

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Utah Board of Water Resources

Lake Powell Pipeline Project

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Project No. P-12966-000

Project No. P-12966-004

NOTICE OF INTERVENTION,
OR, IN THE ALTERNATIVE, MOTION TO INTERVENE, OF
THE COLORADO RIVER WATER CONSERVATION DISTRICT

Pursuant to Rule 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 CFR § 385. 214, and the Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions,” (Dec. 11, 2017), as modified by the “Notice Suspending Procedural Schedule” (Jan. 11, 2018), the Colorado River Water Conservation District (“River District”) hereby files this Notice of Intervention, or in the alternative, Motion to Intervene in the above-captioned proceeding as follows:

I. Filing Party/Contacts

All correspondence and filings related to this proceeding should be addressed to the following individuals:

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II. Timeliness of Intervention

On December 11, 2017, the Commission noticed the Application of the Utah Board of Water Resources (“UBWR”) for the Lake Powell Pipeline Project, Project No., 12966-004. In the “Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions,” (Dec. 11, 2017), the Commission set a deadline to intervene in this proceeding of 60 days following the issuance of the Notice. However, the Commission modified the intervention deadline in its “Notice Suspending Procedural Schedule” (Jan. 11, 2018), to 60 days after issuance of a Commission decision on UBWR’s then pending Petition for Declaratory Order. The Commission issued its Order Denying Petition for Declaratory Order on Jurisdiction on September 20, 2018. Accordingly, this Notice of Intervention is timely pursuant to Rule 210 of the Commission’s Rules of Practice and Procedure. 18 CFR § 385.210.

III. Notice of Intervention

Pursuant to Rule 214(a)(2), 18 CFR § 385.214(a)(2), “any state fish and wildlife, water quality certification, or water rights agency” becomes a party to a proceeding by timely filing a

¹ Designated to receive service in accordance with Rule 210 of the Commission’s Rules of Practice and Procedure, 18 CFR § 385.210 (2014).

notice of intervention. The River District is a political subdivision of the State of Colorado, expressly created and chartered by the Colorado General Assembly to be “an appropriate agency for the conservation, use and development of the water resources of the Colorado River and its principal tributaries in Colorado.” Colo. Rev. Stat. § 37-46-101. Accordingly, the River District hereby files this Notice of Intervention in order to confirm its intervention and to attain party status in this proceeding.

IV. In the Alternative, Motion to Intervene

If the Commission for any reason does not accept the River District’s Notice of Intervention pursuant to 18 CFR § 385.214(a)(2) as sufficient to establish its intervenor status, the River District in the alternative hereby moves for intervention pursuant to 18 CFR § 385.214(a)(3), and in support thereof states as follows:

As set forth above, this Motion is timely pursuant to Rule 210 of the Commission’s Rules of Practice and Procedure. 18 CFR § 385.210.

Through its Application, UBWR seeks approval of a pipeline which would deliver water derived from the Colorado River and its tributaries and stored in Lake Powell to Sand Hollow Reservoir for eventual distribution to municipal and industrial water customers in Washington County, Utah. The State of Colorado and the State of Utah are parties to the Colorado River Compact (“Compact”). Colo. Rev. Stat. § 37-61-101. Both the State of Colorado and the State of Utah are “States of the Upper Division” as that term is defined in the Compact. Colo. Rev. Stat. § 37-61-101 (Art. II(c)). The waters of the Colorado River system are apportioned between the Upper Basin and the Lower Basin, as those terms are defined in the Compact. Colo. Rev. Stat. § 37-61-101 (Art. II(f & g)). The waters of Lake Powell, as well as the waters of the Colorado River system in the State of Colorado, are all located in the Upper Basin of the

Colorado River system, upstream of Lee Ferry². Both the State of Colorado and the State of Utah are also parties to the Upper Colorado River Compact. Colo. Rev. Stat. § 37-62-101. Pursuant to the Upper Colorado River Compact, the waters of the Upper Basin are apportioned between the states of Colorado, New Mexico, Utah and Colorado. Colo. Rev. Stat. § 37-61-101 (Art. III). Water from the Lake Powell Pipeline Project would be delivered to Washington County, Utah. Waters of the Colorado River System within Washington County, Utah, are entirely within the Lower Basin of the Colorado River. Accordingly, the transfer of water out of the Upper Basin for use in the Lower Basin of the Colorado River, as is contemplated by this project, raises issues of fact and law under the Compact, the Upper Colorado River Compact, and related documents, which together create the “Law of the River.”


The River District is a political subdivision of the State of Colorado statutorily charged with the conservation, use, and development of water resources of the Colorado River in Colorado, is a water policy and planning agency for the Colorado River Basin within the state of Colorado, and is statutorily granted “such powers as may be necessary to safeguard for Colorado, all waters to which the state of Colorado is equitably entitled under the Colorado river compact.” C.R.S. 37-46-101. In addition thereto, the River District is obligated to promote the welfare of its inhabitants. *Id.* The River District has a direct and substantial interest in this proceeding, to ensure that the proposed pipeline project does not harm the water resources in the Colorado River Basin and the Upper Basin within the state of Colorado and the River District’s inhabitants. The River District’s interests cannot be adequately represented by any other party. Further, the participation of the River District in this proceeding is in the public interest, all as set forth in greater detail in Colorado law.

² The location of the point of division between the Upper Basin and the Lower Basin is named in the Compact as Lee Ferry. The location is presently known as Lees Ferry.

WHEREFORE, the River District respectfully submits this Notice of Intervention or, in the alternative, requests that the Commission grants it Motion to Intervene in this proceeding.

Respectfully submitted this 14th day of November, 2018.

DIETZE AND DAVIS, P.C.

By: 
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CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of November, 2018, caused to be served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-service and/or by depositing in the U.S. Mail with first class postage affixed as follows:

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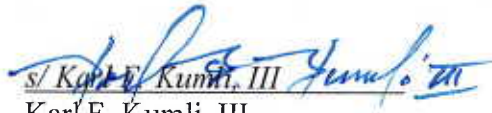
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