



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board



Arnold Schwarzenegger
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Executive Office

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October 1, 2009

Peter Lewandowski, President
The Nevada Hydro Company, Inc.
2416 Cades Way
Vista, CA 92083

Ronald E. Young, General Manager
Elsinore Valley Municipal Water District
P.O. Box 3000
Lake Elsinore, CA 92531

Dear Messrs. Lewandowski and Young:

DENIAL OF REQUEST FOR WATER QUALITY CERTIFICATION FOR LAKE ELSINORE ADVANCED PUMPED STORAGE PROJECT, FEDERAL ENERGY REGULATORY COMMISSION NO. 11858

By letter dated January 21, 2009, The Nevada Hydro Company (TNHC) and its co-applicant, the Elsinore Valley Municipal Water District (EVMWD) requested water quality certification pursuant to section 401(a)(1) of the Federal Clean Water Act (33 USC § 1341 et seq.) for the proposed Lake Elsinore Advanced Pumped Storage (LEAPS) Project, Federal Energy Regulatory Commission (FERC) No. 11858. The January 21, 2009 request was the fifth request for water quality certification; the first request was received on March 11, 2005.

In taking a certification action, the State Water Resources Control Board (State Water Board) must either: 1) issue an appropriately conditioned water quality certification, or 2) deny certification. (Cal. Code Regs., tit. 23, § 3859.) A water quality certification may be issued if it is determined that there is reasonable assurance that an activity is consistent with state and federal water quality standards and that the appropriate environmental documents have been adopted to support certification and meet requirements of the California Environmental Quality Act (CEQA). However, when compliance with water quality standards is not yet determined or if an application suffers from a procedural inadequacy, the State Water Board must deny certification without prejudice. (Cal. Code Regs., tit. 23, § 3837, subd. (b)(2) and § 3838, subds. (b) and (c).)

On April 16, 2009, the California Public Utilities Commission (CPUC), acting as lead agency under CEQA, dismissed an application¹ from TNHC without prejudice, and in so doing, the CPUC discharged its obligation to prepare a final CEQA document for LEAPS. When deciding whether to dismiss the application, the CPUC found that the application lacked a proper environmental assessment and TNHC failed to provide an accurate description of the project. CEQA guidelines define the lead agency as any public agency that has the principal responsibility for carrying out or approving a project.

¹ TNHC applied to the CPUC on October 9, 2007 for a Certificate of Public Convenience Necessity for the Talega-Escondido / Valley Serrano 500-Kilovolt Interconnect portion of the LEAPS project.

California Environmental Protection Agency

(Cal. Code Regs., tit. 14, § 15367.) EVMWD appears to be the appropriate new lead agency per these guidelines. If EVMWD disputes its obligation as lead agency, the State Water Board recommends EVMWD submit the dispute to the Office of Planning and Research to make a lead agency determination. (Cal Code Regs., tit. 14, § 15053.)

Issuance of a water quality certification is a discretionary action that requires the State Water Board to comply with the CEQA. The State Water Board must be provided with and have ample time to properly review a final copy of valid CEQA documentation before issuing a certification. (Cal. Code Regs., tit. 23, § 3856, subd. (f).) A final and valid CEQA document has not been issued for the LEAPS project and therefore, you are hereby notified that your January 21, 2009 request for water quality certification is denied without prejudice. The denial without prejudice is issued for procedural rather than substantive reasons, and carries with it no judgment on the technical merits of the activity.

The State Water Board will consider another application for water quality certification if TNHC and EVMWD can demonstrate that a final CEQA document will be prepared for the LEAPS project. If you have any questions on this matter, please contact Tristan Leong in the Water Quality Certification Program of the Division of Water Rights at (916) 322-8469 or at TLeong@waterboards.ca.gov.

Sincerely,

*ORIGINAL SIGNED BY
THOMAS HOWARD FOR*

Dorothy Rice
Executive Director

cc: Magalie R. Salas, Secretary
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