881), no action may be commenced against the Receiver without leave of this Court.

D. **Powers of Receiver.** The powers granted to the Receiver pursuant to this Order shall include the following:

1. **General Grant of Authority.** Pending further Order of this Court, the Receiver is granted full and exclusive power, duty, and authority to administer and manage all of the Company's business affairs, funds, assets, choses in action and any of its other property, real or personal, tangible or intangible, including all intellectual property, licenses, license applications, patents, copyrights, trademarks, and domain names (collectively, and as described in greater detail below, the "Receivership Property"), and is vested with all of the powers of the Company, together with all powers of the Company's officers, directors and shareholders.

2. **Exclusive Control of Receivership Property.** The Receiver is authorized to, and shall, take exclusive possession and control of all Receivership Property, including the following:

a. **Real and Tangible Personal Property.** The Receiver is authorized to, and shall, enter upon and take exclusive possession and control of all real and tangible personal property of the Company, wherever they may be located within or outside of the State of Nevada, and is further authorized as follows:

(1) **Management.** The Receiver is authorized to, and shall, take control of the Receivership Property for the purpose of managing, maintaining, and

preventing waste and maintaining records.

(2) **Rents and Income.** The Receiver is authorized to, and shall, collect and receive all earnings, revenues, rents, issues, profits, income, and cash collateral derived from the Receivership Property.

(3) **Repairs.** The Receiver is authorized to make all necessary or proper repairs, renewals, replacements, alternations, additions, betterments, and improvements to and on the Receivership Property

(4) **The Company as Lessee; Exemption.** Any landlord shall recognize the Receiver as having the authority to act in the place of the Company as a tenant as contained in any lease agreement; except, however, the Receiver shall have no personal liability in connection with any leasehold interest of the Company. In addition, Wait asserts that the building located at 2416 Cades Way (“Building”) is owned wholly and independently by Wait in his individual capacity, and is leased by Control Technology, Inc., (“CTI”), an electrical engineering company separate from Hydro. The building is a secure facility as CTI is a government contractor and subcontractor working around the world on sensitive matters of U.S. National interest. Wait has represented that he gifts Hydro use of the Cades Way address to receive mail and to store and maintain physical books and records concerning the Project, at no cost to Hydro. Within five (5) days of entry of this Interim Order, Hydro shall deliver to the Receiver the original or true and correct copies of all of its books and records maintained in the Building, and the Receiver shall submit a change of address for all U.S. Mail for Hydro to its address. Upon delivery of said books and records, the Receiver shall have no right to access the Building without further order of this Court.

(5) **Locksmiths.** Except as provided in Section I.D.4 of this Interim Order, any licensed locksmith presented with a copy of this Order, after verifying the identification of the Receiver, shall be entitled to lawfully change the locks of any and all business premises, even if such lock shall be of a secured variety such

as Medeco or similar and such locksmith may also pick any combination to any safe the Receiver reasonably believes to contain assets of the Company.

(6) **Remediation.** The Receiver is authorized to take all action necessary to comply with applicable laws and/or take remedial action necessary to preserve the Receivership Property.

b. **Intangible Personal Property.** The Receiver is authorized to, and shall, take exclusive control over all intangible personal property of the Company, including but not limited to the following: all licenses, license applications, permits, permit applications, inventory, accounts, accounts receivable, books, records, Deposit Accounts, contracts, contract rights, general intangibles, and payment intangibles, including without limitation, contracts and accounts, all proceeds thereof, and all writings or other records in whatever form (including electronic) that documents any of them, including original written agreements, purchase orders, invoices, receipts, checkbooks, keys, computer passwords, alarm passwords, safe combinations, check registers, passbooks, journals, ledgers, related financial documents and books of account from which the Company receives payments or other data used in or related to its business.

c. **Accounts Receivable and Rights to Payment.** The Receiver is authorized to, and shall, demand, collect, and hold all of the Company's accounts receivable and other rights to payment, and all proceeds thereof. The Receiver is authorized to, and shall, present for payment any checks, money orders, negotiable instruments or commercial paper through which the Company is compensated. The Receiver is authorized to, and shall, endorse the same and collect the proceeds, including, but not limited to, the proceeds from any escrow accounts containing funds to be dispersed upon the occurrence of a particular event.

d. **Bank Accounts and Safe Deposit Boxes.** The Receiver is authorized to, and shall, take exclusive possession and control of and any funds of the Company, including without limitation any and all bank accounts of the Company to which such funds were or are deposited (the "Deposit Accounts"), as well as any safe deposit boxes, wherever maintained. The Receiver shall be vested with the specific power to be added as the sole

1 signatory on any Deposit Account, to close the account and/or to continue to operate the
2 Deposit Account and he shall be able to use the tax ID number of the Company to operate
3 such Deposit Account. Any bank served with this Order shall not require an original
4 certified copy of this Order, but shall, after verifying the identification of the Receiver,
5 accept this Order in PDF or copy form.

6 e. **Insurance.** The Receiver shall determine upon taking possession of the
7 Receivership Property, whether in the Receiver's judgment, there is sufficient insurance
8 coverage. With respect to any insurance coverage, the Receiver shall be named as an
9 additional insured on the policies until such time as the Receiver is discharged. If sufficient
10 coverage does not exist, the Receiver shall notify the Parties to this lawsuit and he shall
11 have thirty (30) days to procure sufficient all-risk and liability insurance, provided however,
12 if funds are not available to pay for such insurance, the Receiver shall seek instructions from
13 the Court.

14 f. **Books, Records and Computers.** The Receiver is authorized to, and shall,
15 take exclusive possession and control of all books and records concerning the Company
16 wherever it or they may be found, including for purposes of this Order, any computers or
17 other equipment containing such books and records. The Receiver shall provide the
18 Company's designated representative with access to all non-privileged documents in the
19 Receiver's possession, and the Company's designated representative may copy any such
20 documents at its expense.

21 g. **Tax Records and Tax IDs.** The parties, and each of them, upon receipt of
22 this Order, shall provide the Receiver with any tax identification numbers utilized by the
23 Company. The Receiver shall also be entitled to use such tax identification numbers during
24 his operation of the Receivership Estate. The Receiver shall be furnished with any and all
25 current tax documents and any CPA in possession of such documents is authorized to, and
26 shall, provide the Receiver with any and all such tax records requested by Receiver. The
27 Receiver may also obtain a new tax identification number for use in establishing a
28 Receivership Estate entity in connection herewith.

1 h. **Mail.** On a going forward basis, the Receiver is authorized to take all
2 necessary steps to receive, collect and review all mail addressed to the Company and shall
3 establish a Post Office Box for the receipt of such mail, (“Receiver’s Post-Office Box”). At
4 the Receiver’s discretion, the Receiver is authorized to instruct the U.S. Postmaster to
5 reroute, hold, and/or release said mail to the Receiver. The Receiver shall promptly, and in
6 no event later than two (2) business days from receipt, provide to Wait via e-mail, a copy
7 of all Company mail received at the Receiver’s P.O. Box.

8 i. **Email.** The Receiver is authorized to take all necessary steps to receive,
9 collect and review all email addressed to or sent by the Company that is not protected by
10 the attorney-client privilege or work product doctrine in (1) this action; (2) the action
11 pending in the Court of Queen’s Bench of Alberta, Canada styled *Daytona Power Corp.,*
12 *Plaintiff v. The Hydro Company, Inc. (d/b/a The Nevada Hydro Company, Inc.), Rexford J.*
13 *Wait and Gowling WLG (Canada) LLP, Defendants, Case No. 2001-04622* (the “Alberta
14 Action”); or (3) the action pending before the Superior Court of the State of California,
15 County of San Diego, Case No. 37-2020-00012591-CU-MC-CTL, and related appeal (the
16 “California Action”). To the extent the Company seeks to assert such protection, it shall
17 concurrently provide therewith a written privilege log to the Receiver and to Plaintiff for
18 the purposes of determining whether said materials are, indeed, privileged. On and after
19 the effective date of this Order, all persons associated with the Company (a) shall promptly
20 forward to the Receiver any and all incoming email received on a Company email account,
21 and (b) shall include the Receiver on all outgoing email messages made on any Company
22 email account.

23 j. **Claims and Choses in Action.** The Receiver is authorized to investigate,
24 institute, prosecute, defend, compromise, adjust, intervene in, or become party to such
25 actions or proceedings in state or federal courts or arbitrations or mediations as may in his
26 opinion be necessary or proper for the protection, maintenance, and preservation of the
27 Company or its business or property or the carrying out of the terms of this Order, and
28 likewise to defend, compromise, adjust, or otherwise dispose of any and all actions or

proceedings instituted against him as Receiver, the Receivership Property or against the Company; provided however, that the Receiver shall have no authority to take any of the foregoing actions with respect to this action, the Alberta Action, or the California Action; or the payment of the Company's attorney fees, costs and other expenses of litigation related thereto. For the avoidance of doubt, the rights granted to the Receiver in this paragraph also include the authority to commence actions on behalf of the Company to recover transfers that are avoidable under applicable law, including Nevada's adoption of the Uniform Fraudulent Transfer Act, Nev. Rev. Stat. 112.140, *et seq.*

3. **Operation of the Company's Businesses.** The Receiver is authorized to conduct all ordinary-course business activities of the Company, including development and advancement of the Lake Elsinore Advanced Pump Storage ("LEAPS") project.

4. **Employees.** The Receiver is authorized to engage and dismiss employees of the Company in his sole discretion.

5. **Employment of Professionals.** The Receiver is authorized to hire, retain or otherwise employ any agents, contractors, consultants, employees, servants, attorneys, accountants, computer forensics and/or other professionals as the Receiver may deem necessary or appropriate to administer the Receivership Estate, to administer or collect any of the Receivership Property, or to otherwise perform any other powers and responsibilities described herein, and to pay said agents, contractors, employees, servants and professionals at ordinary and usual rates and prices, pursuant to appropriate contracts, out of funds that come into the Receiver's possession. The Receiver is directed to examine and promptly report to the Court regarding the need, if any, to engage the following professionals:

- a. A Certified Public Accountant.
- b. Attorneys specializing in proceedings before the Federal Energy Regulatory Commission ("FERC").
- c. An Endangered Species Act Consultant.
- d. A Non-Federal Hydropower License Consultant.
- e. A National Historic Preservation Act Consultant.

- f. A United States Forest Services Special Use Permit Consultant.
- g. An Environmental Impact Statement Consultant.
- h. A Clean Water Act Consultant.
- i. A United States Forest Service Special Use Permit Consultant.
- j. Any other professionals that the Receiver, in the exercise of his judgment, determines may be appropriate.

To avoid unnecessary delay, the Receiver is authorized to request Court approval of the employment of any professional by way of a motion that includes a request for an order shortening time. Alternatively, the Receiver may request Court approval of the employment of any professionals by way of a stipulation approved by all parties to this action.

6. **Authority to Enter Into Contracts.** The Receiver is authorized to enter into contracts as the Receiver reasonably believes are necessary for the purposes of this Receivership.

E. **Turnover of Receivership Property.** The Company and its officers and directors, shareholders, agents, employees, and those in active concert or participation with them shall upon the Receiver's request immediately deliver to the Receiver, without limitation, possession and control of all Receivership Property at a place and time determined by the Receiver in his sole discretion, including, without limitation:

1. All cash and cash equivalents, including Bitcoin, Ethereum or other cryptocurrency.
2. All vehicles (including automobiles, trucks, motorcycles, aircraft, watercraft and snowmobiles) which the Company now owns or in which it claims any interest, including keys, registration, proof of insurance and all original certificates of title or other evidence of ownership.
3. All certificated stocks, bonds, debentures, options, warrants or other investment property.
4. All original promissory notes and negotiable instruments.
5. All original deeds, mortgages, deeds of trust, escrow instructions, leases, escrow settlement papers, land contracts or other written documents relative to any and all real

property in which the Company holds any interest whatsoever.

6. All keys, security codes and other items, devices and codes providing or relating to access to the Receivership Property.

7. All documents, books, records and computer files and all passwords needed to access any computer or on-line accounts or records which relate to the income, operation or management of the Receivership Property or any business related thereto.

8. Such other records, documents and electronically stored information relating to the Receivership Property or pertaining to the management, operation, or maintenance of the Receivership Property as may be reasonably requested by the Receiver.

F. **Turnover of Receivership Property Records.** The Company and its officers and directors, shareholders, agents, employees, and those in active concert or participation with them are ordered to cooperate with the Receiver in the transition of the management and turnover of the Receivership Property to the Receiver. As part of that cooperation, the Company and its officers and directors, shareholders, agents, employees, and those in active concert or participation with them shall immediately turnover (or direct those persons over whom they have control to turnover), without limitation, all records relating to the Receivership Property to the Receiver at a place and time determined by the Receiver in his sole discretion, including, without limitation:

1. All standard accounting documents for the Company, including profit and loss statements, accounts receivable reports, accounts payable reports, transactions, journals, general ledgers, trial balances, and financial statements, in hard copy and/or electronic format as requested by the Receiver.

2. All corporate records for the Company including articles of incorporation, by-laws, shareholder agreements, board of directors roster, officers rosters, shareholder rosters, shareholders' certificates, minutes of all annual meetings, minutes of all shareholder and director meetings, annual reports, the stock register and all records of stock ownership, corporate business and tax resolutions, hiring and appointment resolutions, director conflict of interest resolutions, resolutions for loans to and by the corporation, resolutions regarding employee benefits and

1 retirement plans and stock dividend resolutions, for the period of January 1, 2017 through the
2 present, including all amendments to such documents.

3 3. All keys, security codes and other items, devices and codes providing or
4 relating to access to the Receivership Property.

5 4. All agreements, leases and any other documents pertaining to the
6 Receivership Property and all agreements, leases and other documents pertaining to the
7 Receivership Property, together with all security deposits and other deposits.

8 5. All documents, books, records and computer files and all passwords needed
9 to access any computer or on-line accounts or records which relate to the income, operation or
10 management of the Receivership Property or any business related thereto.

11 6. An inventory of all equipment, furniture, supplies and other personal
12 property located at the Receivership Property.

13 7. A list of any bank accounts of the Company and a list of all other accounts
14 in which income, if any, from the Receivership Property is deposited and all checks, cancelled
15 checks, ledgers, records of deposits and all other documents relating to those accounts.

16 8. A list outlining the monthly operating expenses for the Receivership
17 Property.

18 9. An employee roster and complete payroll records from January 1, 2017 to
19 the present.

20 10. All computer equipment, software, management files, equipment, furniture,
21 supplies, and all passwords needed to access all software and computer files maintained in any way
22 relating to the Receivership Property.

23 11. Such other records, documents and electronically stored information relating
24 to the Receivership Property or pertaining to the management, operation, or maintenance of the
25 Receivership Property as may be reasonably requested by the Receiver

26 12. All communications, applications, submissions and other documents
27 concerning the LEAPS project submitted to or received from governmental agencies, including but
28 not limited to the following:

- 1 a. United States Federal Energy Regulatory Commission (FERC).
- 2 b. California Department of Fish and Wildlife.
- 3 c. United States Forest Service.
- 4 d. California State Office of Historical Preservation.
- 5 e. United States Fish and Wildlife Service.
- 6 f. United States Environmental Protection Agency.
- 7 g. United States Army Corps of Engineers.
- 8 13. All communications, applications, submissions and other documents
- 9 concerning the LEAPS project submitted to or received from any suppliers, contractors or other
- 10 parties with which the Company has conducted business, including but not limited to the following:
- 11 a. Z Global
- 12 b. Wood Environmental & Infrastructure.
- 13 c. Genterra Consultants Inc.
- 14 d. GANDA.
- 15 e. Barnard Construction.
- 16 f. Kiewit Energy Group.
- 17 14. All communications, applications, submissions and other documents
- 18 concerning the LEAPS project submitted to or received from third parties, including but not limited
- 19 to the following:
- 20 a. Center for Biological Diversity.
- 21 b. City of Lake Elsinore, California.
- 22 c. City of Wildomar, California.
- 23 d. City of Riverside, California.
- 24 e. Endangered Habitats League.
- 25 f. Forest Lake and Communities Coalition.
- 26 g. Forest Residents Opposing New Transmission Lines (FRONTLINES).
- 27 h. Kilmeny Orchard Property Association.
- 28 i. La Cresta Highlands Property Owners Association.

- j. Landowners Mutual Company.
- k. Pechanga Band of Luiseno Indians.
- l. Plateau Coalition.
- m. Riverside County Flood Control and Water Conservation District.
- n. San Bernardino Valley Audubon Society.
- o. San Diego Gas & Electric Company.
- p. Santa Rosa West Property Owners Association.
- q. Southern California Edison Company.
- r. Sycamore Creek Community Association.
- s. Vista Del Lago Incorporated.

15. Copies of Federal and State income tax returns filed by the Company for the years 2017 through 2020, along with any extensions and requests for extension.

16. Copies of all Federal tax returns filed by any affiliates of the Company for the years 2017 through 2020, along with any extensions and requests for extension. For the purpose of this Order, an “affiliate” is defined as any entity in which the Company holds, directly or indirectly, ten percent (10%) or more of the outstanding shares, membership units or other equity or voting interests.

17. Any and all documents, including all applications and supporting materials, relating to any grants, licenses, permits or other entitlements requested by the Company from any governmental, quasi-governmental, or private foundation or entity.

18. Records of any and all monies received by the Company whether in the nature of revenue, reimbursement of expenses, or reimbursement of loans, or investments, from January 1, 2017 through the present.

19. Documents reflecting all assets (real, personal or mixed) owned by the Company, either outright, or in partnership or joint ownership with any other individual or entity, from January 1, 2017 through the present.

20. All check books, check registers, bank statements, deposit slips and canceled checks for any and all bank, savings, loan and/or any credit union accounts, in which the Company

owns or owned any interest whatsoever, or in which it was authorized to draw checks, whether said accounts were in its name alone, or in the name of another person(s) and the Company jointly, from January 1, 2017 through the present.

21. Copies of every certificate of title or other evidence of ownership for every vehicle (including automobiles, trucks, motorcycles, aircraft and watercraft) which the Company now owns or claims any interest to, or has owned from January 1, 2017 through the present.

22. All documents reflecting any liens or security interests in any vehicles (as defined above).

23. All documents evidencing any stocks, bonds, debentures, warrants, options or other securities, which the Company owns or claims any interest to or had any interest whatsoever in, either along or jointly with another, from January 1, 2017 through the present.

24. Copies of all deeds, mortgages, deeds of trust, escrow instructions, leases, escrow settlement papers, land contracts or other written documents relative to any and all real property that the Company had any interest in whatsoever, whether in its name alone, in the name of another person, or with another person as joint tenants, from January 1, 2017 through the present.

25. Documents identifying and reflecting the nature and extent of any the Company's interests in any other corporations, limited liability companies, or limited and general partnerships.

26. Documents evidencing each and every credit card in the Company's name, together with copies of all statements relating to such credit card(s) from January 1, 2017 through the present.

27. All existing employment contracts, service agreements, construction agreements, construction control or construction disbursement agreements, insurance policies, annuities, pensions, and/or bonds to which the Company is currently a party.

28. Copies of all agreements of sale or other documents relating to the purchase and/or sale of assets owned or to be owned by the Company and/or any corporation in which the Company is or was a stockholder, manager, director or partner.

29. All documents evidencing all notes, contracts, negotiable instruments receivable or accounts receivable, whether or not due, belonging to the Company or in which the Company has or had any interest whatsoever, either alone or jointly with any person or persons from January 1, 2017 through the present.

30. A complete inventory of all items of personal property valued in excess of \$500 - including cash - currently owned by the Company or in the Company's possession. With respect to personal property owned by the Company but not in the Company's possession, including property located in another country, provide the name and address of the individual or entity with possession of such property. With respect to personal property owned by an individual or entity other than the Company but within the Company's possession, identify the owner of each such item, as well as a description of the item.

31. Copies of all financial statements prepared and/or signed by the Company from January 1, 2017 through the present.

32. A comprehensive statement detailing the Company debts and obligations.

33. Copies of any records pertaining to leases, contracts, commercial paper and the like, in which the Company has an interest or under which it receives present income or is to receive future income including, but not limited to, promissory notes, deeds of trust, mortgages, etc.

34. All documents evidencing loans or indebtedness owed by the Company, including, but not limited to, real property mortgages, deeds of trust, promissory notes, as well as any memoranda, statements, or amortization schedules demonstrating the principal balances presently due.

35. All appraisals of real or personal property owned by the Company or in which it has any interest.

36. Copies of all pending contracts, bids, or request for proposals either issued by the Company or to which the Company anticipates becoming a party.

37. A statement listing all lawsuits and/or adversary proceedings in which the Company is named as a party, whether as plaintiff, defendant or otherwise.

38. Copies of all applications for a loan or financing submitted by the Company from January 1, 2017 through the present.

39. Copies of any and all documents relating to any and all intellectual property owned by and/or licensed to the Company, including without limitation all licenses, license applications, permits, permit applications, patent applications, patents, trademark applications, copyrighted material, and assignments.

40. Copies of any and all documents relating to any domain names and websites utilized by the Company, including without limitation any and all registration agreements, service agreements, and any other agreement with the host of any such domain name or website.

41. A list of any and all social media platforms maintained by or for the benefit of the Company.

42. Copies of any and all documents relating to the source code and/or executable, machine-readable code ("Code") for any and all technology owned and/or licensed by the Company, including without limitation the location of such Code and any original documents relating to such Code.

G. Non-interference with Receivership Property. The Company, its officers and directors, shareholders, agents, employees, and those in active concert or participation with them are hereby restrained and enjoined from damaging, destroying, concealing, disposing of, selling or otherwise transferring, or using so as to substantially impair the value of any or all of the Receivership Property until further order of this Court. Except as provided in this Order or otherwise by leave of this Court, during the pendency of the Receivership, the Company and its officers and directors, shareholders, agents, employees, and all other persons, creditors and entities are hereby stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Receiver, Receivership Property, or the Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:

1. Commencing, prosecuting, litigating or enforcing any suit against the Receiver or the Receiver's duly authorized agents and employees with respect to any matter arising

1 out of or in connection with this Order, except that actions may be filed to toll any applicable statute
2 of limitations;

3 **2.** Taking or attempting to take possession of, or retaining possession of the
4 Receivership Property, or attempting to foreclose, forfeit, or alter (other than to terminate) any the
5 interests in the Receivership Property of the Company's directors, officers or shareholders or their
6 families, whether such acts are part of a judicial proceeding or otherwise;

7 **3.** Using self-help or executing or issuing, or causing the execution or issuance
8 of any court attachment, subpoena, replevin, execution, or other process for the purpose of
9 impounding, taking possession of, or interfering with, or creating or enforcing a lien upon any of
10 the Receivership Property, wherever located; and

11 **4.** Doing any act or thing to interfere with the Receiver taking control,
12 possession or management of the Receivership Property, or to in any way interfere with the
13 Receiver or the duties of the Receiver; or to interfere with the exclusive jurisdiction of the Court
14 over the Receivership Property.

15 **5.** This section does not stay the commencement or continuation of an action
16 or proceeding by a governmental unit to enforce such governmental unit's police or regulatory
17 power. Nor does this paragraph affect any right to appellate review of this Order or any motions
18 for relief before this Court in the current pending action.

19 **H. Receiver's Trust Account.** The Receiver is authorized to, and shall, deposit all
20 proceeds collected and taken under the Receiver's exclusive possession and control, into a federally
21 insured bank account ("Receiver Trust Account") to be thereafter used and maintained by the
22 Receiver in furtherance of the Receiver's duties and powers as set forth herein, and the Receiver
23 may designate, in his discretion, additional signatories on such account.

24 **I. Payment of Expenses of the Receivership Estate.** Pursuant to Nev. Rev. Stat.
25 32.340(1), all reasonable fees, costs and expenses of the Receivership shall be paid from the
26 proceeds of the Receivership Property. Plaintiff shall not be obligated to pay any fees, costs or
27 expenses of the Receiver. Any voluntary advances made by Plaintiff, at its sole and absolute
28 discretion, to the Receiver for the benefit of the Receivership Property or for payment of any fees,

1 costs and expenses incurred by the Receiver or any professional employed by or on behalf of the
2 Receiver, shall be deemed an administrative expense of the Receivership Estate and shall be
3 secured by a lien against all Receivership Property. No filing shall be necessary to perfect any lien
4 granted pursuant to this Order.

5 J. **Initial Report of Assets.** Within thirty (30) days of a written request by Plaintiff,
6 the Receiver shall prepare and file with the Court, for its approval, a detailed balance sheet with
7 respect to the Receivership Property and proceeds of the Receivership Property, including a
8 schedule of all bank accounts and other assets arising from or related to the Receivership Property
9 and proceeds of the Receivership Property and a detailed schedule of all obligations, interests and
10 claims against the Receivership Property, along with a statement containing all relevant information
11 as to the status of taxes, income, expenses, distributions and other matters regarding the
12 Receivership Property.

13 K. **Monthly Reports.** The Receiver shall prepare and file on a monthly basis,
14 commencing thirty (30) days after appointment, so long as Receivership Property shall remain its
15 possession or care, reports for the Receivership Property setting forth all receipts and
16 disbursements, cash flow, changes in the assets in the Receiver's charge, and other relevant
17 operational issues that have occurred during the preceding month. The Receiver is directed to file
18 such reports with this Court, and to serve a copy of the report all attorneys of record in this action,
19 and any other interested parties who request the same.

20 L. **Notices of Intent to Pay Fees.** The Receiver shall prepare and serve on all Parties
21 monthly statements ("Notice of Intent To Pay Fees") reflecting the Receiver's fees and
22 administrative expenses, including the fees and costs of agents, accountants and attorneys, and other
23 professionals engaged by the Receiver to assist in the administration of the Receivership Property,
24 incurred for each monthly period in the operation and administration of the receivership estate.
25 After waiting ten (10) calendar days from the date of mailing/emailing, the Notice of Intent To Pay
26 Fees, only if no objections are received by the Receiver, the Receiver may thereafter disburse from
27 estate funds, if any, up to ninety percent (90%) of fees and one hundred percent (100%) of expenses
28 requested. If objections are received by the Receiver and the issues at controversy are not resolved,

1 the Receiver may seek instructions from the Court. Notwithstanding periodic payment of fees and
2 expenses, fees and expenses shall be submitted to the Court for its approval and confirmation in the
3 form of either a properly noticed interim request for fees, stipulation of all parties, or at the time of
4 the Receiver's Final Report and Account.

5 M. **Direction to Sheriff or Constable.** If necessary, the Sheriff, Constable, or any other
6 public officer that the Receiver may choose to employ, shall, without delay, deliver to the Receiver
7 possession of the Receivership Property, and, if necessary, use force as required, and if premises
8 are not voluntarily opened may use a locksmith for said purpose.

9 N. **Further Instructions.** The Receiver and the parties to this case may, at any time,
10 apply to this Court for further or other instructions or orders or for further powers necessary to
11 enable the Receiver to perform the Receiver's duties properly.

12 O. **Tax Returns.** The Company, and not the Receiver, shall remain responsible for
13 filing all Federal and State tax reports and returns and for payment of all taxes due. The Receiver
14 shall provide the Company's designated representative with access to any records necessary for the
15 Company to complete such documents and arrange for payment.

16 P. **Termination of Receivership Estate.** The Receiver may be discharged by entry of
17 an order of this Court. Upon relinquishing possession and control of the Receivership Property, the
18 Receivership shall be discharged from all further duties, liabilities and responsibilities relating to
19 the Receivership Property.

20 Q. **Final Report.** Within thirty (30) days following the termination of the Receivership
21 (whether by Order or stipulation), the Receiver shall file and serve a motion for approval of the
22 Receiver's final report and account. Notice shall be given to all persons of whom the Receiver is
23 aware who have potential claims against Receivership Property. The motion to approve the final
24 report and accounting shall contain a summary of the receivership accounting, provide a summary
25 of actions taken by the Receiver, and shall state the basis for termination of the Receivership. Any
26 Order approving the final report and accounting may provide for the discharge of the Receiver and
27 exoneration of any bond posted by the Receiver.

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**PART II: APPROVAL OF ADVANCES OF FUNDS AS ADMINISTRATIVE
EXPENSES OF THE ESTATE**

R. **Fees and Costs of the Receivership.** The Receiver estimates that initial fees, costs, and expenses of the Receivership Estate may approach the sum of TWO HUNDRED THOUSAND AND 00/100 DOLLARS (the "Initial Receivership Costs"). Per the Order Appointing Receiver, the Company is responsible for paying all fees, costs, and expenses of the Receivership Estate. Accordingly, within three (3) business days of entry of this Order, the Company shall communicate in writing to the Receiver and the Parties whether it has the financial capability to fund the Initial Receivership Costs. If and to the extent the Company is unable to pay the Initial Receivership Costs, Plaintiff Daytona Power Corp. ("Plaintiff") has agreed to provide to the Receiver one or more fee advances of up to TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) to fund Initial Receivership Costs and may thereafter provide such additional funds as may be reasonably requested by the Receiver to carry out his duties, subject to approval by the Court. All funds advanced by Plaintiff (collectively, the "Fee Advances") shall be held in the Receiver Trust Account until disbursed pursuant to this Order or any subsequent order related to receiver fees, costs and expenses. All advances by Plaintiff shall be repayable by the Company at the interest rate set forth in NRS 99.040. The Court shall approve all terms and conditions for any advances by Plaintiff in excess of \$50,000.00. The Court shall also, at a later date and to the greatest extent possible, determine additional terms for repayment by the Company, if any, including the priority of said advances by Plaintiff to the Company.

S. **Cash Bond or Surety Premium.** As part of the Fee Advances, Plaintiff shall provide sufficient funds for the Receiver to post a cash bond in an amount approved by this Court. Alternatively, Plaintiff shall provide as part of the Fee Advances sufficient funds for any premium necessary to obtain a bond from a surety.

T. **Advances Constitute Administrative Expenses of the Receivership Estate.** Any Fee Advances by Plaintiff pursuant to this Order shall constitute an administrative expense of the Receivership Estate as noted above.

///

PART III: COMPENSATION FOR THE RECEIVER

U. **Compensation of the Receiver.** The Receiver shall be entitled to compensation of \$500.00 per hour for professional services performed pursuant to this Order, plus reimbursement for actual expenses. Nothing in this Order shall prohibit the Receiver from requesting that this Court approve reasonable periodic adjustments to his compensation or that of his staff.

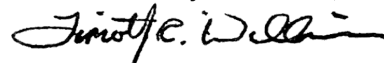
PART IV: APPROVAL OF COUNSEL FOR THE RECEIVER

V. **Employment of Fleming Law Firm, PLLC.** The Receiver is authorized to engage the Fleming Law Firm, PLLC ("FLF"), effective *nunc pro tunc* as of October 1, 2021, to advise the Receiver in the administration of assets of the Receivership, to represent the Receiver in any litigation commenced pursuant to this Order, and in connection with any other matters for which the Receiver, in his reasonable business judgment, determines it is appropriate to consult counsel. The Receiver is authorized to compensate FLF for professional time at the rate of three hundred twenty-five dollars (\$325.00) per hour, plus reimbursement for actual expenses. Nothing in this Order shall prohibit FLF from requesting that this Court approve reasonable periodic adjustments to its compensation.

IT IS SO ORDERED.

~~DATED this ____ day of November, 2021.~~

Dated this 19th day of November, 2021



DISTRICT COURT JUDGE

MH

A88 75F CFB5 F7C3
Timothy C. Williams
District Court Judge

Respectfully submitted:

/s/ Patrick J. Reilly

Patrick J. Reilly
William D. Nobriga
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Attorneys for Daytona Power Corp.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daytona Power Corp, Plaintiff(s) | CASE NO: A-21-839925-B
7 vs. | DEPT. NO. Department 16
8 Hydro Company, Defendant(s)
9

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12 Court. The foregoing Order was served via the court's electronic eFile system to all
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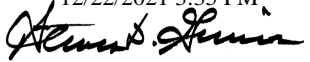
15 Ogonna Brown	obrown@lewisroca.com
16 William Nobriga	wnobriga@bhfs.com
17 Patrick Reilly	preilly@bhfs.com
18 Adrienne Brantley-Lomeli	abrantley-lomeli@lewisroca.com
19 Mary Barnes	mabarnes@bhfs.com
20 Jonathan Blum	jblum@wileypetersenlaw.com
21 Chastity Dugenia	cdugenia@wileypetersenlaw.com
22 Jennifer Hess	jhess@lewisroca.com
23 Nicole Lord	nlord@lewisroca.com
24 Jason Wiley	jwiley@wileypetersenlaw.com
25 Ryan Petersen	rpetersen@wileypetersenlaw.com

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Caitlin Pascal
Scott Fleming

cpascal@wileypetersenlaw.com
scott@fleminglawlv.com


CLERK OF THE COURT

ORDER

Patrick J. Reilly, Esq.
Nevada Bar No. 6103
William D. Nobriga, Esq.
Nevada Bar No. 14931
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702. 382.2101
Facsimile: 702. 382.8135
preilly@bhfs.com
wnobriga@bhfs.com

Attorneys for Daytona Power Corp.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAYTONA POWER CORP., a Nevada
corporation,
Plaintiff,
v.

THE HYDRO COMPANY, a Nevada
corporation; REXFORD J. WAIT, an
individual,
Defendants.

Case No.: A-21-839925-B

Dept. No.: XVI

ORDER REGARDING STATUS REPORTS

On December 16, 2021, at 9:00 a.m. and at 1:30 p.m., this Court held status conferences regarding (1) the Motion by Receiver for Findings Pursuant to NRS 32.265 on an Order Shortening Time filed by Receiver Jeffrey Hunter (the "Motion for Findings"); (2) Defendants Memorandum of Points and Authorities Regarding Receiver's Bond Pursuant to NRS 32.275 (the "Bond Motion"); and (3) the Status Reports filed by Plaintiff, Defendants, and the Receiver regarding the status of the Lake Elsinore Advanced Pumped Storage Project (the "LEAPS Project") (collectively, the "Status Reports"). Patrick J. Reilly, Esq., of the law firm Brownstein Hyatt Farber Schreck, LLP, appeared on behalf of Plaintiff Daytona Power Corp. ("Daytona Power"). Jonathan D. Blum, Esq., of the law firm Wiley Petersen, appeared on behalf of Defendants The Hydro Company ("Nevada Hydro") and Rexford J. Wait ("Wait") (collectively the "Defendants"). Scott D. Fleming,

Esq., of the law firm Fleming Law Firm, PLLC, appeared on behalf of the Receiver, Jeffrey Hunter (“Mr. Hunter” or the “Receiver”). After carefully considering the Motion for Findings, the Bond Motion, and the Status Reports and all of the briefing in support of and in opposition to these filings, the supporting evidence and relevant legal authorities presented in support of these filings, and all of the other evidence and filings on record herein and arguments of counsel, this Court enters the following Order.

I.

ORDER GRANTING IN PART MOTION FOR FINDINGS.

1. On December 9, 2021, the Federal Energy Regulatory Commission (FERC) dismissed without prejudice Hydro’s application for the LEAPS project.

2. The deadline to seek a rehearing/appeal is January 8, 2022.

3. Given the timing of this emergency, the Court hereby enters interim findings to facilitate the best chances of a successful appeal for the benefit of all parties.

4. The Receivership Act does not require the Court to make at finding at the time of the appointment of a receiver that proposed compensation is fair and reasonable. Nevertheless, Defendants have raised questions regarding the compensation proposed for Mr. Hunter and the Court thus finds that it is appropriate to issue findings at this time. Based on its review of the Hunter Declaration, the Court finds and concludes that the compensation requested by Mr. Hunter is not facially unreasonable and that no evidence has been presented by Defendants to suggest that the hourly rate proposed by Mr. Hunter is excessive. The Court reserves the right, however, to consider any future objections to any request for compensation by the Receiver pursuant to NRS 32.340.

5. Therefore, Mr. Hunter is not disqualified from serving as the Receiver of Nevada Hydro during the appeal process. Mr. Hunter will retain his role as Receiver, and will retain the power, rights, and privileges as outlined in this Court’s Interim Order, entered on November 19, 2021, until the completion of the appeal, at which point the Court will revisit the issue.

II.

ORDER SETTING BOND AMOUNT.

This issue of a receiver bond will be revisited after the completion of the FERC appeal

process, or at a time to be determined by the Court. No bond will be required at this time.

III.

ORDER APPROVING ACTIONS OF THE RECEIVER.

6. Additionally, within the various Status Reports filed by the parties were requests for the Court to authorize the Receiver to take certain actions to move endangered LEAPS Project forward. The Court grants these requests as follows.

7. First, this Court authorizes Mr. Hunter to retain the law firm Van Ness Feldman, LLP, as regulatory counsel to assist Nevada Hydro with the LEAPS Project licensing processes before the FERC and other regulatory agencies.

8. Second, this Court authorizes Mr. Hunter to retain Mario Loyola, of Loyola Strategies as a regulatory consultant for Nevada Hydro during the appeal process.

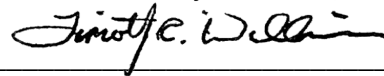
9. Third, this Court authorizes Mr. Hunter to retain Paul Anderson as a regulatory consultant assist in navigating Nevada Hydro through the regulatory process of licensing the LEAPS Project during the appeal process.

10. Fourth, this Court authorizes Mr. Hunter to begin the process of filing a rehearing before FERC to appeal FERC's decision to dismiss the application, and to take the requisite actions necessary to save the LEAPS Project.

IT IS SO ORDERED.

~~DATED this ____ day of December, 2021.~~

Dated this 22nd day of December, 2021



DISTRICT COURT JUDGE

Respectfully submitted by:

489 204 078D F2A8
Timothy C. Williams
District Court Judge

MH

/s/ Patrick J. Reilly

Patrick J. Reilly
William D. Nobriga
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Attorneys for Daytona Power Corp.

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Approved as to form and content:

/s/ Jonathan D. Blum

Jonathan D. Blum

Jason M. Wiley

WILEY PETERSEN

1050 Indigo Drive, Suite 200B

Las Vegas, NV 89145

Attorneys for Defendant Rexford J. Wait

/s/ Scott D. Fleming

Scott D. Fleming

FLEMING LAW FIRM, PLLC

8250 West Charleston Boulevard

Suite 100

Las Vegas, Nevada 89117

Attorney for Receiver Jeffrey Hunter

Barnes, Mary A.

From: Scott Fleming <scott@fleminglawlv.com>
Sent: Tuesday, December 21, 2021 3:19 PM
To: jblum@wileypetersenlaw.com; Reilly, Patrick J.
Cc: Barnes, Mary A.
Subject: Re: Daytona Power/The Hydro Company

Approved. Thanks.

F L E M I N G
LAW FIRM, PLLC

Scott D. Fleming, Esq.
8250 West Charleston Boulevard
Suite 100
Las Vegas, Nevada 89117
www.fleminglawlv.com
scott@fleminglawlv.com
(702) 743-6263

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Sent: Tuesday, December 21, 2021 2:14 PM
To: 'Reilly, Patrick J.' <preilly@bhfs.com>; Scott Fleming <scott@fleminglawlv.com>
Cc: 'Barnes, Mary A.' <mabarnes@bhfs.com>
Subject: RE: Daytona Power/The Hydro Company

Approved. thanks.

Jonathan D. Blum, Esq.



1050 Indigo Drive, Suite 200B
Las Vegas, Nevada 89145
Office 702.910.3329 | Mobile 702.443.0677
jblum@wileypetersenlaw.com



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Sent: Tuesday, December 21, 2021 2:10 PM
To: 'jblum@wileypetersenlaw.com' <jblum@wileypetersenlaw.com>; Scott Fleming <scott@fleminglawlv.com>
Cc: Barnes, Mary A. <mabarnes@bhfs.com>
Subject: Daytona Power/The Hydro Company

Attached is a draft Order for your approval. Thank you.

Patrick J. Reilly
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
702.464.7033 tel
702.882.0112 cell
preilly@bhfs.com

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daytona Power Corp, Plaintiff(s) | CASE NO: A-21-839925-B
7 vs. | DEPT. NO. Department 16
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16 William Nobriga	wnobriga@bhfs.com
17 Patrick Reilly	preilly@bhfs.com
18 Adrienne Brantley-Lomeli	abrantley-lomeli@lewisroca.com
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20 Jonathan Blum	jblum@wileypetersenlaw.com
21 Chastity Dugenia	cdugenia@wileypetersenlaw.com
22 Jennifer Hess	jhess@lewisroca.com
23 Nicole Lord	nlord@lewisroca.com
24 Jason Wiley	jwiley@wileypetersenlaw.com
25 Ryan Petersen	rpetersen@wileypetersenlaw.com

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Caitlin Pascal
Scott Fleming

cpascal@wileypetersenlaw.com
scott@fleminglawlv.com

Attachment 2

From: [Leong, Tristan -FS](#)
To: [Mario Loyola](#)
Cc: david@leapsphs.com; paul@leapsphs.com
Subject: Re: [External Email]Outstanding Issues Discussion
Date: Wednesday, December 15, 2021 4:58:49 PM

Hi Mario,

I am in receipt of the email. Thank you for setting up the meeting yesterday, it was a productive discussion.

Tristan

Get [Outlook for iOS](#)

From: Mario Loyola <mario@loyolastrategies.com>
Sent: Wednesday, December 15, 2021 2:51:33 PM
To: Leong, Tristan -FS <tristan.leong@usda.gov>
Cc: david@leapsphs.com <david@leapsphs.com>; paul@leapsphs.com <paul@leapsphs.com>
Subject: [External Email]Outstanding Issues Discussion

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;
Use caution before clicking links or opening attachments.
Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

Dear Tristan:

Thank you for making time to discuss LEAPS yesterday. Please see attached a short memo that summarizes our discussion. We appreciate your flexibility and willingness to move forward on the basis of the understandings discussed. We look forward to being in touch again soon.

Please acknowledge receipt of this email if you would. Thanks very much.

Mario Loyola, President
Loyola Strategies Research and Consulting
(202) 539-4499

recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

Memorandum

Date: December 15, 2021

Topic: 2021-Dec-14 LEAPS USFS Issue Resolution Meeting

To: Tristan Leong - USDA Hydroelectric Coordinator

From: Paul Anderson, LEAPS Director Sustainability

cc: David Pfeiffer - Daytona Power Corp and Mario Loyola - Loyola Strategies

File Number: 9240

Dear Tristan,

Thank you for meeting with the new leadership team of the Lake Elsinore Advanced Pump Storage (LEAPS) Project yesterday. The purpose of this memorandum is to summarize the key outstanding issues and provide our proposed approach to their resolution, as discussed in our meeting yesterday.

We look forward to a positive resolution of all outstanding issues and continuing to build a positive and collaborative working relationship. To that end, we intend to follow-up with more detailed study plans for your review and comment.

Best regards,

Paul.

Issue 1 - Project Configuration

In its letter of October 8, 2019, and in subsequent conversations with former LEAPS project management, the Forest Service has requested that The Nevada Hydro Company (TNHC) provide *unbiased information to evaluate a range of project configuration alternatives with the objective of lessening impacts to NFS lands and resources.*

Resolution
Undertake a study to re-assess project configuration, assessing impacts (eg. environmental, social/local, technical, fire, commercial) and benefits of reasonable alternatives. The alternatives study will include, among other things, a reassessment of the two proposed transmission lines.

Issue 2 - Geotechnical & Seismic Studies

The Forest Service has indicated that “without an understanding of seismic risks, FERC’s licensing decision may lack site-specific seismic risk reduction measures or appropriate design alternatives for such infrastructure.”

Resolution
Complete a preliminary seismic and geotechnical study including field investigation to determine rock characteristics, validate model assumptions and confirm reservoir feasibility.

Issue 3 - Water Quality

In the October 2019 USFS letter, there were two issues raised in respect of water quality.

The first issue was regarding the existing water quality model. Forest Service staff had difficulty reproducing or following the model/calibration parameters to discern potential water quality conditions within Lake Elsinore and had some unanswered questions about the modelling conducted.

The second issue raised related to water quality was associated with water quality impacts on the San Juan Creek watershed. Although LEAPS do not propose to release water to the San Juan Creek watershed, it is possible some discharge of water from Lake Elsinore into the San Juan Creek watershed could occur through spillage, emergency releases, spillway testing exercises, or other routine reservoir operations.

Resolution
1. Complete a working session with experts at USFS and LEAPS to review the model and

discuss any issues. If required, complete additional modelling or further clarify.

2. Conduct a study of potential impaired water release from Decker Canyon Reservoir into San Juan Creek Watershed and its potential to impact listed species and critical habitat.

Issue 4 - Construction in Inventoried Roadless Area (IRAs)

USFS has commented that TNHC's Study 23 lacks detail to confirm that it would not involve prohibited road construction or road reconstruction in the IRA.

Resolution
Provide further detail confirming potential road requirements within the IRA during construction and confirm what access will be required for longer term operations.

Issue 5 - Quino Checkerspot Butterfly (QCB) Spring Survey

Surveys were conducted in 2003, 2004, and 2005, which confirmed negative findings. A survey was also conducted in the spring of 2019 and no QCB were found. However, the Study Area for this survey was based on a preliminary habitat assessment conducted in September 2018 and was limited to the proposed electrical transmission line alignment north of Interstate 15.

Resolution
TNHC will consult with USFWS and undertake a revised spring 2022 survey for Quino Butterfly.

Issue 6 - Fire Study

The USFS has a fundamental concern that LEAPS could significantly increase the risk, impact, and potential of fire across the project transmission area, which is proposed within a very active and challenging wildland fire management zone.

Resolution
Conduct the Project Configuration Study identified in Issue 1 (above) and then revisit the evaluation of fire risk once the project configuration is confirmed.

Issue 7 - Recreational Study

The USFS had concerns that the original application failed to provide sufficient information of potential impacts to recreational activities that may result from the proposed project. On April 30, 2021, TNHC submitted a Recreational Study Work Plan to address identified deficiencies. During our meeting yesterday, USFS indicated that the proposed study plan addressed most of the questions being asked by the Forest Service related to the recreational impacts of the LEAPS Project. Of course, the impacts on recreation due to Transmission line construction and operation will be influenced by the project alternative selected in the study proposed in Issue 1 (above). We committed to undertaking the recreational study as proposed.

Resolution
Conduct the Project Configuration Study identified in Issue 1 (above) and then undertake the recreational study as proposed in TNHC submission of April 30, 2021 once the project configuration is confirmed.

Issue 8 - Visual Impacts

The Forest Service stated that Study 30 (filed by TNHC in February 2019) is of limited value to assess the visual impacts of LEAPS. The Forest Service is developing an independent assessment of LEAPS scenery impacts and consistency with scenery management objectives as TNHC's visual studies are inadequate to quantify these effects.

Resolution
Conduct the Project Configuration Study identified in Issue 1 (above) and then revisit the evaluation of visual impacts based on the alternative selected.

Issue 9 - Historical Resources

There is a significant amount of confusion and concern surrounding the efforts TNHC has undertaken for LEAPS to comply with Section 106 of the National Historic Preservation Act.

Resolution
Immediately set up a meeting with SHPO to introduce the new leadership team and discuss how to resolve the current impasse.

Attachment 3



GENTERRA CONSULTANTS, INC.
Proposal for Phase 1 of Additional Study 3 – Geotechnical Study
Lake Elsinore Advanced Pump Storage (LEAPS) Project
Riverside County, California
FERC Project No. 14227
December 17, 2021 (DRAFT)

INTRODUCTION

GENTERRA Consultants, Inc. (GENTERRA) is pleased to submit to The Nevada Hydro Company, Inc. (NHC) this draft proposal with our scope of work for implementing a portion of the proposed Additional Study 3 – Geotechnical Study for the LEAPS project as Study 3 – Phase 1 work to meet the request from the United States Forest Service (USFS). This proposal is submitted pursuant to requests from NHC for a proposal with the required scope of work to cover items needed for a limited initial geotechnical investigation as requested by the USFS. The intent of this limited investigation is to show site conditions to the USFS as related to the basic assumptions made by GENTERRA in our preliminary engineering design of the dam. It is recognized that a more comprehensive geotechnical investigation will be performed once the FERC application is approved. As stated below, a comprehensive Preliminary Investigation Work Plan had been submitted in 2018 for the preliminary geotechnical investigation that will contain many more borings and other exploration methods.

BACKGROUND

GENTERRA Consultants, Inc. (GENTERRA) had prepared a Work Plan dated September 7, 2018 that presented the geotechnical and geological investigations to be performed by GENTERRA for the Nevada Hydro Company (NHC) to meet the requirements for Additional Study 3 – Geotechnical Study requested by the Federal Energy Regulatory Commission (FERC) as described in the FERC letter of June 15, 2018 to support the preliminary engineering design of all major components of the Lake Elsinore Advanced Pump Storage (LEAPS) Project.

USFS has been requesting NHC to perform a portion of the proposed Additional Study 3 – Geotechnical Study for the LEAPS project to confirm assumptions made regarding the subsurface conditions within the upper reservoir and dam site to be located within the Cleveland National Forest.

TNHC is interested in knowing the effort level as well as the proposed schedule to complete the limited geotechnical work requested by the USFS.

PROPOSED SCOPE OF WORK

GENTERRA proposes to perform the following tasks to provide the services that would be required for implementing a portion of the proposed Additional Study 3 – Geotechnical Study for the LEAPS project as Study 3 – Phase 1 work to meet the request from the United States Forest

Service (USFS). The proposed field investigations include geophysical surveys and exploratory drilling and sampling.

Task 1: Work Plan for Study 3 – Phase 1 Field Investigation

In Task 1, GENTERRA will prepare a work plan for implementing the Study 3 – Phase 1 field investigation.

Task 1 consists of four (4) subtasks as described below.

- Subtask 1.1 – Prepare Draft Work Plan and Submit to USFS: In this subtask, we will prepare a draft work plan describing the field investigation work to be performed. This draft work plan will provide details about the proposed geophysical surveys within the footprint of the upper reservoir and dam and two 50-foot-deep core borings. The work plan will provide the basis and methodology for the proposed field investigation work. The work plan will describe locations of planned ground-disturbing activities within the Forest and provides information on how these areas will be accessed. Procedures for control of invasive plant species on equipment entering Forest land, and procedures for fire prevention during field activities, will be described;
- Subtask 1.2 – Review by USFS: The draft work plan will be submitted to USFS for their review and approval to initiate the field work. The USFS will have 30 days to review and provide comments or give approval;
- Subtask 1.3 – Review Conference with USFS: In this subtask, we will participate in a meeting with the USFS to address any USFS comments on the draft work plan. The goal of this conference is to get verbal approval of our responses to any USFS comments; and,
- Subtask 1.4 – Prepare Final Work Plan and Submit to USFS: In this subtask, we will prepare the final work plan addressing any USFS comments. The final work plan will be submitted to USFS.

Task 2: Pre-Field Activities

Prior to performing the field activities to be performed, several agencies require review of the work plan and resolution of any comments. In addition, access permission must be sought and received from landowners whose properties on which the field activities will occur, or properties that must be traversed in order to access properties on which the activities will be performed. A fundamental assumption for Study 3 – Phase 1 work is that access permissions will be sought and negotiated by NHC with USFS considering that all proposed field activities will occur within the limits of the Cleveland National Forest.

Task 2 consists of three (3) subtasks as described below.

Subtask 2.1 – Permitting and Access: In this subtask, GENTERRA will assist NHC to complete the permit and access application to USFS for the proposed field work.

The Riverside County, Department of Environmental Health (DEH) is responsible for issuing permits for all monitoring wells and exploratory borings that penetrate groundwater within the County. Since planned core borings will not extend into groundwater, we are not planning to contact the DEH to obtain permits for the planned work.

The City of Lake Elsinore (City) is a stakeholder that has provided requests for information on planned geotechnical studies. Since proposed field activities will be outside City jurisdiction, we are not planning to contact the City.

The Elsinore Valley Municipal Water District (EVMWD) is responsible for water quality and supply within Lake Elsinore. Since proposed field activities will be outside EVMWD jurisdiction, we are not planning to contact the EVMWD to obtain permits.

The State of California Department of Water Resources, Division of Safety of Dams (DSOD), has jurisdiction over dams exceeding a certain height and that exceed a minimum water retention threshold. The planned dam and upper reservoir exceed these thresholds and therefore fall under DSOD regulation. DSOD requires review and approval of all geological and geotechnical investigation work plans for jurisdictional dams and their associated reservoirs and appurtenances prior to implementing any such investigations. GENTERRA may contact DSOD to get their informal feedback on the proposed field investigation. We do understand that an application for a new dam and reservoir may not be filed with the DSOD at this point. That will be done once the FERC application is approved.

Subtask 2.2 – Utility Clearance: As the first step of the field investigation and as required by the State of California, in this subtask we will mark proposed core boring locations and notify Underground Service Alert (USA) of the locations of our planned exploration at least 72 hours prior to doing the work, to clear the boring locations from existing underground utilities. We will invite NHC and USFS representatives who are familiar with the site to review the proposed core boring locations marked by GENTERRA and to identify areas of potential utility conflicts prior to our exploration.

We will attempt to avoid utilities, however, even with reasonable efforts, there are inherent risks to utilities from subsurface exploration. We will invite representatives from NHC and from USFS who are familiar with the site during the drilling and sampling to confirm the locations of utilities and take necessary precautions to prevent damage, or to take necessary action if there is damage.

Subtask 2.3 – Subcontracting: In this subtask, we will prepare Subcontracting Agreement with a qualified driller who has the capability to perform 50-foot-deep core borings and is available to do the work on an expedited basis.

Task 3: Field Investigations on USFS Land

In this task, we will perform the field investigation work within USFS land. Proposed field investigation work consists of geophysical surveys and core borings. Task 3 consists of two (2) subtasks as described below.

- Subtask 3.1 – Geophysical Surveys: In this subtask, we will perform geophysical surveys within the footprint of upper reservoir and dam. As shown on Figure 1 – Preliminary Site Investigation Plan for Study 3 – Phase 1, we plan to perform seismic refraction surveys and multi-channel analysis of surface waves (MASW) survey for this Phase 1 work to get better idea about the subsurface conditions. A total of six (6) seismic refraction lines are proposed within the footprint of the proposed dam and reservoir. The results of the survey will give us information about the quality of the bedrock within the limits of the dam and the reservoir, and it may also give us preliminary idea regarding groundwater conditions. One (1) multi-channel analysis of surface waves (MASW) survey line is proposed crossing the proposed axis of the dam to capture any unfavorable foundation condition that requires removal of that materials before constructing the dam; and,
- Subtask 3.2 – Exploratory Drilling and Sampling: In this subtask, we may refine the locations of proposed core borings that are shown on Figure 1 based on the results of geophysical surveys. As indicated on Figure 1, we propose to drill two 50-foot-deep core borings using a track-mounted drill rig. The cores will be stored in the core boxes for visual evaluation and laboratory testing.

Task 4: Laboratory Testing

In this task, GENTERRA will evaluate and choose the rock core samples for laboratory testing. We are not planning to perform any tests on soil-like materials that may be encountered in the upper part of the core borings.

- Subtask 4.1 – Rock Testing: We will select representative rock core samples for the laboratory testing. We proposed to perform at least six (6) unconfined compressive strength testing to determine strength on bedrock materials within the project site.

Task 5: Geotechnical Data Report

In this task, GENTERRA will prepare a geotechnical data report. Task 5 consists of three (3) subtasks as described below.

- Subtask 5.1 – Draft Geotechnical Data Report: Upon completion of this Phase 1 work, a Draft Geotechnical Data Report will be prepared by GENTERRA to present the results of the investigation. At a minimum, the report will include the following information: 1) Project description, 2) Site geology 3) Site map with field exploration locations, 4) Boring logs, 5) Laboratory test results, 6) Geotechnical constraints for the project, and 8) Recommendations for next phase of the geotechnical investigation program;

- Subtask 5.2 – Review by USFS: The Draft Geotechnical Data Report will be delivered to the USFS as a stand-alone report. After the Draft Geotechnical Data Report is submitted, GENTERRA will follow up with the USFS to make sure that the draft report is received and to answer any initial review questions. After submittal for review, any comments that are provided to GENTERRA will be addressed, and appropriate changes will be incorporated into the final report. During the review process, GENTERRA will conduct up to three conference calls and/or virtual meetings to resolve written review comments from the USFS; and,
- Subtask 5.3 – Final Geotechnical Data Report: In this subtask, the Draft Geotechnical Data report for the Phase 1 work will be updated by incorporating responses to all comments from the USFS to generate the Final Geotechnical Data Report. After the Final Geotechnical Data Report is submitted to the USFS, GENTERRA and/or NHC will follow up with the USFS to make sure that the final product is to their satisfaction.

Task 6: Project Management, Meetings and Coordination

In this task, GENTERRA will provide project management and coordinate the driller and project team. GENTERRA will also participate in progress meetings and meetings with the USFS.

COST ESTIMATE

A cost estimate spreadsheet is attached showing the breakdown by person of estimated hours and costs associated with each task and associated subtasks. This is for review by NHC. We are flexible on the scope and estimates.

COST ESTIMATE

A cost estimate spreadsheet is attached showing the breakdown by person of estimated hours and costs associated with each task and associated subtasks. This is for review by NHC. We are flexible on the scope and estimates. We have provided estimated costs for performing our work within the Cleveland National Forest. However, the additional costs for other items that ultimately may be needed to complete all of the work described in this proposal are unknown at this time. GENTERRA will assist NHC with the coordination of work involving the USFS, as well as other agencies, landowners, and stakeholders (if any), in order to obtain the Special Use Permit and any other necessary permits for site access.

Not included in our estimated budget are the potential costs for additional meeting and correspondence, for controlling the impact of ground disturbing activities, for control of invasive plant species, for protection of plant and animal species, for fire prevention, for construction of temporary access roads, for construction of the proposed temporary staging areas, and for addressing other issues that are unforeseen at this time.

If necessary, GENTERRA will request additional budget if a need arises for additional labor and expenses to adequately address all required items for this project.

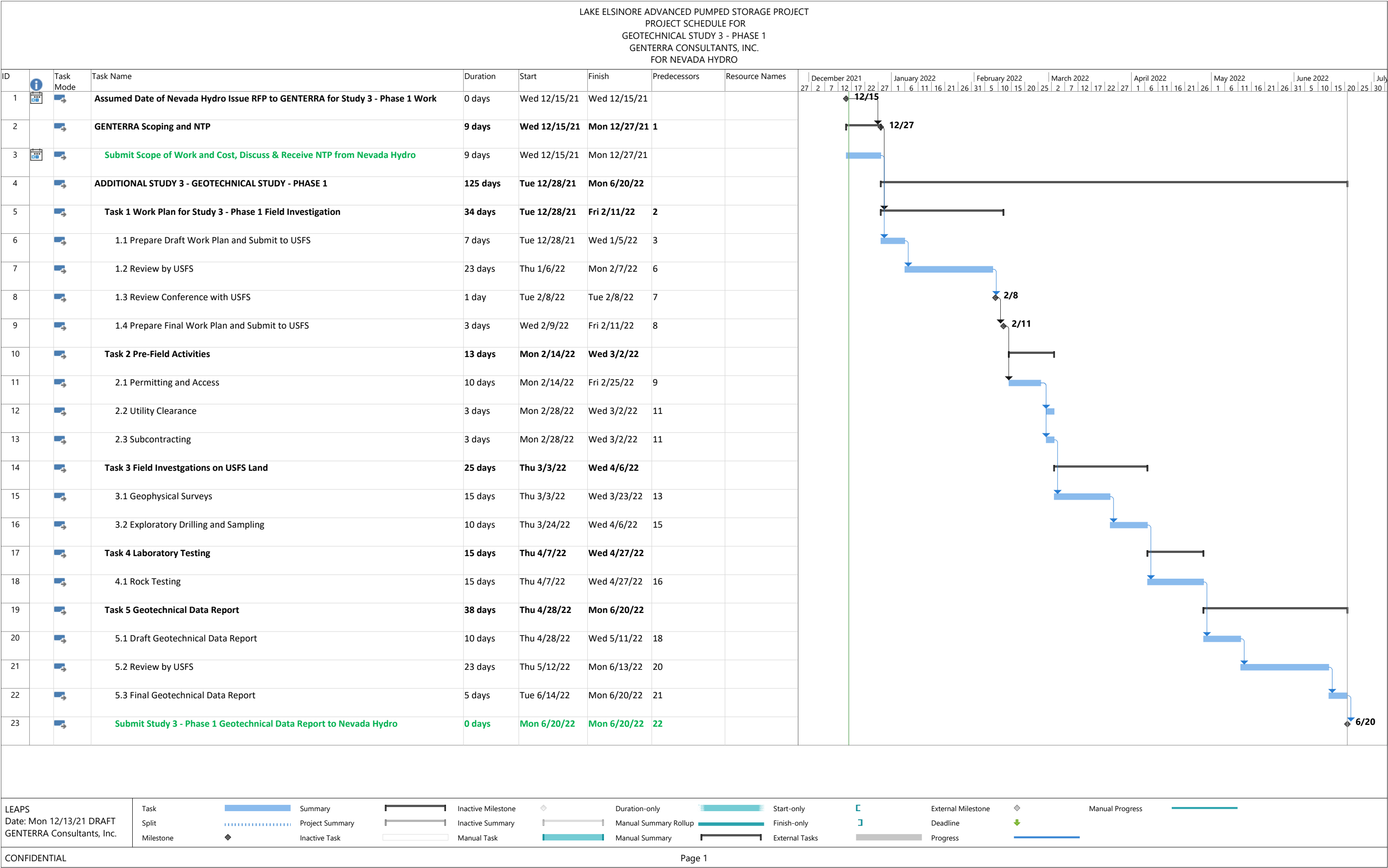
SCHEDULE

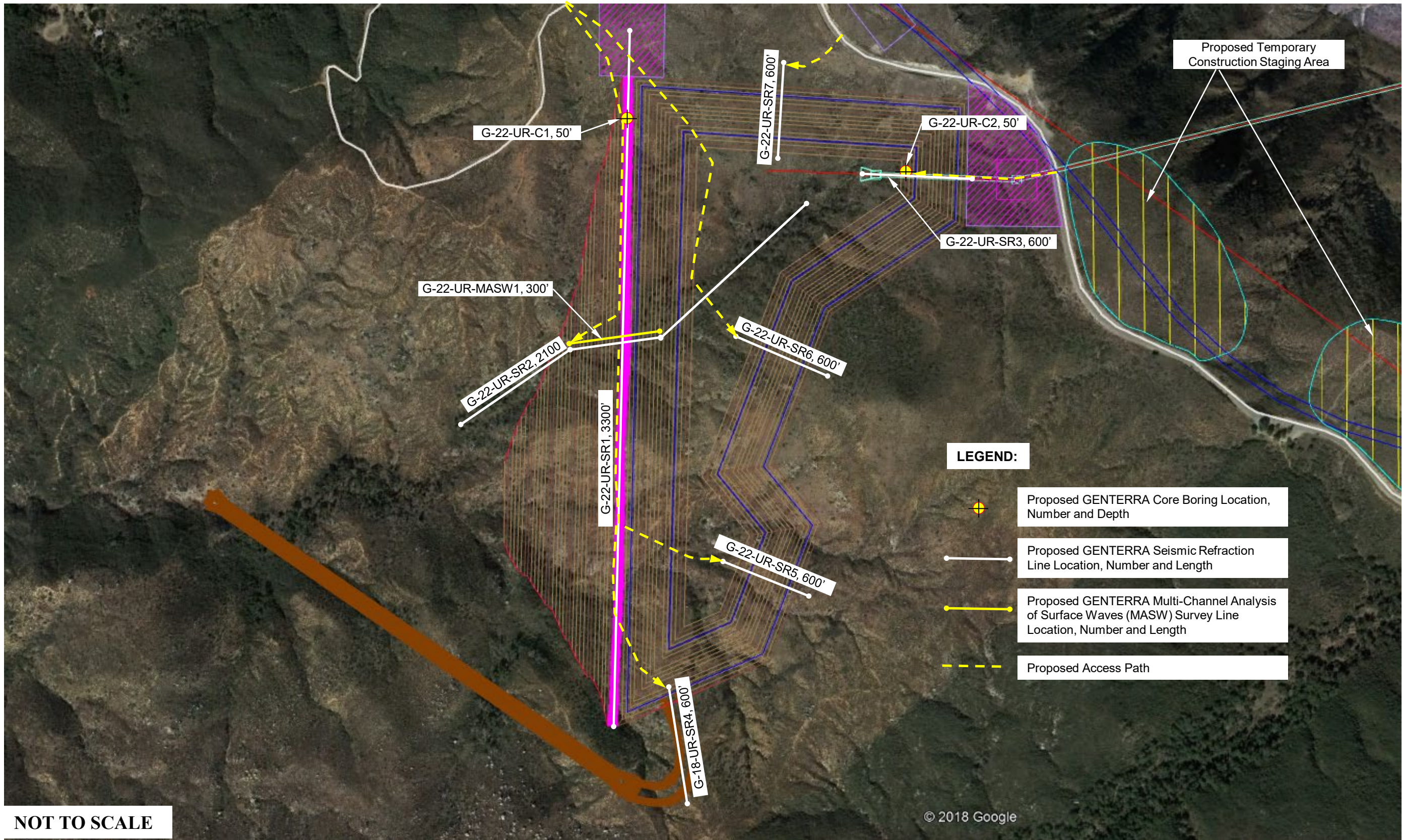
Proposed schedule for the proposed scope of work is presented on the attached project schedule.

AUTHORIZATION


After we receive notification of concurrence from NHC with this scope of work and budget, we will prepare our Work Authorization and Agreement Form for review and signature, or we will review and execute a Purchase Order and/or Consulting Agreement. This proposal has been prepared at our own expense using our professional experience and judgement and should not be shared with anyone outside of NHC without our prior knowledge and approval. Questions and/or discussion of this Scope of Work and the attached figure, cost estimate and schedule can be coordinated with Joseph J. Kulikowski, PE, GE, President and Senior Principal Engineer of GENTERRA Consultants, Inc., by email at joekul@genterra.com or by phone at (949) 753-8766.

Enclosures: Figure 1 – Preliminary Site Investigation Plan for Study 3 – Phase 1
 2021 Fee Schedule
 Cost Estimate (2 Spreadsheets)
 Project Schedule





REFERENCE: Google Earth 2018 Website

DESIGNED BY: SL/SB	THE NEVADA HYDRO COMPANY, INC. 2416 CADES WAY VISTA, CALIFORNIA 92083	LAKE ELSINORE ADVANCED PUMPED STORAGE (LEAPS) PROJECT RIVERSIDE COUNTY, CALIFORNIA		PROPOSAL NO.	DATE	FIGURE 1
DRAWN BY: SL				P2647-NHC-LEAPS	December 16, 2021	Preliminary Site Investigation Plan For Study 3 – Phase 1
DATE DRAWN: DEC. 2021						
CHECKED BY: JJK						

Attachment 4



Scott Vandegrift
Chief Environmental Review and Permitting Officer
US Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250
scott.vandegrift@usda.gov

January 6, 2022

**RE: Lake Elsinore Advanced Pumped Storage Project - FERC No. 14227-003
Project Update and New Leadership**

Dear Mr. Vandegrift,

As you know, the Lake Elsinore Advanced Pumped Storage (LEAPS) project is a renewable energy project located in Lake Elsinore and the Santa Ana Mountains, in Riverside County, California. LEAPS, owned by the Nevada Hydro Company, has been in development for many years, culminating in the 2017 filing of a hydro license application with the Federal Energy Regulatory Commission.

I am pleased to announce new leadership for the LEAPS project. I have been appointed to serve as Director of Sustainability for LEAPS and will assume all responsibilities leading the development of the LEAPS project. I look forward to engaging with you in a positive manner to addresses all outstanding issues and concerns related to the project, including any Forest Service issues related to the 2017 hydro license application before the Federal Energy Regulatory Commission (FERC).

In the past, the Forest Service worked with Nevada Hydro regarding the issuance of a Special Use Authorization (SUA) and potential amendments to the 2005 Cleveland National Forest LMP. During that period, we are aware that previous management expressed an unwillingness to satisfy Forest Service requests related to its criteria for issuance of SUAs, culminating in the November 15, 2021 letter from the Forest Service to the FERC, withdrawing as a cooperating agency in the NEPA Review process. We want to reiterate that the facts upon which your letter of November 15 was based have materially

changed. The new management of Nevada Hydro is strongly committed to satisfying Forest Service requests related to the project.

As you know, the new LEAPS leadership team had the opportunity to meet with Mr. Tristan Leong, Hydroelectric Coordinator for the United States Forest Service - Region 5 (Forest Service). That meeting was productive and resulted in a series of understandings on the proposed resolution of the outstanding issues (as outlined in the October 2019 letter by the Forest Service to the FERC). The resolution to each of these issues was outlined in a memo to Mr. Leong dated December 15, 2021, which is attached to this letter for your reference. The purpose of this letter is to formally reaffirm our commitment to these proposed resolutions and provide you with an update on the progress of each item since the December 14, 2021 meeting.

Issue 1 - Project Configuration

During the December 14, 2021 meeting LEAPS committed to undertake a study to re-assess project configuration, assessing impacts (e.g., environmental, social/local, technical, fire, commercial) and benefits of reasonable alternatives. The configuration study will include, among other things, a reassessment of routing alternatives for the proposed transmission line(s). As a first step, LEAPS has retained GridBright, Inc., which provides grid interconnection and integration services to the power industry. GridBright will identify each grid interconnection option and evaluate the feasibility of each alternative from a technical perspective. We will then provide an assessment of the impacts and benefits of each reasonable alternative.

Issue 2 - Geotechnical & Seismic Studies

LEAPS also committed to completing a preliminary seismic and geotechnical study including field investigation to determine rock characteristics, validate model assumptions and confirm reservoir feasibility. LEAPS has retained GENTERRA Geotechnical Consultants to commence this work. GENTERRA is currently working on a detailed work plan that we will provide to the Forest Service for review and comment.

Issue 3 - Water Quality

LEAPS agreed to set up a meeting with the Forest Service and Dr. Michael Anderson who developed the water quality model used to determine potential project impacts and to conduct a study of potential water quality impairment in the San Juan Creek watershed associated with water release from the Decker Canyon Reservoir. LEAPS has been in contact with Dr. Anderson and we will provide a series of possible meeting times to the Forest Service in order to advance such a meeting. In addition, the scope of work for GENTERRA will include the identification of the potential for water release from the Decker Canyon Reservoir into the San Juan Creek watershed that could occur through spillage, emergency releases, spillway testing exercises, or other routine reservoir operations based on the measures that have been included in the design of the reservoir. Once this component of their work is complete, we will be able to assess the potential impacts of water releases of project operations on listed species within San Juan Creek and to describe how any impacts might be mitigated. We also agreed that this effort should be coordinated with any consultation requirements of the U.S. Fish and Wildlife Service

Issue 9 - Historical Resources

During our meeting on December 14, 2021, LEAPS committed to setting up a meeting with California Office of Historic Preservation (OHP) to introduce the new leadership team and discuss how to resolve current issues. A letter has been sent to Ms. Julianne Polanco and Mr. Brendon Greenaway of the California State Office of Historic Preservation to arrange a meeting.

Summary and Closing

The above summarizes our progress to date in the pursuit of resolving outstanding issues of the Forest Service. We will continue to work collaboratively with the Forest Service until each issue is resolved. I understand that Mario Loyola has been in contact with you regarding our planned FERC rehearing request which is due to be filed with the FERC imminently. It is our intention to provide this letter as an attachment to that submission.

Mr. Loyola will be in contact in the coming days to discuss this progress with you and answer any questions you may have. In the interim, if you have any questions or concerns, please contact me directly at paul@leapsphs.com. Thank you for service and consideration in this matter.

Best regards,

A handwritten signature in dark ink, appearing to read "Paul Anderson". The signature is fluid and cursive, with the first name "Paul" and last name "Anderson" clearly distinguishable.

Paul Anderson, M.Sc.

Director, Sustainability

Encl.

c.c. Tristan Leong, Hydroelectric Coordinator United States Forest Service - Region 5

Memorandum

Date: December 15, 2021

Topic: 2021-Dec-14 LEAPS USFS Issue Resolution Meeting

To: Tristan Leong - USDA Hydroelectric Coordinator

From: Paul Anderson, LEAPS Director Sustainability

cc: David Pfeiffer - Daytona Power Corp and Mario Loyola - Loyola Strategies

File Number: 9240

Dear Tristan,

Thank you for meeting with the new leadership team of the Lake Elsinore Advanced Pump Storage (LEAPS) Project yesterday. The purpose of this memorandum is to summarize the key outstanding issues and provide our proposed approach to their resolution, as discussed in our meeting yesterday.

We look forward to a positive resolution of all outstanding issues and continuing to build a positive and collaborative working relationship. To that end, we intend to follow-up with more detailed study plans for your review and comment.

Best regards,

Paul.

Issue 1 - Project Configuration

In its letter of October 8, 2019, and in subsequent conversations with former LEAPS project management, the Forest Service has requested that The Nevada Hydro Company (TNHC) provide *unbiased information to evaluate a range of project configuration alternatives with the objective of lessening impacts to NFS lands and resources.*

Resolution
Undertake a study to re-assess project configuration, assessing impacts (eg. environmental, social/local, technical, fire, commercial) and benefits of reasonable alternatives. The alternatives study will include, among other things, a reassessment of the two proposed transmission lines.

Issue 2 - Geotechnical & Seismic Studies

The Forest Service has indicated that “without an understanding of seismic risks, FERC’s licensing decision may lack site-specific seismic risk reduction measures or appropriate design alternatives for such infrastructure.”

Resolution
Complete a preliminary seismic and geotechnical study including field investigation to determine rock characteristics, validate model assumptions and confirm reservoir feasibility.

Issue 3 - Water Quality

In the October 2019 USFS letter, there were two issues raised in respect of water quality.

The first issue was regarding the existing water quality model. Forest Service staff had difficulty reproducing or following the model/calibration parameters to discern potential water quality conditions within Lake Elsinore and had some unanswered questions about the modelling conducted.

The second issue raised related to water quality was associated with water quality impacts on the San Juan Creek watershed. Although LEAPS do not propose to release water to the San Juan Creek watershed, it is possible some discharge of water from Lake Elsinore into the San Juan Creek watershed could occur through spillage, emergency releases, spillway testing exercises, or other routine reservoir operations.

Resolution
1. Complete a working session with experts at USFS and LEAPS to review the model and

discuss any issues. If required, complete additional modelling or further clarify.

2. Conduct a study of potential impaired water release from Decker Canyon Reservoir into San Juan Creek Watershed and its potential to impact listed species and critical habitat.

Issue 4 - Construction in Inventoried Roadless Area (IRAs)

USFS has commented that TNHC's Study 23 lacks detail to confirm that it would not involve prohibited road construction or road reconstruction in the IRA.

Resolution
Provide further detail confirming potential road requirements within the IRA during construction and confirm what access will be required for longer term operations.

Issue 5 - Quino Checkerspot Butterfly (QCB) Spring Survey

Surveys were conducted in 2003, 2004, and 2005, which confirmed negative findings. A survey was also conducted in the spring of 2019 and no QCB were found. However, the Study Area for this survey was based on a preliminary habitat assessment conducted in September 2018 and was limited to the proposed electrical transmission line alignment north of Interstate 15.

Resolution
TNHC will consult with USFWS and undertake a revised spring 2022 survey for Quino Butterfly.

Issue 6 - Fire Study

The USFS has a fundamental concern that LEAPS could significantly increase the risk, impact, and potential of fire across the project transmission area, which is proposed within a very active and challenging wildland fire management zone.

Resolution
Conduct the Project Configuration Study identified in Issue 1 (above) and then revisit the evaluation of fire risk once the project configuration is confirmed.

Issue 7 - Recreational Study

The USFS had concerns that the original application failed to provide sufficient information of potential impacts to recreational activities that may result from the proposed project. On April 30, 2021, TNHC submitted a Recreational Study Work Plan to address identified deficiencies. During our meeting yesterday, USFS indicated that the proposed study plan addressed most of the questions being asked by the Forest Service related to the recreational impacts of the LEAPS Project. Of course, the impacts on recreation due to Transmission line construction and operation will be influenced by the project alternative selected in the study proposed in Issue 1 (above). We committed to undertaking the recreational study as proposed.

Resolution
Conduct the Project Configuration Study identified in Issue 1 (above) and then undertake the recreational study as proposed in TNHC submission of April 30, 2021 once the project configuration is confirmed.

Issue 8 - Visual Impacts

The Forest Service stated that Study 30 (filed by TNHC in February 2019) is of limited value to assess the visual impacts of LEAPS. The Forest Service is developing an independent assessment of LEAPS scenery impacts and consistency with scenery management objectives as TNHC's visual studies are inadequate to quantify these effects.

Resolution
Conduct the Project Configuration Study identified in Issue 1 (above) and then revisit the evaluation of visual impacts based on the alternative selected.

Issue 9 - Historical Resources

There is a significant amount of confusion and concern surrounding the efforts TNHC has undertaken for LEAPS to comply with Section 106 of the National Historic Preservation Act.

Resolution
Immediately set up a meeting with SHPO to introduce the new leadership team and discuss how to resolve the current impasse.