

**Navi Pin Haa Un Muu / Breath of My Heart Birthplace,  
Concerned Citizens for Nuclear Safety,  
Nuclear Watch New Mexico,  
Veterans for Peace – The Joan Duffy Chapter No. 55,  
Veterans for Peace – The Donald and Sally-Alice Thompson Chapter No. 63,  
Anna Hansen, Robin Seydel, and Bill and Barbara Tiwald**

November 18, 2024

By email to: [objections-southwestern-regional-office@usda.gov](mailto:objections-southwestern-regional-office@usda.gov)

Reviewing Official, Michiko Martin, Regional Forester, Region 3  
Santa Fe National Forest  
333 Broadway Blvd SE  
Albuquerque, NM 87102

Re: Request for Recognition of Interested Person Status, 36 CFR § 219.57  
Associated Plan Amendment to the Santa Fe National Forest's Land Management Plan  
Proposed Los Alamos National Laboratory Electrical Power Capacity Upgrade Project  
(LANL EPCU) Objections Based on NEW Information  
LANL EPCU Final Environmental Assessment  
(DOE/EA-2199, LA-UR-23-32753, August 2024)

Dear Ms Martin:

**Introduction**

Thank you for the opportunity to request Recognition of Interested Persons Status in the above-referenced matter to discuss the issues we raised in our February 20, 2024 comments and October 28, 2024 objections to determine whether a potential resolution is possible. 36 CFR §219.57.

The undersigned representatives of non-governmental organizations and individuals stand with Governor of Tesuque Pueblo Milton Herrera, former Governor of Tesuque Pueblo Mark Mitchell, the All Pueblo Council of Governors (APCG),<sup>1</sup> many other Pueblo and Tribal Peoples

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<sup>1</sup> RESOLUTION

ALL PUEBLO COUNCIL OF GOVERNORS

RESOLUTION NO. APCG 2021 – 13

SUPPORTING PRESERVATION OF THE CAJA DEL RIO TRADITIONAL CULTURAL LANDSCAPE AND URGING THE UNITED STATES FOREST SERVICE (“USFS”) AND DEPARTMENT OF ENERGY (“DOE”) TO FULLY ASSESS POTENTIAL ENVIRONMENTAL IMPACTS AND CULTURAL RESOURCE IMPACTS OF THE

and representatives from Traditional Indo-Hispano and Land Grant Communities to oppose any of the proposed actions suggested in Los Alamos National Laboratory (LANL) Electrical Power Capacity Upgrade Project (EPCUP) Final Environmental Assessment (EA) (Final EA). DOE/EA-2199, LA-UR-23-32753, August 2024.

**Request for Recognition of Interested Person Status to Participate in Any Resolution Meetings between Objectors and the United States Forest Service**

We submit the following request for recognition of Interested Person status under the objections filed on October 28, 2024 by Joni Arends, Concerned Citizens for Nuclear Safety (CCNS), as lead objector. We note Mara Taub is not participating in this request. Laura Watchempino submitted her individual request for Interested Person status on November 14, 2024.

We provide the following brief explanation of the interest in the objections. Our detailed objections were filed on October 28, 2024 by email to [objections-southwestern-regional-office@usda.gov](mailto:objections-southwestern-regional-office@usda.gov)

We respectfully request that the United States Forest Service (USFS) withdraw its decision to amend the 2022 Santa Fe National Forest Land Management Plan to establish a S/N Transmission Line Utility Corridor Management Area and Special Use Permit for a Utility Right of Way as stated in the USFS draft Decision Notice and Finding of No Significant Impact (FONSI).

**DOE/NNSA/LANL/Los Alamos County (LAC) and Los Alamos Power Pool (LAPP) Did Not Disclose an Alternative to the EPCU Project They Were Exploring Before, During and After the NEPA EPCU Process Thus Creating a Nullity**

**DOE/NNSA/LANL/LAC and LAPP Must Withdraw the Draft and Final EPCU Documents**

**DOE/NNSA/LANL/LAC and LAPP Must Begin the NEPA Process Again**

We support the CCNS objections based on the facts that DOE/NNSA/LANL/LAC and LAPP did not disclose an alternative they were in negotiations in that would provide 170 MW of solar electricity that could be transmitted along existing lines from the former site of the San Juan Generating Station to LANL. DOE/NNSA/LANL claimed in the EPCU NEPA documents that the third line was needed to transmit 173 MW from the Norton Substation to LANL.

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PROPOSED ELECTRICAL POWER CAPACITY UPGRADE PROJECT.

<https://cajadelrio.org/wp-content/uploads/2022/04/Res.-2021-13-Resolution-Caja-Del-Rio-EPCU.pdf>

In 1985, LANL and LAC created the Los Alamos Power Pool (LAPP), an agreement to share energy at 80% to LANL and 20% to the County. Before, during and after the time of the EPCU NEPA process, the LAPP was negotiating to construct and operate the Foxtail Flats Solar + Battery Energy Storage System (BESS) in San Juan County. This alternative project was omitted from the EPCU NEPA processes. DOE/NNSA/LANL/LAC/LAPP no longer have a need for a new transmission line across the Caja del Rio because the contracts for the Foxtail Flats Solar + BESS have been signed and approved by the LAC. As a result, the public was unable to provide comments about this undisclosed alternative. Such an omission invalidates the entire NEPA process and the USFS's planning process. The draft and final EAs must be withdrawn by the federal agencies, LAC and LAPP due to the DOE/NNSA/LANL self-imposed defects in the NEPA process.

### **Statement Relating These Objections to Previously Submitted Public Comments and New Information Made Available on February 21, 2024**

Our previous comments submitted to DOE/NNSA and LANL during the December 2023 through February 2024 comment periods for the draft and final EA, respectively, are consistent with previously submitted comments and objections that specifically addressed the Santa Fe National Forest Land Management Plan 2022 because they apply to the draft USFS Decision Notice, FONSI and Final EA. New information regarding the Foxtail Flats Solar + BESS agreement became available after the February 2024 comment period ended on February 20, 2024, when we learned that the Los Alamos County Board of Public Utilities (LAC BPU) had approved the Foxtail Flats + BESS project on February 21, 2024. Six days later, the Los Alamos County Council unanimously approved the Foxtail Flats + BESS project. This new information questions the purpose and need for the EPCUP and presents a reasonable alternative to the proposed project not previously analyzed.

The federal agencies did not address the issues we raised in our February 20, 2024 comments in the draft EA. In fact, there is no mention of the Foxtail Flats Solar + BESS Project in the draft or final EA.

The undersigned request that DOE/NNSA/LANL/LAC/LAPP, USDA, USFS and BLM withdraw the draft and final EA documents because there is no purpose or need for the third electrical line across the Caja del Rio. The contracted Foxtail Flats Solar + BESS provides an existing alternative for the daily transmission of 170 MW to the LAPP, beginning in 2026, just as the proposed Caja del Rio line would have – without tearing up the Caja del Rio.

### **Objections to the Santa Fe National Forest Plan Amendment**

We object to the USFS Draft Decision Notice and proposal to prematurely issue a Finding of No Significant Impact (FONSI) under its current land management plan that would allow the creation of a special management area for a high-risk electrical utility corridor and a special use permit for the construction and operation of a new electrical transmission line within the corridor.

The USFS is attempting to put the cart before the horse. If a future amendment to the recently revised USFS land management plan is required to permit this project, it should have been in place prior to the release of the USFS draft EA. Amendments like these require opportunities for public participation that have not been met in this case. The very question decided by the USFS draft and final EA should have first been vetted with the public during the last revision of the USFS land management plan, or with a proposed amendment to the updated plan.

Attempts to grandfather future amendments to the USFS land management plan, and/or a special use permit, into this Final EA are contrary to the 1976 National Forest Management Act and 2012 Planning Rule that takes into account multiple uses and invites varied opportunities for broad public participation. Instead, the proposed land management plan amendments and special use permit should preclude the USFS issuance of a FONSI for this project and demonstrate the need for a comprehensive environmental impact statement (EIS) that addresses the historical, cultural, ecological, and environmental justice implications of this major federal project, along with alternatives proposed by the affected communities.

Further, the USFS is open to learning Traditional Ecologic Knowledge in its forest management efforts.

More focus should be placed on the history of the Pueblos' generational land use and of Hispanic land grant use in northern New Mexico. Since its inception the federal government, DOE/NNSA and LANL have appropriated and degraded Pueblo ancestral lands, water and cultural resources. LANL continues to store dangerous plutonium-contaminated nuclear legacy waste from the Manhattan era on site in trenches, pits and shafts and under fabric tents, despite the availability of the Waste Isolation Pilot Plant (WIPP) to store this legacy waste.

The Pueblos of northern New Mexico know first hand about the toxic releases of hazardous materials to their watersheds, aquifers, and the myriad harms that legacy nuclear waste poses to their sacred landscapes, communities, and way of life. The false narrative that nuclear weapons will somehow make us more secure, is similar to the colonialist view that turns a blind eye toward the history of the Pueblos in this region and the many harms they continue to endure as a result of DOE/NNSA and LANL's nuclear weapons activities. It is time to take a more comprehensive view of the Lab's history on the Caja del Rio Plateau so that the past harms endured by surrounding communities can be reconciled with that view.

Finally, LANL's "need for new transmission lines" because the existing lines are expected to approach capacity by 2028 is now moot with the Foxtail Flats Purchase Agreement.

The stated purposed and need for more electric power instead seems to be inextricably tied to LANL's new mission of manufacturing 30 plutonium triggers for nuclear weapons per year for the next 50 years, which should have been analyzed as a critical component of the draft EA for that project. A federal district court judge recently found the preparation of an EA instead of a supplemental EIS for the new mission to be arbitrary and capricious, for failing to consider alternatives to the multiplicity of sites involved in that project.

On September 30, 2024, the US District Court Judge for the District of South Carolina, Aiken Division, the Honorable Mary Geiger Lewis, determined:

“An agency must issue a supplemental Environmental Impact Statement . . . if “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” *Defenders of Wildlife v. N.C. Dept. of Transp.*, 762 F.3d 374, 394 (4<sup>th</sup> Cir. 2014) (quoting 40 C.F.R. § 1502.9(c)(1)(i), (ii)).

“In reviewing an agency’s decision not to prepare a supplemental EIS, a court must undertake a two-step inquiry. First, the court must determine whether the agency took a hard look at the proffered new information. Second, if the agency did take a hard look, the court must determine whether the agency’s decision not to prepare a supplemental EIS was arbitrary or capricious.” *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 443 (4th Cir. 1996).

“Here, the Court is unconvinced Defendants took a hard look at the combined effects of environmental impacts of their two-site strategy. But, even assuming they did, their “decision not to prepare a supplemental EIS was arbitrary [and] capricious.” *Id.*

**“As the Fourth Circuit put it, “[i]t would be one thing if the [agency] had adopted a new alternative that was actually within the range of previously considered alternatives. [Emphasis added.] It is quite another thing to adopt a proposal that is configured differently.” *Wild Va. v. U.S. Forest Serv.*, 24 F.4th 915, 929 (4th Cir. 2022) (citation omitted) (internal quotation and ellipses omitted). Here, we have the latter.**

*Savannah River Watch, Tom Clements, The Gullah/Geechee Sea Island Coalition, Nuclear Watch New Mexico and Tri-Valley Communities Against a Radioactive Environment v. United States Department of Energy. Jennifer Granholm, in her Official Capacity as the Secretary; the National Nuclear Security Administration; and Jill Hruby, Administrator.* Civil Action No. 1:21 cv 01942 MGL.

The Santa Fe, Carson, and Cibola land management plans (LMPs) have all been recently revised to reflect common goals across agencies and interests. An initial assessment of ecological, social, cultural and economic conditions on USFS lands and the surrounding landscape was published in 2015. The information gathered was used to identify needed changes to existing LMPs, such as climate changes and wildfire effects with an emphasis on ecosystem restoration, and social and economic sustainability. All three plans emphasize partnerships and shared stewardship of local resources. The USFS acknowledges the need for government-to-government consultation with Tribes and coordination with other government agencies, including Acequias and Land Grants.

The updated USFS plans recognize the importance of these forest landscapes to traditional communities that rely on forest resources for subsistence, cultural practices, and religious ceremonies. An EIS and Record of Decision (ROD) were issued for the revised plans in 2022, following opportunities to file objections to the draft ROD.

## Objections to the LANL Electrical Power Capacity Upgrade Project

On February 20, 2024, we submitted our public comments for the draft EA based on what was then available in the public record about an alternative to the proposed EPCU – the Foxtail Flats Solar + BESS. Since then, we have learned about the availability of Foxtail Flats Solar + BESS to supply power to both Los Alamos County and LANL through the Los Alamos Power Pool (LAPP). Roughly 80% of the pooled power is available to DOE/LANL and NNSA. County customers use about 20%. <https://www.losalamosnm.us/News-articles/Large-scale-Solar-Power-is-Coming-to-Los-Alamos>

The draft EA should be withdrawn based on this new information. The Foxtail Flats Solar + BESS project was not considered in the draft LANL EPCU Project, but it should have been evaluated as a reasonable alternative.

DOE/NNSA and LANL, however, failed to disclose and consider Foxtail Flats Solar + BESS as a reasonable alternative to the proposed LANL EPCU Project in its NEPA analysis.

NEPA and the APA require agencies to act reasonably in eliminating alternatives from detailed study.” *High Country Conservation Advocates v. U.S. Forest Serv.*, 951 F.3d 1217, 1227 (10th Cir. 2020). And, an “agency’s elimination of an alternative from detailed study . . . [is] arbitrary and capricious [when] its explanation for doing so [is] inconsistent with its stated purpose.” *High Country*, 951 F.3d at 1225 (footnote omitted). But, that is exactly what we have here.

*Savannah River Watch v. United States Department of Energy.*

DOE/NNSA and LANL have therefore failed to demonstrate a current need to install new electrical line infrastructure across the Caja del Rio.

**Through the Los Alamos Power Pool, DOE/NNSA and LANL have contracted with Los Alamos County to construct and operate the 170 MW Foxtail Flats Solar + BESS. There is no need to tear up the Caja del Rio for a third 173 MW electrical line because the Foxtail Flats Solar + BESS proposal is an excellent alternative.**

The Los Alamos County BPU agenda item 7.C states: “Both agreements provide long-term energy reliability and price stability through 20-year, fixed price terms. The electricity from these two agreements is estimated to lead to a 50% reduction in electricity generation carbon emission from fuel consumption, when compared to 2023. These agreements are a significant step towards achieving DPU’s 2040 net carbon-neutral goal.” *February 21, 2024*

To view the February 21, 2024 LAC BPU agenda, supporting documents and the virtual connections to participate in the meeting, go to <file:///Users/ccns/Downloads/Agenda-16.pdf>, see agenda item 7.C.

We must seriously question why LANL states it cannot meet – or at least take a significant step towards achieving its carbon neutral electricity needs with similar agreements from New

Mexico-made PV power and storage capacities – when it is a key facility of the Department of Energy. *See* § 2.4.2 Expand Onsite Power Generation draft EA, p. 2-18.

In the meantime, LANL continues its use of gaseous fuel resulting in greenhouse gas (GHG) emissions into the air. For example, on February 14, 2024, LANL submitted its Exemption Notice for Twenty Small Fuel-Burning Units to the New Mexico Environment Department Air Quality Bureau. IDEA ID No. 856 – LANL – Permit No. 2195, LA-UR-24-21102. Each gaseous fuel unit is used solely for heating buildings for personal comfort or producing hot water for personal use and has a design rate less than or equal to five (5) million BTU per hour.

The Final EA, in further support of the need for LANL to develop a roadmap for future resource decisions to transition to renewable energy, references a 2017 Siemens’ business report by Pace Global entitled “Integrated Resources Plan (IRP) Report,” which was prepared for the Caribbean Utilities Company (CUC). (Global 2017). *See* p. 6-2 of draft EA. Unfortunately, the link in the reference section does not work.

Pace Global states that the report provides a 29-year planning period from 2017 to 2045 ‘to provide a roadmap for future resource decisions for CUC, covering issues around transitioning the generation portfolio from a largely fossil based to a renewable dominated portfolio, need for natural gas, and value of storage, and base load renewal generation technologies.’”

LANL is not mentioned in this IRP. Nevertheless, it is clearly incumbent on LANL to provide similar analyses over a set period of time to create a roadmap for transitioning its generation portfolio from fossil based fuels to renewables in its National Environmental Policy Act (NEPA) analyses.

We remain concerned about NNSA’s general compliance (or lack of it) with the statutory requirements of NEPA. Department of Energy (DOE) NEPA regulations require programmatic environmental impact statements (PEISs) for broad, multi-site programs and Site-Wide Environmental Impact Statements (SWEISs) for complex sites with multi-missions. Both require periodic review of their ongoing relevance, to be updated as needed. Smaller site-specific NEPA reviews are then to be “tiered” off of PEISs and/or site-wide environmental impact statements as foundations for analysis and their contextual placement and need.

Using NEPA language, LANL’s greater electrical needs are primarily caused by unnecessary expanded plutonium pit production that in turn requires the expenditure of tens of billions of dollars in “connected actions.” Yet the NNSA has not analyzed the commitment of these “irretrievable resources” since the 2008 Complex Transformation PEIS and the 2008 LANL SWEIS.

We assert that NEPA compliance requires NNSA to conduct site-specific NEPA reviews only after completing (or during) a new PEIS for expanded plutonium pit production and a new LANL SWEIS.

## **CCNS Supports Pueblo and Tribal Nations Requests Regarding the EPCU Project**

The All Pueblo Council of Governors and individual Pueblos have consistently engaged in the administrative process for the EPCU Project, urging agencies to fulfill statutory responsibilities under the National Environmental Policy Act and the National Historic Preservation Act (NHPA) to provide adequate and meaningful Tribal consultation. However, through both verbal and written technical comments, the APCG and member Pueblos have acknowledged failure of agencies to uphold the federal Indian trust responsibility, disregard NEPA and NHPA, and neglect Pueblo cultural and environmental interests. CCNS fully supports APCG and Pueblo requests for a full environmental impact statement, a tribally-led ethnographic study preceding any further project decisions, and the demand that the Forest Service reject the Forest Plan amendment and deny the special use permit for the EPCU project.

### **Conclusion**

In conclusion, we provide the following comments about the Final EA:

- The Final EA does not fully analyze the direct, indirect and cumulative effects of the Proposed Action, the Foxtail Flats Solar + BESS alternative, and No Action Alternative.
- Although LANL used a 50-mile radius for the environmental justice (EJ) analyses in the 2008 LANL SWEIS, in contrast, LANL inappropriately used a 20-mile radius for its Final EA EJ analyses, thus eliminating many Pueblo, Tribal and Traditional Indo-Hispano and Land Grant Communities. This is an injustice that must be remedied.

We support:

- Withdrawal of the Draft and Final EA based on the availability of Foxtail Flats Solar + BESS, which eliminates the current purpose and need for additional electrical power.
- Preparation of a draft environmental impact statement addressing the LANL EPCU and Foxtail Flats Solar + BESS as alternatives under NEPA.
- DOE/NNSA and LANL pursuing similar PV and battery storage agreements to those considered by the Los Alamos County Board of Public Utilities meeting on February 21, 2024 and the Los Alamos County Council at its February 27, 2024 meeting.
- DOE/NNSA and LANL ensuring early, often, continuous and meaningful consultation with the Pueblos, Tribes and Traditional Indo-Hispano and Land Grant Communities throughout the preparation and release of NEPA documents.
- A Pueblo-led Ethnographic Study of the Caja del Rio to inform the project's environmental and cultural assessment prior to any further development decisions.

Thank you for your careful consideration of our Request for Interested Persons Status. Please contact us with any questions you might have.



Sincerely,

Beata Tsosie and Belin Marcus  
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