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March 23, 2026

The Honorable Debbie-Ann A. Reese  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: Pensacola Hydroelectric Project, FERC Project No. 1494-438; Stakeholder  
Submission of LEAD Agency Regarding Contaminated Sediment Transport Study**

Dear Secretary Reese,

Vermont Law and Graduate School’s Environmental Advocacy Clinic submits this comment on behalf of Local Environmental Action Demanded Agency, Inc. (“LEAD Agency”), pursuant to the Federal Energy Regulatory Commission’s (“FERC”) Notice of Revised Procedural Schedule for Filing Contaminated Sediment Report for the Proposed Project Relicense for the Pensacola Hydroelectric Project No. 1494, as amended on December 17, 2025, in connection with the Grand River Dam Authority’s (“GRDA”) application to relicense the Pensacola Dam (the “Project”).

In 1997, LEAD Agency was founded by Rebecca Jim and Earl Hatley to advocate for a full and complete cleanup of the contamination from the Tri-State Mining District in affected communities. Over the last three decades, the environmental justice organization has worked with nine tribal nations and thousands of people to fight for clean water and a sustainable future for its community. LEAD has been involved in the relicensing of the Project since 2017.

LEAD Agency writes this stakeholder submission to explain the proper geographical scope that GRDA must investigate to ensure their final report will adequately inform FERC’s environmental review of the project. The Neosho River, Spring River, Tar Creek, Grand Lake, and the tributaries of Grand Lake are the adjacent areas affected by the Project, and GRDA must investigate and report on human pathway exposure in these areas. This submission includes the studies that were submitted to GRDA during the consultation process. These studies focus on the risks of human pathway contamination through swimming, picnicking, hunting, fishing, camping, and foraging. These studies also highlight the disproportionate impact on indigenous families. The following studies must be considered by GRDA to ensure FERC has all the information necessary to conduct a thorough environmental analysis of the Project that is informed by current exposure pathways.

**I. GRDA MUST ADEQUATELY ADDRESS THE CONCERNS AND COMMENTS OF STAKEHOLDERS PURSUANT TO FERC’S MOST RECENT DETERMINATION LETTER**

a. Timeline and Current Stage of Relicensing

On March 13, 2018, the City of Miami filed its Study Plan Request for the Contaminated Sediment Transport Study (“Transport Study”).<sup>1</sup> The City proposed the Transport Study to “determine Project impacts on flooding and toxic sediment deposition in the upper reaches of Grand Lake and the areas surrounding Tar Creek, the Neosho River, and Spring River tributaries, including the vicinity of Miami.”<sup>2</sup> LEAD Agency filed comments on October 24, 2018 to endorse the City’s requested studies.<sup>3</sup> On November 1, 2018, GRDA responded to the comments

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<sup>1</sup> City of Miami, Comments of the City of Miami, Oklahoma on Pre-Application Document, Scoping Document 1 and Study Requests. Docket No. P-1494-438, Accession No. 20180313-5162 (Mar. 13, 2018).

<sup>2</sup> GRDA, Response to Comments on Revised Study Plan, Docket No. P-1494-438, Accession No. 20181101-5212 (November 1, 2018).

<sup>3</sup> LEAD, Comments on Amendments to the Pre-Application Document, Study Requests, Docket No. P-1494-438, Accession No. 20181024-5063 (Oct. 24, 2018).

and opposed the study modification with limited explanation.<sup>4</sup> GRDA's response (or lack thereof) failed to adequately address the legitimate concerns of the City, LEAD Agency, and local Tribes.<sup>5</sup>

On November 8, 2018, FERC issued a Study Plan Determination approving GRDA's Revised Study Plan.<sup>6</sup> It did not directly address the issue of whether a nexus existed between project operations and the transport of contaminated sediment but stated that if other studies could show that such a nexus existed, a Transport Study *could* be required.<sup>7</sup>

LEAD Agency continued to make requests that GRDA conduct the Transport Study; GRDA continued to ignore those requests. In 2023, FERC deferred the determination on the renewed request for the Transport Study until modifications to GRDA's study of sedimentation were complete.<sup>8</sup> In the same manner as noted previously, GRDA failed to meaningfully respond to requests for a Transport Study for the relicensing of the Project.<sup>9</sup> GRDA continued to argue that the Project has no impact on the spread of contamination and dismissed the concerns of its stakeholders.<sup>10</sup>

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<sup>4</sup> GRDA Response, *supra* note 2.

<sup>5</sup> FERC, Study Plan Determination for the Pensacola Hydroelectric Project, Docket No. P-1494-438, Accession No. 20181108-3052 (November 8, 2018).

<sup>6</sup> Instead of adequately addressing the legitimate concerns of the City, LEAD, and Tribal nations, GRDA simply pointed to their previous submission. *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> FERC, Determination on Requests for Study Modifications and New Studies for the Pensacola Hydroelectric Project, Docket No. P-1494-438, Accession No. 20230314-3035 (March 14, 2023).

<sup>9</sup> GRDA, Additional Information and Analyses Requested by Commission Staff and Response to Request for Contaminated Sediment Transport Study, Docket No. P-1494-438, Accession No. 20230724-5120 (July 24, 2023) (dismissing repeated requests to undertake studies intended to determine the impact of Project operations on underserved communities).

<sup>10</sup> *Id.*

b. Summary of FERC’s 2025 Determination Letter

On September 23, 2025, FERC released a determination letter responding to the City’s request to modify the approved study plan for the Project.<sup>11</sup> FERC noted that GRDA previously claimed the Transport Study was not required because the “study lacks any nexus between project operations and effects on the resource to be studied.”<sup>12</sup> FERC rejected this argument and stated, “because operation of Commission-licensed project facilities...could potentially affect transport and deposition of contaminated sediments into the Grand Lake floodplain, there is a direct nexus between contaminated sediment transport and the proposed relicensing action.”<sup>13</sup>

In accepting GRDA’s proposal to conduct a Desktop Study in lieu of the full Transport Study, FERC recommended that GRDA “investigate and report on potential human pathways for contaminant exposure on project land and adjacent areas that are affected by the project.”<sup>14</sup> FERC noted that the GRDA’s stakeholder consultations would enhance the Commission staff’s understanding of current exposure pathways.<sup>15</sup>

FERC explained this recommendation in two phases.<sup>16</sup> Phase 1 recommended that GRDA engaged in consultations to “identify activities and practices that present potential human pathways for contaminant exposure.”<sup>17</sup> Phase 2 recommended that GRDA develop a report after they “review the literature on the risk of contaminant exposure, identify any potential contaminant exposure risks to affected people, and identify possible exposure mitigation

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<sup>11</sup> FERC, Determination on Request for Study Plan Modification, Docket No. P-1494-438, Accession No. 20250923-3042 (Sep. 23, 2025) at 3.

<sup>12</sup> *Id.* at B-2.

<sup>13</sup> *Id.* at B-5, B-6.

<sup>14</sup> *Id.* at B-7, B-8.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at B-8.

<sup>17</sup> *Id.*

approaches.”<sup>18</sup> The report should also include documentation of consultation with affected stakeholders, copies of comments and recommendations, and specific descriptions of how stakeholders were accommodated in the report.<sup>19</sup> GRDA has already sidestepped the recommendations for Phase 1, and LEAD Agency is concerned about the accuracy of the GRDA’s report outlined by Phase 2.

Throughout the relicensing process, GRDA’s blatant disregard for the community has continued even after FERC’s most recent determination.<sup>20</sup> GRDA’s request for an extension of time continues this pattern of ignoring FERC and dismissing stakeholder concerns.<sup>21</sup> It is important to note that GRDA’s Extension Request was not a proper forum for GRDA’s legal challenges to FERC’s clear recommendation in the Determination Letter. GRDA’s request begins with “GRDA notes that the results of this [Desktop] Study will have limited utility because: (1) the extensive scientific record before the Commission firmly establishes that GRDA’s Project operations do not contribute to overbank flooding along Grand Lake O’ the Cherokees (Grand Lake) and its tributaries.”<sup>22</sup> GRDA already questioned the effectiveness of the Desktop Study in the early stages of this process, implying that GRDA is not interested in meaningfully evaluating the effects of the Project on contaminated sediment transport. GRDA also argues against FERC’s determination that there is a nexus between the relicensing action and the deposition of contaminated sediment in overbank areas.<sup>23</sup>

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<sup>18</sup> FERC Determination (2025) at B-8, *supra* note 11.

<sup>19</sup> *Id.*

<sup>20</sup> GRDA, Comments on Study Plan Modification and Request for Extension of Time to Complete Contaminated Sediment Transport Desktop Study, Accession No. 20251023-5094, Docket No. P-1494-438 (Oct. 23, 2025).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

In addition, GRDA's refusal to fully consider community concerns was noticeable throughout the stakeholder consultation process. GRDA seemed to conduct the consultations with the preconceived notion that Project operations could never contribute to overbank flooding and thus has no impact on the spread of contaminated sediment. With this manifestation of confirmation bias, GRDA set the stage for an inadequate consultation process. GRDA dismissed and ignored FERC's clear recommendations by failing to adhere to the Phase 1 recommendations; thus, GRDA's recommended Phase 2 report will likely be inadequate. Furthermore, GRDA did not engage in meaningful consultations to investigate and report on potential human pathways for contaminant exposure. GRDA hired consultants to conduct 30-minute interviews with affected stakeholders. These 30-minute interviews were inadequate.

LEAD Agency's interview was conducted on February 5, 2026, and the consultant's questions during this interview exclusively focused on activities conducted on Grand Lake despite the broader scope recommended by FERC.<sup>24</sup> GRDA ignored FERC's clear recommendation "to investigate and report on... *adjacent* areas that are affected by the project."<sup>25</sup> FERC even cited to numerous studies that demonstrate that contaminated soil is present along the Neosho River, Spring River, Tar Creek, and Grand Lake.<sup>26</sup> Regardless, GRDA narrowed the scope of the consultations by only inquiring about human pathway exposure on Grand Lake and ignoring much of the Project area and "adjacent areas that are affected by the project."<sup>27</sup>

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<sup>24</sup> FERC Determination (2025) at B-8, *supra* note 11.

<sup>25</sup> *Id.* (emphasis added).

<sup>26</sup> *Id.* at B-5.

<sup>27</sup> *Id.* at B-8.

The Quapaw Nation submitted a letter following their interview and described the deficiencies in GRDA’s consulting process.<sup>28</sup> The letter highlights (among other things) the box-checking nature of the interview, the narrow scope of the interview—that notably did not address exposure pathways at tribal cultural properties—and the air of disrespect given the interview format, which did not meet the standard for a proper consultation.<sup>29</sup> The Nation plans to submit additional information relevant to the study to GRDA and FERC in the form of written comments. LEAD Agency agrees with Quapaw Nation about the improper scope of the consultation and its general inadequacy. The following information should be used to address and support any deficiencies from GRDA’s consultations.

## **II. ACTIVITIES AND PRACTICES THAT BRING PEOPLE INTO CONTACT WITH CONTAMINATED SEDIMENT**

LEAD Agency provides the following information regarding the impacts of contaminated sediment in affected communities. The full studies have been attached as separate exhibits. LEAD Agency’s 2024 Household Survey Report<sup>30</sup> (Exhibit 1) highlights the intersection of toxic contaminant exposure and flood risk, as floodwater can carry toxic materials onto private property. The survey shows that along Tar Creek (and other watersheds), runoff can come into contact with old mining locations and pick up heavy metals, creating toxic runoff. Flooding can remobilize decades of heavy metals that have settled into creek and riverbed sediments,

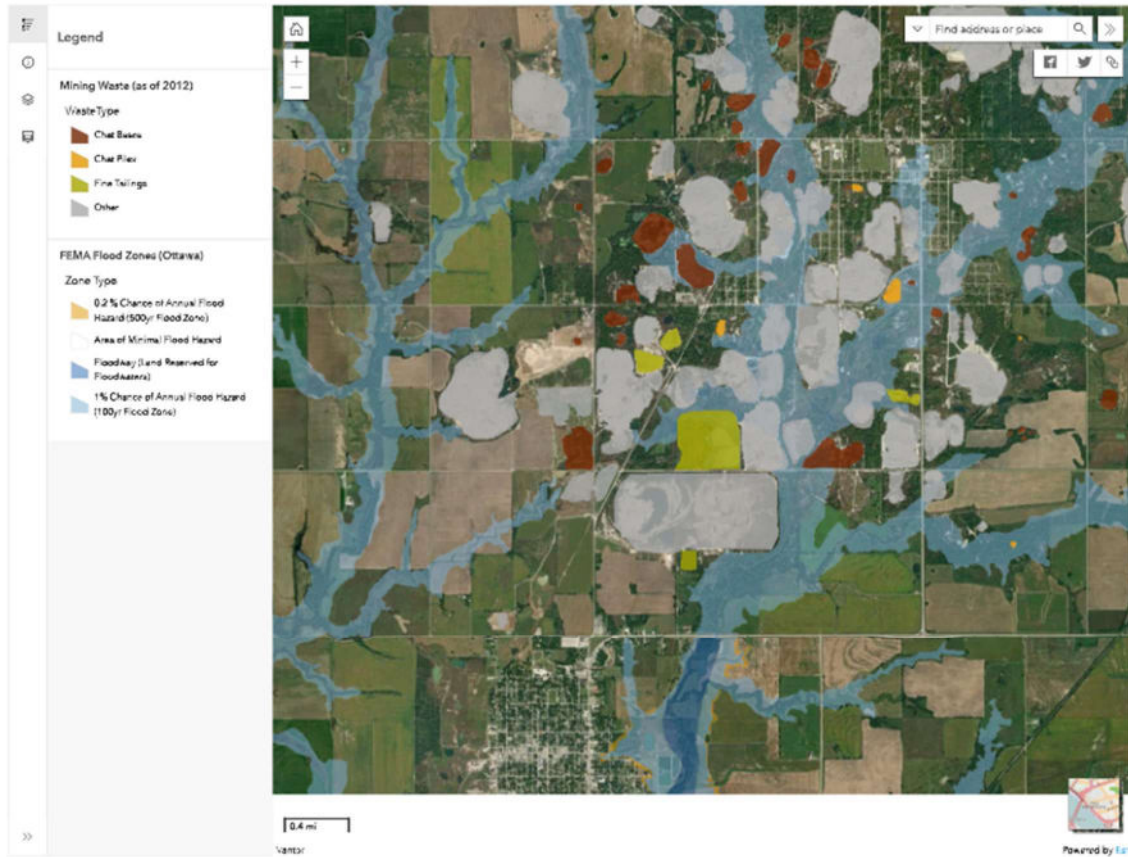
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<sup>28</sup> Quapaw Nation, GRDA Consultation on Contaminated Sediment Transport Study, Accession No. 20260224-5026, Docket No. P-1494-438 (Feb. 24, 2026).

<sup>29</sup> *Id.*

<sup>30</sup> Household Survey Report for Miami, Oklahoma/Ottawa County, LEAD Agency & Buy-In Community Planning, Inc., 2024. <https://www.leadagency.org/survey-report>.

depositing them wherever the waters recede.



**Figure 1.** The Tar Creek Superfund and Flood map (<https://bit.ly/LEADfloodmap>) shows the relationships between floodwaters and legacy mine waste from the Tar Creek Superfund site (Ottawa County, OK).

The Tar Creek Superfund & Flood map<sup>31</sup> (above) (Exhibit 2) shows the scope of the flooding, contaminated areas and further highlights the need for an in-depth investigation and report that focuses on the various human pathways for contamination.

<sup>31</sup> Lively, M., Jim, R., Tran., J., Hatley, E., & Meierdiercks, K. (2026). The Tar Creek Superfund and Flood map: a case study in the equitable co-production of maps for storytelling, environmental activism, and education. *Community Science*, 5, e2024CSJ000007, <https://doi.org/10.1029/2024CSJ000077>

a) The EPA's Swimming Hole Risk Assessment.

The Swimming Hole Risk Assessment<sup>32</sup> (Exhibit 3) conducted by EPA Region 6 in 2023 determined that the Tar Creek Swimming Hole presents unacceptable risks of exposure for people swimming, wading, and picnicking. The Tar Creek Swimming Hole is southeast of the Miami Nursing Home and includes the waters surrounding the Low Water Bridge and the BNSF Bridge. It is approximately 0.75 miles upstream of the Northeastern Oklahoma A&M College ("NEO") softball field. The project boundary extends up Tar Creek to NEO's campus and is, therefore, adjacent to the project area.

The EPA Region 6 tested surface water, bank soil, and sediment. The chemicals of concern in surface water included: arsenic, cadmium, cobalt, iron, lead, manganese, nickel, and zinc.<sup>33</sup> The chemicals of concerns for the sediment and bank soil were cadmium, lead, and zinc.<sup>34</sup> The focused study assessed potential exposures and associated risks for children (0-6 years old) and adults, "under both Tribal Lifeway and General Public exposure scenarios."<sup>35</sup>

This study and its implications on relicensing must be investigated by GRDA and included in their final report. EPA Region 6 "concluded that swimming/wading and picnicking activities at the Tar Creek Swimming Hole Area pose a risk exceeding EPA's accepted risk levels and as such it is recommended to refrain from such activities until site is remediated."<sup>36</sup>

This study establishes that even picnicking on the banks of Tar Creek causes harmful exposure.

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<sup>32</sup> Khoury, Ghassan, Screening Risk Evaluation for Individuals Observed Swimming in the Tar Creek Swimming Hole Area, EPA Region 6 (2023).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

Along the banks of Tar Creek in areas between the Tar Creek bridges at Veterans Boulevard (upstream of the Swimming Hole) and Steve Owens Boulevard (within the Project boundary), LEAD Agency has witnessed individuals camping, picnicking, fishing, foraging, swimming, drinking contaminated water, and burning wood harvested from the banks, which can lead to contaminant exposure. These activities have a disparate impact on the unhoused individuals living on the banks, who have no choice but to drink the water and be continuously exposed. If merely sitting on top of contaminated soil is dangerous for residents, then the risks of swimming, fishing, hunting, and foraging are even more troubling.

b) Foraging in Tar Creek's floodplain and adjacent areas.

Garvin's 2018 study (Exhibit 4) shows that plant consumption poses a greater consumption exposure risk for tribal members compared to consumption of other invertebrates or fish.<sup>37</sup> Garvin's 2017 study (Exhibit 5) shows that thirty-six species of edible plants collected from the floodplains of Elm Creek, Grand Lake, Lost Creek, Spring River, and Tar Creek were shown to have elevated metal concentrations in their soils.<sup>38</sup> Of these samples, the ones collected from Tar Creek all exceeded the 15% contaminant consumption threshold; eleven species had greater than 100% exceedance, which translates to no consumption without subsequent health risks.<sup>39</sup>

These numbers are particularly concerning because the concentrations of metals were magnitudes higher than those reported for fish and crayfish,<sup>40</sup> which also make up a substantial part of subsistence for locals. Further risk is associated with local indigenous subsistence because

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<sup>37</sup> Garvin et al., *Edible wild plants growing in contaminated floodplains: implications for the issuance of tribal consumption advisories within the Grand Lake watershed of northeastern Oklahoma, USA*, Environ. Geochem. Health (2018).

<sup>38</sup> Garvin et al., *Screening Level Assessment of Metal Concentrations in Streambed Sediments and Floodplain Soils within the Grand Lake Watershed in Northeastern Oklahoma, USA*, Arch. Environ. Contam. Toxicol. (2017).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

the plants are still used for medicinal and cultural purposes despite consumption advisories placed on the floodplains around Elm Creek, Grand Lake, Lost Creek, Spring River, and Tar Creek.<sup>41</sup>

Residents forage throughout floodplains of the Neosho and Spring Rivers, as well as their tributaries. These areas are replete with edible foods including greens, fruits, vegetables, and mushrooms. Other native plants are used for weaving and basket-making, such as reeds, cattails, and horsetails. Residents forage a wide geography including flood-prone bottomlands within the Project boundary and riparian areas along nearly all the creeks feeding into the Neosho River, Spring River, and Grand Lake.

c) Fishing on the Neosho River, Grand Lake, and Tar Creek.

Fishing has been engrained in rural Oklahoma culture for centuries, and the constitutional right to fish was added to the state's constitution in 2008.<sup>42</sup> Oklahomans from all walks of life enjoy fishing in Tar Creek, the Neosho River, Spring River, Grand Lake, and its tributaries. Residents enjoy a mix of recreational and subsistence fishing, and many use fishing to cut down on grocery costs. Approximately 19% of people living in the four counties surrounding Grand Lake are living below the poverty level, 3% higher than Oklahoma's state average (16%) and 5% higher than the United States' average (14%).<sup>43</sup> The 2015 longitudinal study (Exhibit 6) by Dong et al. ultimately shows that consumption of locally caught freshwater fish is the primary source

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<sup>41</sup> Garvin (2017), *supra* note 38.

<sup>42</sup> The constitutional right for Oklahomans to hunt, trap, fish, and take game and fish was passed by Senate Joint Resolution in 2008 and prohibits state laws that would prevent anyone from engaging in the aforementioned activities. "All citizens of this state shall have the right to hunt, fish, trap, and harvest game and fish, subject only to reasonable regulation as prescribed by the Legislature and Wildlife Conservation Commission. [This approach] emphasizes traditional methods, practices, and procedures for taking game... hunting, fishing, and trapping shall be the preferred means of managing game and fish." OK Const. Art. 2, § 36. Right to hunt, fish, trap, and harvest game and fish.

<sup>43</sup> Dong et al., *A longitudinal study of mercury exposure associated with consumption of freshwater fish from a reservoir in rural south central USA*, Environmental Research 136 (2015) 155-162 (Accessed Feb. 18, 2026).

of methylmercury exposure for the rural, low-income population of primarily anglers and their families. Notably, about 30% of study participants were aware of fish consumption advisories, but less than one-third of that number said they followed them.

Oklahoma Department of Environmental Quality (DEQ) maintains an active fish consumption advisory (Exhibit 7) for lead in northeast Oklahoma, including Spring River, Neosho River, and Grand Lake.<sup>44</sup> Recognizing the many exposure pathways residents confront, DEQ advises residents of the Tar Creek area to consume less locally-caught fish than non-residents.<sup>45</sup> LEAD Agency has personally witnessed and interacted with the area's anglers, from people in fancy bass boats to little Jon boats fishing for subsistence on Tar Creek. These individuals proudly showed off their fish and exclaimed that their live wells were full to the brim. Whether these anglers fish out of necessity or simply enjoy catching their own food, the result is the same. These people were exposed to contamination, and they unintentionally shared that contamination with their families over dinner. These exposure pathways are especially dangerous to children, who have lower tolerance thresholds compared to adults.

LEAD Agency has also handed out brochures and explained the risks of heavy metal contamination with these anglers. These discussions could inspire fear and uncertainty. When asked about what concerns they had about the area's water quality, the anglers responded that their biggest fear was falling in the water. At times, anglers showed rashes and infections caused by the contamination within Tar Creek. Despite the knowledge and risks, Oklahoman fishing culture lives on and is unlikely to change any time in the near future.

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<sup>44</sup>Fish Consumption Guide for the Tar Creek Area Including Grand Lake, Oklahoma DEQ (2010), <https://oklahoma.gov/content/dam/ok/en/deq/documents/land-division/superfund/tar-creek/TarCreekFishConsumptionBooklet.pdf>

<sup>45</sup> *Id.*

d) Hunting in the area around Grand Lake and its tributaries.

The contamination within the Neosho River, Spring River, Tar Creek, Grand Lake, and the tributaries of Grand Lake also has devastating impacts on hunting. Similar to fishing, hunting is deeply engrained in the culture of rural Oklahoma.<sup>46</sup> Contamination, as shown in the Swimming Hole Risk Assessment and the Garvin Plant Foraging Studies, affects the health of the game in the area. People hunt deer, ducks, squirrels, quail, geese, turkeys, and more. These animals are eating contaminated plants and drinking contaminated water from the various lakes and rivers. As Oklahomans enjoy both sport and subsistence hunting, this beloved activity is another avenue for human contact with the contaminated sediment.

Notably, GRDA has visibly promoted Oklahoma's hunting culture. Together with the Oklahoma Department of Wildlife Conservation, it jointly manages two Wildlife Management Areas (WMA) on the Neosho River and two WMAs on the Spring River.<sup>47</sup> GRDA's website designates specific areas for public hunting of turkey, deer, and waterfowl,<sup>48</sup> but lacks any information about the potential risks of contamination exposure.

### III. CONCLUSION

In summary, LEAD Agency seeks to ensure that GRDA investigates and reports on potential human pathways for contaminant exposure on the project land and adjacent areas affected by the project. The proper scope is broader than just Grand Lake, which was the only focus of GRDA's consultation interviews. The Neosho River, Spring River, Tar Creek, Grand Lake, and the tributaries of Grand Lake are the adjacent areas affected by the project, and they must be properly considered throughout this process.

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<sup>46</sup> See OK Const. Art. 2, § 36, *supra* note 42.

<sup>47</sup> GRDA, Hunting on GRDA Property, <https://grda.com/resources/recreation-rules-maps/hunting-on-grda-property/?from=hub>.

<sup>48</sup> *Id.*

This comment does not purport to be fully comprehensive, therefore LEAD Agency reserves the right to raise any and all issues in response to GRDA's submissions in this docket. Additionally, LEAD Agency fully supports the City of Miami's submission and urges FERC to consider it.

Sincerely,

**LEAD Agency, Inc.**

By its attorney:

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*Attorneys for LEAD Agency, Inc.*

Dated: March 23, 2026

**LEAD Agency, Inc.**

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Rebecca Jim, Executive Director and Tar  
Creekkeeper  
Martin Lively, Grand Riverkeeper