

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

<b>Eagle Crest Energy Company</b>	)	
	)	<b>Project No. P-13123-031</b>
<b>Eagle Mountain Pumped Storage</b>	)	
<b>Hydroelectric Project</b>	)	

**NATIONAL PARKS CONSERVATION ASSOCIATION  
MOTION TO INTERVENE AND OPPOSITION TO APPLICATION  
FOR AMENDMENT OF LICENSE**

**I. INTRODUCTION**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, .214, the National Parks Conservation Association (“NPCA”) submits this Motion to Intervene and Opposition to Application for Amendment of License (“Amendment Application”) in the above-referenced Docket Number P-13123-031 for Eagle Crest Energy Company’s (“Eagle Crest”) Eagle Mountain Pumped Storage Hydroelectric Project (“Project”). Eagle Crest’s Amendment Application, filed on October 12, 2022, proposes material changes to the Project, and these changes could have significant ecological impacts. On behalf of its members and the general public, NPCA seeks to intervene to address the complex legal and environmental challenges raised by Eagle Crest’s Amendment Application.

The changes Eagle Crest proposes will infringe on sensitive desert dry wash woodland habitat, impact threatened species, and encroach on land currently proposed for development for a neighboring solar project. NPCA and its members have substantial interests in preserving the

desert habitat and groundwater aquifers, protecting threatened species, and preventing wilderness degradation, all of which may be adversely affected by the proposed Project. NPCA has also filed a still-pending challenge to the Project before the Interior Board of Land Appeals, which could disrupt the Project's legal viability by invalidating its amendment to the Desert Renewable Energy Conservation Plan.

The Commission should permit NPCA to intervene to represent the public interest and the interests of its members, which are not currently represented by other parties to the proceeding. And, because the proposed changes raise significant and unexamined environmental impacts from a Project that is also threatened by an unresolved legal challenge, the Commission should deny Eagle Crest's Amendment Application.

## **II. COMMUNICATIONS**

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## **III. MOTION TO INTERVENE**

### **A. Factual background**

The Commission first issued Eagle Crest a license to construct and operate the Project in 2014, despite significant concerns from both government agencies and the public about the Project's ecological impacts. *See Eagle Crest Energy Company*, 147 FERC 61220 (2014). Since then, as far as NPCA is aware, the Project has been unable to secure a power-purchase

agreement or long-term funding, and has repeatedly missed deadlines to begin construction. The Commission has granted Eagle Crest a series of deadline extensions to begin work on the Project. *See Nat'l Parks Conservation Ass'n v. FERC*, 6 F.4th 1044, 1047-48 (9th Cir. 2021). Eagle Crest recently requested, and the Commission granted, the last extension to which it is entitled under the Federal Power Act and America's Water Infrastructure Act of 2018. *Eagle Crest Energy Co.*, No. 13123-002 (FERC issued Apr. 12, 2022).

The Project will adversely affect the Chuckwalla Area of Critical Environmental Concern, the "most outstanding representative of the Colorado Desert in California with a full complement of characteristic wildlife and plant species." *See* U.S. Bureau of Land Management, *Desert Renewable Energy Conservation Plan – Land Use Plan Amendment, App. B (Colorado Desert Subregion)*, at 144 (Sept. 14, 2016). The Fish and Wildlife Service has designated the "entire area" as critical habitat for the threatened desert tortoise, and states that it "contains areas of exceptional desert tortoise densities, the highest known in the Sonoran Desert." *Id.* The flora are among the "most botanically diverse" in the California desert, with "158 plant species including several species found nowhere else." *Id.* The area is the "most important habitat" for burro deer and the "best remaining habitat" in California for endangered Sonoran pronghorn antelope, which the Fish and Wildlife Service plans to reintroduce to the region. *Id.*

Eagle Crest's most recent request to the Commission, the Amendment Application, proposes two changes to the Project. First, the Amendment Application seeks to revise the Project boundary to accommodate a relocation of the Project's principal transmission ("gen-tie") line. Amendment Application Initial Statement at 1. Second, the Amendment Application seeks to remove the Red Bluff substation, owned by Southern California Edison, from the Project boundary. *Id.* at 1-2.

Though Eagle Crest claims in the Amendment Application that the “proposed transmission path would deviate very little from the existing transmission line corridor,” *id.* at 3, the proposed re-route would increase the length of the transmission line by 1.2 miles and bring 75 acres of new lands within the Project boundary, Amendment Application Attachment 3 at 19; Amendment Application Initial Statement at 4. The new transmission line right-of-way would traverse land classified by the California Department of Fish and Wildlife as desert dry wash woodland, a habitat type that Eagle Crest acknowledges is unusually sensitive, and would cross land that has not been assessed by any of the biological surveys associated with the Project or proposed solar projects in the area. Amendment Application Attachment 3 at 11-13, 19. Both the U.S. Fish and Wildlife Service and U.S. Bureau of Land Management have raised questions about the proposed changes’ impacts on species, including the desert tortoise. *Id.* at Appendix A. Both agencies have also suggested that the Amendment Application may require renewed Section 7 consultation under the Endangered Species Act. *Id.* The transmission line’s 200-foot right-of-way would also intrude on land being developed for the nearby Clearway solar project. Amendment Application Initial Statement at 3; Amendment Application Attachment 2 at 4-1. Eagle Crest’s proposed removal of 85.5 acres from the project boundary for an already-built substation does not return sensitive habitat or offset any of these impacts. Amendment Application Initial Statement at 4.

## **B. Legal background**

Intervention, including in post-licensing proceedings, is permissible where the movant’s participation is in the public interest, 18 C.F.R. § 385.214(b)(2)(iii), or where the movant has or represents an interest that may be directly affected by the outcome of the proceeding, *id.* § 385.214(b)(2)(ii).

Where intervention is permissible, the Commission is required to grant intervention in post-licensing proceedings if the application presents either one of two circumstances: first, if the filings “entail material changes in the plan of project development or in the terms and conditions of the license,” or, second, if the filings “could adversely affect the rights of property-holders in a manner not contemplated by the license.” *Kings River Conservation Dist.*, 36 FERC 61365, 61883 (1986); *Nat’l Parks Conservation Ass’n*, 6 F.4th at 1050.

In proceedings where the Commission has not issued public notice, a motion to intervene is timely if filed within 30 days of a final order. *Eagle Crest Energy Co.*, 168 FERC 61186, 62111 (2019).

Under the Federal Power Act, the Commission must consider mitigation of environmental degradation in its hydropower licensing process. *See* 16 U.S.C. § 797(e); *U.S. Dep’t of Interior v. FERC*, 952 F.2d 538, 545 (D.C. Cir. 1992) (“It is intended that the Commission give significant attention to, and demonstrate a high level of concern for all environmental aspects of hydropower development.”) (quoting H.R. Rep. No. 99-507, pt. 2, at 21–22 (1986)). Adopted projects must be “best adapted to a comprehensive plan . . . for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat). . . .” 16 U.S.C. § 803(a)(1).

## **C. Argument**

### **1. NPCA’s participation would further the public interest, as well as its own.**

NPCA’s staff and members have an interest in protecting the public lands, wildlife, and plant species that the Project will affect, and NPCA seeks to vindicate the greater public interest in protecting the natural resources found on and near the Project area. One of NPCA’s priorities is to safeguard the California desert’s spectacular resources and recreational opportunities.

NPCA and its more than one million members and supporters have abiding personal and professional interests in protecting the fragile California desert ecosystem, as well as specific interests in the area affected by the Project due to its proximity to Joshua Tree National Park. In particular, NPCA has fought for more than two decades to protect the Project area and surrounding region from harmful development, including the previously proposed Eagle Mountain garbage landfill. That plan was withdrawn after NPCA successfully challenged the Bureau of Land Management's Environmental Impact Statement and land exchange for the landfill. *See Nat'l Parks Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058 (9th Cir. 2009).

When Eagle Crest initially sought its FERC license for this Project, NPCA submitted two sets of public comments explaining its concerns about the proposed Project's impacts on groundwater, threatened species, wilderness, and other desert resources. In 2018, when Eagle Crest failed to commence construction before its extended deadline, NPCA submitted a letter urging the Commission to terminate the Project's license. NPCA also opposed Eagle Crest's application to the Bureau of Land Management for a right-of-way for the Project's water supply pipelines and transmission lines. NPCA is currently appealing, before the Interior Board of Land Appeals, the Bureau of Land Management's 2018 Record of Decision approving the right-of-way and the land use amendments for the Project.

If granted, Eagle Crest's Amendment Application would exacerbate the adverse environmental impacts of a Project that NPCA has consistently opposed and that does not serve the public interest. When Eagle Crest unsuccessfully moved to intervene at an earlier stage of this Project, Commissioner Glick noted in his dissent, and the majority did not disagree, that NPCA's interests were "adequately stated" under Rule 214(b)(2). *Eagle Crest Energy Co.*, 168

FERC 61186, 62112 (2019) (Glick, dissenting). Thus, NPCA’s participation in this proceeding is permissible.

The Commission has not issued public notice on Eagle Crest’s Amendment Application, and has not yet issued a final order on the Application. Thus, NPCA’s motion is timely. *See id.* at 62111.

**2. FERC should allow intervention because Eagle Crest proposes material changes, and these changes could adversely affect property holders.**

In *Kings River*, FERC identified two conditions under which it must grant intervention in post-licensing proceedings. 36 FERC at 61883. Either condition is sufficient, and both are satisfied here.

First, Eagle Crest’s Amendment Application proposes material changes to the Project. Though no Commission rule defines “material change” in the context of an existing license, FERC has relied on the definition of “material amendment” in 18 C.F.R. § 4.35(f) to guide its decisions in post-license proceedings. *See Eagle Crest Energy Co.*, 168 FERC at 62110. Under that definition, a material amendment is “any fundamental and significant change, *including but not limited to*” changes to the installed capacity of the project, the location or size of the dam or powerhouse, the number of discrete units of development. 18 C.F.R. § 4.35(f)(1) (emphasis added).

Though Eagle Crest’s proposed changes are not among the non-exhaustive examples of “fundamental and significant change” provided in 18 C.F.R. § 4.35(f)(1), those changes nonetheless meet that standard under FERC’s administrative decisions. In *City of Hamilton, Ohio*, the Commission considered the City of Hamilton’s abandonment of a one-and-a-half mile stretch of a planned transmission line route and the construction of a new transmission line segment of equal length in a 100-foot right-of-way corridor outside the approved project

boundary. 62 FERC 61061, 61302 (1993). Even though the total length of the City’s transmission line would remain unchanged, the Commission determined that this amendment constituted a “substantial change” to the project, and that the change met the *Kings River* standard. *Id.* at 61301, 03.

Eagle Crest proposes even more significant changes in this case. Eagle Crest intends to increase the overall length of its line by more than a mile and introduce approximately ten new steel lattice towers that could each stand over 200 feet tall. *See* Amendment Application Attachment 2 at 4-1; Amendment Application Attachment 3 at 19-20. At 200 feet wide, Eagle Crest’s transmission right-of-way is twice as wide as the City of Hamilton’s, and its proposed changes also intrude on sensitive dry wash woodland habitat—which the previously approved transmission line segment completely avoided. *See* Amendment Application Attachment 2 at 4-1; Amendment Application Attachment 3 at 20. Even if Eagle Crest’s proposed transmission poles would not be located within dry wash woodland habitat, the new transmission line, which would increase perching habitat for predatory wildlife, could increase predation pressure on desert tortoises and other native wildlife, which preferentially use the dry wash habitat; increase risk of wildfires; and cause habitat disturbance during construction and maintenance. Eagle Crest’s changes are thus “fundamental and significant,” and the Commission should grant NPCA’s motion to intervene on that ground.

Second, Eagle Crest proposes changes that could adversely affect the rights of property holders, namely Clearway, the developer of a neighboring solar project. Here, the property right in question is a right-of-way from the Bureau of Land Management. Eagle Crest acknowledges that “the proposed transmission corridor . . . would intrude into the outermost portions of the lands” under development for the Clearway solar project. Amendment Application Initial



Statement at 3. The revised transmission route in *City of Hamilton* was also slated to cross private property. 62 FERC at 61302. There, the Commission concluded that the fact “[t]hat the relocated transmission line will cross private property not currently within the project boundary is sufficient” to meet the *Kings River* standard. *Id.* at 61303. The same conclusion follows here.

The Commission should thus grant NPCA’s motion to intervene for both reasons outlined in *Kings River*, either of which is sufficient to justify NPCA’s participation.

#### **IV. OPPOSITION TO APPLICATION FOR AMENDMENT OF LICENSE**

##### **A. If granted, the proposed amendment will create significant new environmental impacts.**

Eagle Crest’s Amendment Application both raises new environmental concerns and underscores the Project’s adverse impacts on critical groundwater supplies. Numerous parties, including independent researchers and government agencies, have raised concerns about the Project’s groundwater impacts over the eight years since the Project was first licensed. Because of these issues, and because Eagle Crest has not sufficiently analyzed the cultural and biological impacts of its proposed changes, the Commission should deny the Amendment Application.

Eagle Crest’s interactions with the Bureau of Land Management and Fish and Wildlife Service demonstrate that Eagle Crest has not sufficiently addressed the environmental impacts of the transmission line’s proposed relocation. Instead of proceeding through desert scrub, as previously planned and approved, the proposed re-route of the transmission line will cross sensitive desert dry wash woodland habitat three times. Amendment Application Attachment 3 at 20. The Bureau of Land Management and the Fish and Wildlife Service have expressed concerns about the impacts of these proposed adjustments on local species, including the threatened desert tortoise, Bendire’s thrasher, and Le Conte’s thrasher. Amendment Application Attachment 3 at Appendix A. The Bureau also indicated that, and the Fish and Wildlife Service

has queried whether, the proposed changes could require reinitiating formal consultation under Section 7 of the Endangered Species Act. *Id.* In another comment, the Fish and Wildlife Service requested that Eagle Crest provide the number of acres of desert tortoise critical habitat that would be disturbed by the proposed changes, but Eagle Crest declined to do so. Amendment Application Attachment 3 at 19, Appendix A. The Commission should not permit Eagle Crest to move forward with changes that will impact fragile ecosystems but have not been sufficiently analyzed or mitigated.

The proposed amendment may create additional impacts that have not yet been fully assessed by biological or cultural surveys. Eagle Crest's Application shows that sections of the proposed transmission right-of-way have not been subject to biological-resource surveys conducted by Eagle Crest or by the proponents of the neighboring Desert Sunlight, Clearway, or Oberon large-scale solar projects. Amendment Application Attachment 3 at 13. Similarly with respect to cultural-resource surveys, while each section of the proposed transmission right-of-way is covered by at least one cultural survey, a portion of the new route is not covered by the Desert Sunlight Cultural Survey, which a memorandum included in Eagle Crest's Amendment Application describes as "[t]he most comprehensive previous study." *Id.* at 16; Amendment Application Attachment 4. The Commission should deny Eagle Crest's Application because Eagle Crest has not thoroughly studied the biological and cultural impacts of its proposed changes.

Finally, the prospect of approving yet another change to this Project, eight years after the Commission issued the Project's license, raises enduring concerns about the Project's use of precious groundwater resources in the Chuckwalla Valley Groundwater Basin. The Project's Environmental Impact Statement, which remains its foundational groundwater analysis, was

finalized more than a decade ago. Eagle Crest’s Groundwater Level Monitoring Plan and Groundwater Quality Monitoring Plans were approved in the first half of 2016, more than six years ago. Amendment Application Attachment 3 at 5. As early as 2012, the Bureau of Land Management and Lawrence Berkeley Laboratory issued research critical of the groundwater impacts analysis contained in the Environmental Impact Statement. *See* Godfrey, Ludwig, et. al., *Groundwater and Large-Scale Renewable Energy Projects on Federal Land: Chuckwalla Valley Groundwater Basin*, Arizona Hydrological Society Annual Water Symposium (2012). The Environmental Impact Statement’s groundwater analysis is now seriously outdated and was suspect even when it was first published. The Commission should not continue to greenlight the Project’s significant use of fragile groundwater resources without a robust and up-to-date understanding of how the Chuckwalla Valley aquifer system has evolved over the intervening years.

**B. There are outstanding legal questions about whether the Project was entitled to an amendment to the Desert Renewable Energy Conservation Plan and California Desert Conservation Plan.**

In 2016, much of the Project area became subject to special conservation designations and measures under the Desert Renewable Energy Conservation Plan (“DRECP”), a federal and state plan designed to comprehensively manage land uses in the California desert. The Eagle Mountain Project is unable to comply with many of the provisions of the DRECP. *See* U.S. Bureau of Land Management, *Environmental Assessment and Draft CDCA Plan Amendment for the Eagle Mountain Pumped Storage Hydroelectric Project*, at Table 1-3 (Apr. 2017). Because the Project requires rights-of-way from the Bureau of Land Management to utilize lands subject to the DRECP, the Project can proceed only through an amendment to the DRECP and associated California Desert Conservation Plan, which the Bureau granted.

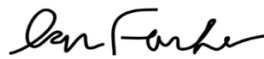
NPCA, however, has appealed that amendment to the Interior Board of Land Appeals, where the matter remains pending. *See Interior Board of Land Appeals, Notice of Appeal and Petition for Stay of Final Environmental Assessment* (Aug. 30, 2018). Thus, there are unresolved questions about whether this Project was entitled to an amendment to the DRECP. The Commission should not grant an amendment of the Project's license prior to the Interior Board of Land Appeals' resolution of those questions, which could extinguish the Project's legal viability at any time.

## V. CONCLUSION

For the foregoing reasons, NPCA respectfully requests that the Commission: (1) grant NPCA's motion to intervene in this proceeding, and (2) deny Eagle Crest's Application for an Amendment of License for the Eagle Mountain Project.

Dated: November 4, 2022

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## CERTIFICATE OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Santa Clara, State of California. My business address is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610.

On November 4, 2022, I served true copies of the following document(s) described as on the interested parties in this action as follows:

### SEE ATTACHED SERVICE LIST

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Mills Legal Clinic at Stanford Law School for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Stanford, California.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address [anamv@stanford.edu](mailto:anamv@stanford.edu) to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 4, 2022, at Stanford, California.



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