



February 6, 2018

Chairman Kevin McIntyre
Federal Energy Regulatory Commission (FERC)
Washington, D.C. 20426

Dear Chairman McIntyre

RE: FERC must disregard the January 23, 2018, Hatch-Lee congressional correspondence regarding the Lake Powell Pipeline Project (FERC Project No. 12966). The Hatch-Lee correspondence attempts to bully FERC into inappropriately approving the entire pipeline based purely on non-truths and lies by omission.

On January 23, 2018, Senator Orrin Hatch, Senator Mike Lee, Representative Rob Bishop and others filed correspondence with FERC asking that “FERC honor basic principles of fairness” and “issue a declaratory order finding that its licensing jurisdiction over the [Lake Powell Pipeline] Project under the FPA [Federal Power Act] includes the entirety of the Hydro System, including the penstock alignments.” The Hatch-Lee correspondence seeks to support the Utah Board of Water Resources’ and Washington County Water Conservation District’s December 27, 2017, Petition for Declaratory Order to FERC. The Petition was filed in an attempt to avoid FERC’s official determination that FERC can only authorize power production facilities instead of the entire pipeline.

The Hatch-Lee correspondence states,

“This project is of vital importance to Southwest Utah with a time-critical need for addition water resource.”

This is a hyperbolic lie by omission.

The pipeline is not necessary. The largest city in Southwest Utah, St. George, faces dwindling future water supplies owing to its uncontrolled, unsustainable growth that has already nearly destroyed the local Colorado River tributary, the Virgin River. St. George has the highest per capita water consumption rate for desert cities in the U.S. St. George uses twice as much water per capita as Phoenix.

Former Utah Division of Water Resources Director Dennis Strong has stated that St. George can meet their water needs and continue to grow if they simply use their zoning laws to limit and control water use. According to Director Strong, if St. George does so, they will “eliminate” the need for the Lake Powell Pipeline Project. Specifically, on February 9, 2016, Director Strong said,

“ Community by community, people should make their positions clear and move to have their zoning laws limit use and defined landscapes. If this is what you choose than local community leaders will not need water for growth. They will not need water for future needs. Their water needs will be met by present supplies. And

that will mean that they will not purchase water from the water district and the Lake Powell Pipeline Project will be delayed or eliminated.”¹

In 2015, the Bureau of Reclamation reported that the “The Basin Study confirmed that, absent future action, the Basin faces a wide range of plausible future long-term imbalances between supply and demand. This imbalance, computed as a 10-year running average, ranges from no imbalance to 6.8 million acre-feet (MAF) with a median of 3.2 MAF in 2060 ” And further, “Based on the approximately 100-year record of Colorado River natural flow, the apportioned right to use water in the Basin exceeds the long-term annual average yield of 16.4 million acre-feet (MAF)”²

In 2017, Colorado State University Colorado Water Institute Senior Water and Climate and Research Scientist Brad Udall and University of Michigan School for Environment and Sustainability Dean Jonathan Overpeck summarize the Colorado River’s perilous situation:

“Using simple but strong relationships derived from hydrology models, which were buttressed by observations, we and our colleagues calculated how river flows are affected by higher temperatures warming could reduce water flow in the Colorado by 20 percent or more below the 20th-century average by midcentury, and by as much as 40 percent by the end of the century.”³

The removal of another 86,000 acre-feet of water from the already over-allocated Colorado River will only further damage the Lower Colorado River and hurt Nevada, California and Arizona.

The Hatch-Lee correspondence states,

“The State of Utah has invested over \$34 million preparing and submitting a comprehensive license application ”

The State of Utah’s wasting of large sums of public money to date is not FERC’s fault or FERC’s responsibility.

As the Salt Lake City Tribune recently reported,

“If you’re hoping to understand Utah’s drive to build the massive Lake Powell pipeline and what it might cost you, don’t start with the state’s explanation of it all to the U.S. government.

The thousands of pages Utah produced to justify the 140-mile, multibillion-dollar pipeline from Lake Powell to water districts in two southwestern Utah counties are inscrutable to most involved — the project’s opponents, government regulators, and even some of the people who wrote the documents

Indeed, records obtained by The Salt Lake Tribune indicate those state documents — prepared at a cost of more than \$33 million — were part of a decade long ordeal for the engineers who produced them, particularly in the final months as they feverishly sought to correct years of procrastination and disarray.⁴

¹ https://www.youtube.com/watch?v=oY_KXDS6hbQ&feature=youtu.be

² Colorado River Basin Stakeholders *Moving Forward* to address Challenges identified in the Colorado River Basin Water Supply and Demand Study, Phase 1 Report: Executive Summary, Bureau of Reclamation, May 1, 2015, <https://www.usbr.gov/lc/region/programs/crbstudy/MovingForward/Phase1Report/fullreport.pdf> .

³ Udall, B., & Overpeck, J. (2017). The twenty-first century Colorado River hot drought and implications for the future. *Water Resources Research*, 53(3), 2404-2418. DOI: 10.1002/2016WR019638.

⁴ “Utah spent \$33 million on a pipeline application it never finished. The Feds approved it anyway,” Emma Penrod, Salt Lake Tribune, January 28, 2018.

The Hatch-Lee correspondence states,

“ multiple statements from the [FERC] Commission since 2008 that the portions of the water pipeline that are also the penstocks for the generating facilities are subject to its jurisdiction...”

This is a lie by omission as Hatch-Lee attempt to force FERC’s approval of the entire pipeline.

Hatch-Lee ignore the fact that FERC issued the preliminary permit for the Lake Powell Pipeline project “for these [hydropower] developments alone, and not for the Lake Powell Pipeline”⁵ And further, “[a]ny eventual license issued by the Commission would be limited to the discrete hydropower developments along the Lake Powell Pipeline, and would not encompass the entire pipeline.”⁶

Hatch-Lee also ignore FERC’s May 17, 2012, Order Denying Request for Rehearing and Clarification in Wyco Power and Water, Inc.’s Regional Watershed Supply Project involving transfer of water from the Green River Basin in Wyoming to Colorado. In Wyco, FERC says, “Commission staff clarified to Wyco that because the Commission would only license the proposed hydropower developments, which are discrete components of the 501-mile-long water conveyance pipeline, construction of substantial portions of the overall project may require authorization from other federal agencies.”⁷

FERC’s Wyco Order Denying Request for Rehearing and Clarification is right on point for the Lake Powell Pipeline where FERC states,

“Moreover, we note that Wyco’s permit application is overly broad because it presumes the Commission would issue a license for a 501-mile-long water supply pipeline. While the Commission regularly licenses discrete hydropower developments within substantial water conveyance systems, it has long been the Commission’s practice not to license the entire water conveyance system itself. See, e.g., *Metropolitan Water District of Southern Calif.*, 4 FERC ¶ 61,064 (1978) (asserting jurisdiction over hydropower developments along the 242-mile-long Colorado River Aqueduct, a water conveyance system that carries water from the Colorado River to Southern California, but not licensing the entire water conveyance system); *Calif. Dept. of Water Resources*, 51 F.P.C. 529, 533-35 (1974) (finding the Commission would only license those facilities that were “actually constructed for power purposes” within the California Aqueduct, a 475-mile-long water conveyance system that carries water from near San Francisco to the Los Angeles area).”⁸

In addition, Hatch-Lee fail to mention two other critical facts in their attempt to bully FERC: (1) Utah Board of Water Resources and Washington County Water Conservation District have failed to provide FERC with a financing plan to pay for the pipeline as requested by FERC, and (2) the water that Utah proposes to transport from Lake Powell to St. George through the Lake Powell pipeline has not been legally secured, nor has it been proven to exist beyond on paper.

⁵ Wyco Power and Water, Inc., FERC Project No. 14263-001, Order Denying Request for Rehearing and Clarification, 139 FERC ¶ 61,124, May 17, 2012, Page 5, Paragraph 11.

⁶ Ibid., Also citing, *Metropolitan Water District of Southern Calif.*, 4 FERC ¶ 61,064 (1978); *Calif. Department of Water Resources*, 51 F.P.C. 529, 533-35 (1974).

⁷ Wyco Power and Water, Inc., FERC Project No. 14263-001, Order Denying Request for Rehearing and Clarification, 139 FERC ¶ 61,124, May 17, 2012, Page 2, Paragraph 3.

⁸ Wyco Power and Water, Inc., FERC Project No. 14263-001, Order Denying Request for Rehearing and Clarification, 139 FERC ¶ 61,124, May 17, 2012, Page 4, Footnote 6.

FERC has repeatedly asked the State of Utah to study the pipeline's potential economic impact but the financial analysis is still missing. The Salt Lake Tribune reports:

"If state officials are feeling spooked, it could be because their application is arguably still incomplete — and because one of its major omissions is Utah's vanished analysis of whether it can actually afford the project."

Among the application's biggest omissions: details on Utah's ability to pay for the project, estimated to cost \$1.4 billion-plus.

Federal regulators have repeatedly asked Utah to study the pipeline's potential economic impact, for taxpayers statewide and especially for residents of Washington and Kane counties, who stand to pay for the pipeline's water.

Most recently, FERC pointedly asked the state to provide an estimate of how the pipeline's cost "would be allocated among existing and new water users, including the likely impacts on user costs."

Though officials with the Division of Water Resources spent much of 2017 filing new versions of the reports FERC requested, the third-party financial analysis is still missing

Millis [Utah Division of Water Resources Director Eric Millis] now says that he does not expect to see a completed financial analysis anytime soon — and that the state considers the FERC license application to be complete without it. ..."⁹

Negotiations between the Bureau of Reclamation and the State of Utah are ongoing regarding the exchange of water taken from the Flaming Gorge Reservoir for water to be taken from Lake Powell. These negotiations have no conclusion date.

On November 27, 2017, the Bureau of Reclamation announced that "The Bureau of Reclamation and State of Utah are initiating negotiations for a water exchange contract, which proposes exchanging the state's assigned Green River water right for use of Colorado River Storage Project water released from Flaming Gorge Dam."¹⁰ And on January 18, 2018, Bureau of Reclamation announced that they "are continuing negotiations for a water exchange contract."¹¹ Neither a contract between Bureau of Reclamation and the State of Utah for "EXCHANGE OF WATER GREEN RIVER BLOCK,"¹² nor a contract between Bureau of Reclamation and the State of Utah for "EXCHANGE OF WATER LAKE POWELL PIPELINE"¹³ can be finalized within less than a prolonged period of time.

Both draft contracts resulting from these negotiations recognize that "[u]nder Section 14 of the Reclamation Project Act of 1939, (43 U.S.C. § 389), the Secretary is authorized to "enter into such contracts for exchange of water [or] water rights as in his judgment are necessary

⁹ "Utah spent \$33 million on a pipeline application it never finished. The feds approved it anyway," Emma Penrod, Salt Lake Tribune, January 26, 2018.

¹⁰ News Release, "Reclamation Continues Water Exchange Negotiation with State of Utah for Lake Powell Pipeline, Bureau of Reclamation, November 27, 2017, <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=61018>

¹¹ News Release, "Reclamation Continues Water Exchange Negotiation with State of Utah for Lake Powell Pipeline, Bureau of Reclamation, January 11, 2018, <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=61323>

¹² Contract No. 17-WC-40-655, Technical DRAFT 10/30/2017, United States of America Department of the Interior Bureau of Reclamation Colorado River Storage Project Flaming Gorge Storage Unit Contract for Exchange of Water Green River Block between the United States of America and the State of Utah, https://www.usbr.gov/uc/provo/pdf/GreenRiver_ExchangeContract_V2.pdf

¹³ Contract No. 17-WC-40-656, Technical DRAFT 12/04/2017, United States of America Department of the Interior Bureau of Reclamation Colorado River Storage Project Flaming Gorge Storage Unit Contract for Exchange of Water Lake Powell Pipeline between the United States of America and the State of Utah, https://www.usbr.gov/uc/provo/pdf/LPP_ExchangeContract_V2.pdf

and in the interests of the United States.” It is not in the interests of the United States to cause further harm to the Colorado River.

Please contact us if we can answer any further questions regarding Senator Orrin Hatch, Senator Mike Lee, Representative Rob Bishop and others attempt to bully FERC into providing approval for the unnecessary and abusive Lake Powell Pipeline. Please contact Dr. Robin Silver, Center for Biological Diversity via mail: P.O. Box 1178, Flagstaff, AZ 86002; by phone: 602-799-3275; by FAX: 928-222-0077; or by email: rsilver@biologicaldiversity.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Silver", with a stylized flourish at the end.

Robin Silver, M.D.
Co-founder and Board Member
Center for Biological Diversity

cc: Lake Powell Pipeline FERC Project No. 12966 Service List