COUNTY OF RIVERSIDE

August 13, 2020

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A,
Washington, DC 20426

RE: **COUNTY OF RIVERSIDE COMMENTS ON SCOPING DOCUMENT 1 FOR LAKE ELSINORE ADVANCED PUMPED STORAGE PROJECT (P-14227-003).**

Dear Ms. Bose:

The County of Riverside ("County"), an Intervenor in this proceeding, appreciates the opportunity to provide the following comments on the Scoping Document 1 ("SD1") for the Lake Elsinore Advanced Pumped Storage Project (hereinafter referred to as "LEAPS project"). As previously advised, the County has many concerns regarding the pumped storage project and the 32 miles of 500kv transmission lines it would bring through the Cleveland National Forest, the community of Temescal Valley, and large areas of Multi-Species Habitat Preserve. Approval of the LEAPS project would bring major public impacts, including but not limited to dam safety issues, wildfire dangers, visual and public safety impacts from transmission lines, traffic and construction impacts, disturbance of sensitive habitat areas, and the possible destruction of California Native American sacred places and tribal cultural resources. All of such are foreseeable impacts to residents, businesses, and sovereign tribal governments in the unincorporated area of the County.

While the County understands that Federal Energy Regulatory Commission (FERC) staff was unable to conduct in-person, on-site scoping meetings due to COVID-19, the County is disappointed that FERC elected to only move forward with soliciting written comments on SD1. A quick review of the docket clearly shows that the LEAPS project is of significant concern to numerous State and Federal agencies, the County, the City of Lake Elsinore, the Pechanga Band of Luiseno Indians, numerous environmental groups, and residents of the County. For that reason, FERC should have conducted virtual scoping meetings via technology, as so many governmental agencies are doing right now, so that the surrounding community residents, as well as the County, the City of Lake Elsinore, and other concerned agencies could have had a meaningful opportunity to verbally provide their concerns and input on the LEAPS project.

As stated in SD 1, the scoping process is done "to ensure that all pertinent issues are identified and analyzed, and that the EIS is thorough and balanced." The County thanks FERC for taking the following comments on SD1 into its consideration so that the issues

and questions raised in this letter may be addressed in depth during the preparation of the Environmental Impact Statement under the National Environmental Policy Act (NEPA).

Purpose and Need of the LEAPS Project is Unclear

After reading SD1, it is unclear as to why the LEAPS project is needed at this time. NEPA requires a project proponent to create a statement that specifies the "underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 CFR 1502.13. While this "purpose and need" statement is presented as a simple statement under NEPA, in reality the statement sets the course of the project, the evaluation of the impacts of that project, and the development and analysis of sufficient alternatives to the project.

This is particularly important for the LEAPS project. As mentioned above several state and federal agencies, cities, environmental groups, and concerned citizens have commented on and been critical of the LEAPS project through the years. Additionally, the California Independent System Operator Corporation (CAISO), a nonprofit public benefit corporation that sets policies to ensure reliable performance of the electricity grid in California, has previously concluded that that LEAPS project was not needed for energy reliability as other options that were either already online or under development would be more than sufficient. Given the intense scrutiny and issues raised about the LEAPS project by numerous organizations, it is incumbent on FERC to provide a suitable discussion as to how and why a two billion dollar project with immense physical environmental impacts is needed or even desired.

The EIS should also discuss as part of the need for the project, the actual net energy that will be created by the LEAPS project. SD1 states that the LEAPS project would generate an average of 1,560,000 megawatt-hours of electricity annually. However, it is our understanding that substantial amounts of energy are required to pump the water from Lake Elsinore to the proposed 70-acre Decker Canyon upper reservoir that is to be constructed in the Cleveland National Forest. In fact, as drafted it is not clear any net energy would be created at all, and instead the project applicant would simply use cheaper electricity at off-peak prices to pump the water to the upper reservoir, in order to sell the generated energy during peak prices. The EIS should include some discussion at least as to how and why this benefits the ratepayer or enhances energy reliability – particularly in light of the cost and environmental damage inherent in the LEAPS project.

Scope of the Project Lacks Detail

SD1 lacks suitable detail as to the scope of the project itself. For example, Figure 2 of the scoping document appears to be at a 1 inch to 4 mile scale making it impossible to ascertain where the project will be located or the types of existing areas that may be impacted. More detail needs to be provided as to the project location, in a larger scale, that includes easily identifiable locational information such as parcel numbers, street

names, etc., so that all potentially impacted residents, businesses, and property owners are able to fully understand and comment upon the impact of the project. This includes potential construction impacts on both public and privately maintained roads.

Furthermore, this project has been ongoing for over a decade. Why did FERC not include at least some visual details or photosimulations in the scoping document as to the substations, conduit system, and transmission lines that will traverse roughly 32 miles within the impact area? While maybe such details are uncommon in a typical scoping document, the LEAPS proposed action is far from a typical project.

Clarity on the Proposed Environmental Measures (PEMs) is Needed

Given the complexity and resulting physical environmental impacts that this project will cause, additional detail on the various Proposed Environmental Measures (PEMs) must be included so that the public can fully understand the impacts of the project and how those impacts are proposed to be mitigated. In particular, the timing of the additional studies, programs/plans, and when additional consultation would occur are necessary for the public so the public can understand if additional restrictions or limitations would be placed on the project after the NEPA/CEQA process is complete, or if this will be the extent of the analysis. Moreover, when project applicants submit a basic series of PEMs, there is a tendency in an EIS to simply list these PEMs again as if they are valid design features or mitigation for impacts without illustrating how or why those measures would help reduce the project's impacts, creating a fundamental disconnect between the PEMs and the analysis. Please ensure this does not occur for this project.

Moreover, please see the additional comments raised on particular PEMs within Section 3.2.2 of SD1 below:

General

As currently written, it does not appear that there will be adequate monitoring of the project during construction. SD1 states the project would "obtain a qualified biologist or natural resource specialist to serve as an environmental construction monitor." This project is complex with substantial biological impacts occurring simultaneously within the Cleveland National Forest and the County. There would likely need to be a number of qualified monitors' onsite simultaneously – with authority to redirect and/or pause the development – in order to ensure this project is implementing all of the necessary design features, regulations, and mitigation that will be required for a project of this magnitude.

Geologic and Soil Resources

The PEM regarding erosion control needs further detail. SD1 discusses the need for an erosion control plan in order to "control erosion, stream sedimentation, dust, and soil mass movement including measures to revegetate disturbed areas with native plants." The EIS needs to include specific examples and details about this plan earlier

in the process, given its importance. Further, an erosion control plan is not likely the place to include measures related to stream sedimentation or revegetating the disturbed land with native plants, as these actions would likely entail their own separate plan with numerous detailed mitigation to illustrate how the project would reduce those particular impacts.

Aquatic Resources

The PEM regarding construction of access roads needs further explanation. It states the project would "build access roads at right angles to streambeds and washes to minimize impacts to water resources." How or why would that reduce the impacts to water resources? If such statements are included in the scoping document, then the document should provide at least some cursory discussion as to how or why that would be applicable.

This section discusses developing a detailed plan specifying the "activities, locations, methods, and schedule that the environmental construction monitor would use to monitor construction in aquatic and terrestrial environments." Similar to prior comments, this is a vague statement, yet covers a significant amount of actual activity that will have impacts on the surrounding community. This is the type of plan that should be discussed and analyzed in the EIS in great detail given its importance, as opposed to pushing it out to a later date after the NEPA and CEQA process may have concluded.

Terrestrial Resources

While the terrestrial resources section of the scoping document contains greater detail related to the studies and consultation, the section still needs further detail and explanation as some of it appears to be misleading and inadequate as to identification of species impacts and mitigation. The section related to restricting construction and survey to the pre-defined project footprint seems misleading as a PEM because any project would typically be restricted to their project boundaries and parameters as the project was evaluated in the EIS.

The section discusses the preparation of a habitat mitigation plan with the US Forest Service, Department of the Interior, California Department of Fish and Wildlife, and Riverside County to "identify appropriate mitigation of habitat losses." This also appears to be a misleading PEM, as how would a project make it through the NEPA process – and certainly through any subsequent CEQA process likely to be required – if these impacts were not already "identified" and analyzed and the "appropriate mitigation" already incorporated into the documentation?

The terrestrial project includes a discussion related to the development of a plan to prevent and control the introduction and spread of noxious weeds and exotic plants. Similar to prior comments, this potential impact must be thoroughly evaluated in the EIS given the importance of the projects location and the sheer distance in the area of potential effect.

The County and the Riverside County Flood Control and Water Conservation District filed a joint motion to intervene (See FERC eLibrary Accession No. 20190920-5007) and raised the comment that the project would be located within the Riverside County Multiple Species Habitat Conservation Plan (MSHCP). SD1 references the MSHCP and the need for "additional preconstruction special-status plant and wildlife surveys at transmission line tower sites and along transmission alignment access roads". However, surveys alone would not ensure consistency with the MSCHP. Since this project is not a covered activity within the MSHCP, it is likely the project will require a separate Section 7 Consultation and Biological Assessment with the U.S. Fish & Wildlife Service.

Threatened and Endangered Species

Further detail, analysis and mitigation as to impacts to threatened and endangered species must be included in the EIS. Section 3.2.2 of SD1 discusses specific surveys for various species (e.g. Quino Checkerspot butterfly, Stephen's kangaroo rat). This is a positive recognition as to the types of direct impacts the applicant's proposed action would cause. However, under the same heading in the cumulative impacts section, there is a blanket statement about the need to study the effects on a multitude of listed endangered and threatened species (e.g. southern California steelhead, Munz's onion, San Diego ambrosia, least Bell's vireo, coastal California gnatcatcher, etc.). This begs the question as to why have roughly 19 listed endangered and threatened species identified under the cumulative impact section, and only four species under Section 3.2.2?

There are concerns regarding impacts to vernal pools. SD1 discusses the restoration of "disturbed vernal pool habitat". As avoidance is the preferable option for vernal pools, is the project suggesting it will restore existing habitat that is already disturbed? Or will the project itself be the disturbance? This needs to be clarified in the scoping document and evaluated in detail in the EIS.

Recreation and Land Use

SD1 references the acquisition and modification of the existing Santa Rosa [Mountain] Villas for the construction of the Santa Rosa powerhouse site. Given the County's housing needs, this is a concern for the County and the first time that such acquisition has been suggested. What if the property owner is unwilling to sell? As a for profit operation by a private entity, this does not appear to be the type of project where eminent domain would be appropriate. Moreover, the multi-family residences at the Santa Rosa [Mountain] Villas have been identified in our new Lakeland Village Community Plan as high density residential units, surrounded by mixed use area properties. Therefore, an assessment as to how this project would impact the community plan, as well as our state mandated Housing Element and Regional Housing Needs Allocation (RHNA) numbers, would be necessary in the EIS. Further, SD1 discusses the option of retaining the villas in a vacant condition "and return [the villas] to the regional housing inventory upon completion of construction to address

potential effects on residents during construction." How is displacing people from their existing homes going to be an improvement over the construction impacts that may occur? And if this is accurate, what kind of operational impacts would now occur to those properties, as it would be entirely inappropriate to argue the baseline condition would now be a vacant property.

Cultural Resources

What level of consultation with the impacted Tribes would occur as part of this project? This discussion should be included as a PEM.

This area of Riverside County is within the Ancestral territory of the Luiseno people and a place with religious and cultural significance to our sovereign Tribal Government neighbors. It is imperative that FERC consult with Riverside County Tribal Governments in order to ensure tribal cultural resources, sacred sites, and historic properties are identified and evaluated as required by Federal law. In addition to properly identifying resources that may be affected by the Project, FERC must also require appropriate studies to be completed before project approval to analyze the impacts the LEAPS project will have on places of cultural and religious significance to California Native American tribes. Further, a proper analysis during these proceedings would assist with the CEQA review for the project.

Aesthetic Resources

As discussed in the prior motion to intervene (See FERC eLibrary Accession No. 20190920-5007), the project will create a permanent visual impact throughout the County. While the PEM discusses the creation of a scenery conservation plan, there is little that can be done to achieve consistency with "high scenic integrity objectives" when it comes to above-ground power poles, transmission lines, and the prominent water conduit system connecting the water from Lake Elsinore to the proposed Decker Canyon reservoir. Therefore, the EIS will need to include a sufficient analysis of all of the potential permanent visual impacts this project will cause within the National Forest and the impacted counties. The impacts of large transmission towers in very close proximity to a major interstate highway route, and on existing communities, needs to be thoroughly analyzed, addressed, and mitigated.

<u>Additional Resource Impacts that Must Be Analyzed</u>

The PEMs and scoping document overall appears to be missing some rather key potential impacts.

- **Fire Impacts**

  It's unclear how we can have a project with 32 miles of 500 kV transmission lines crossing miles of open space with zero PEMs or discussion about fire

impacts, aside from a basic statement in the cumulative effects section. The LEAPS project is proposed to a Very High Fire Risk area, as identified by the California Department of Forestry and Fire Protection (CalFire). Clearly California's recent past has shown fire and power lines to be intricately linked and SD1 should be redrafted to include a more robust discussion on this issue so the public can appropriately comment on this potentially devastating impact to the project's surrounding communities.

- **Traffic and Construction Impacts**

Given the size and scale of the proposed action, impacts during construction – particularly traffic impacts – are likely to be substantial. The PEMs refer to the need to develop and implement safety plans during construction. However, there is a lack of overall discussion and detail as it relates to construction impacts, in particular to the Lakeland Village area. The EIS needs to evaluate and discuss how the project will mitigate for inevitable road and lane closures that would occur, particularly with the construction of the Santa Rosa Powerhouse and the associated water tunnels. Furthermore, will the project applicant utilize Highway 74 predominately for the construction of the upper Decker Canyon Reservoir? What level of material will need to be delivered to the site and what level of cut and fill will be required in order to build a 70-acre surface area reservoir that can hold upwards of 5,972 acre-feet of water?

Joint CEQA/NEPA Document Should be Prepared

Given the scope of the project and the required approvals from local and state agencies, why is FERC processing only a NEPA compliance document as opposed to a joint document implementing both NEPA and the California Environmental Quality Act (CEQA) standards? While at times an EIS may be appropriate and can "stand in" for the future CEQA document; such a procedure here, given the complexity of the project and the level of environmental impacts that would occur, is inappropriate. The fundamental error to this approach is that the potential for detailed evaluation of mitigation measures that would be binding under the CEQA process will now be pushed to a later date – or sidestepped altogether as was already attempted by the project applicant in 2011, arguing that the EIS sufficiently evaluated the impacts under CEQA and therefore an Environmental Impact Report (EIR) under CEQA was not required. The number one requirement for the use of a NEPA document in lieu of an EIR is whether or not that document satisfies all of the requirements of CEQA. State CEQA Guidelines section 15221. In order for an EIS to be utilized under CEQA, the NEPA document must satisfy CEQA's content standards for an EIR. Given the recent federal changes relating to the Council on Environmental Quality's NEPA regulations, it is unlikely that any EIS for a project of this complexity would be sufficient alone to meet the CEQA standards as the changes to the NEPA regulations have no binding effect on CEQA. It is unlikely that any state or local agency will allow the use of the NEPA document alone in order to approve

any subsequent agency approvals needed, and would require a new CEQA document – likely an Environmental Impact Report - be created.

Studies Should Not be Deferred

The provided PEMs discuss a number of options, including what appear to be a number of additional studies and plan/programs. Although that may be suitable depending on the study or the potential impact on the environmental resource, the County is concerned that the project applicant will attempt to reduce the scope of analysis by inappropriately deferring studies, analysis, and mitigation to a later date without the benefit of public review and thus reducing the opportunity for informed decision-making on the part of FERC. Therefore, while the County appreciates the need for these studies and consultations identified in the scoping document, these are studies and consultations that need to occur prior to any FERC approvals in order to inform the public and the multitude of federal, state, tribal, and local agencies, and non-governmental organizations (NGOs) that will review and comment on this EIS.

Multiple Project Alternatives Should be Analyzed

The scoping document states that the EIS will evaluate (1) the no project alternative; (2) the applicant's proposed action; and (3) "alternatives to the proposed action." The scoping document does not provide any indication of what those other alternatives may be or how many. Under NEPA, a reasonable alternative would be any action that could fulfill the purpose and need of the proposed action. This is why greater detail regarding the project's purpose and need must be provided in the scoping document in order to allow the various public agencies, Tribes, NGOs, and the general public to suggest reasonable alternatives to the proposed project. Given the CAISOs findings regarding the lack of need for the proposed action, the EIS must have a robust discussion of other alternatives that would satisfy the State's needs for enhanced reliability of energy, while reducing the significant level of impact this project would cause. For this reason alone it appears a second scoping document should be issued so the public can provide meaningful feedback as it relates to the alternatives analysis; lacking that information will unduly limit the reasonable range of project alternatives that are ultimately analyzed in the EIS.

Conclusion

The LEAPS project could lead to major public impacts, including but not limited to, dam safety issues, wildfire dangers, visual and public safety impacts from transmission lines, traffic and construction impacts, and disturbance of sensitive habitat areas. All of which are foreseeable impacts to residents and businesses in the unincorporated area of the County. While the LEAPS project purports to have statewide energy benefits, the

environmental impacts, potentially detrimental and long lasting, are at the local level and will be borne by the residents of Riverside County. Therefore, it is important that all environmental and public service impacts are satisfactorily analyzed and mitigated in an open and transparent process with ample public review, comment and outreach.

The County thanks FERC for considering its comments and questions on SD1 during the preparation of the EIS. Please do not hesitate to reach out to Assistant County Executive Officer – TLMA Director Juan C. Perez at (951) 955-6742 should you wish to discuss this letter. The County looks forward to working with FERC and the project applicant throughout the EIS process.

Sincerely,

Supervisor V. Manuel Perez, Chairman
Riverside County Board of Supervisors