

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2017-0028-EXEC

**In the Matter of Petition for Reconsideration of
the Water Quality Certification for Eagle Mountain Pumped Storage Project,
Federal Energy Regulatory Commission Project No. 13123**

ORDER DISMISSING PETITION FOR RECONSIDERATION

BY THE EXECUTIVE DIRECTOR:

On July 15, 2013, the Executive Director of the State Water Resources Control Board (State Water Board) issued a water quality certification (certification) for the Eagle Mountain Pumped Storage Project (Project) pursuant to section 401 of the Clean Water Act. (33 U.S.C., § 1341.) The certification included findings of fact and a statement of overriding considerations for unavoidable significant environmental impacts identified in the final environmental impact report. These findings include certification that the final Environmental Impact Report (EIR) was completed in compliance with Public Resources Code section 21000 et seq., also referred to as the California Environmental Quality Act (CEQA). Also on July 15, 2013, the State Water Board filed a notice of determination for the Project with the Office of Planning and Research in compliance with section 21108 of the Public Resources Code.

The State Water Board received petitions for reconsideration of issuance of the certification from the following parties: Gary Cruz, Hildeberto Sanchez, Ralph Figueroa, and Laborers International Union of North America, Local Union 1184 (LIUNA); Kaiser Eagle Mountain, LLC; and National Parks Conservation Association and San Bernardino Valley Audubon Society. The Project applicant, Eagle Crest Energy Company, and the California State Lands Commission filed responses to the petitions for reconsideration.

On June 19, 2014, the Federal Energy Regulatory Commission (FERC) issued a license for the Project. In the license order, FERC found that the proposed "closed-loop" pumped storage project will not discharge into any navigable waters. A project that does not discharge into waters of the United States does not require a certification. FERC considered the environmental conditions of the certification to be recommendations submitted by the State Water Board under section 10(a) of the Federal Power Act. FERC included articles in the license that are consistent with most of the conditions in the State Water Board's certification.

Kaiser Eagle Mountain, LLC, the U.S. Department of the Interior, and the Desert Protection Society filed requests for rehearing of the license order by FERC. On July 1, 2015, Kaiser Eagle Mountain, LLC withdrew its request for rehearing and withdrew its petition for reconsideration with the State Water Board. On October 15, 2015, FERC denied the remaining requests for rehearing.


On May 26, 2016, the State Water Board notified the remaining petitioners that it was proposing to dismiss as moot the pending petitions for reconsideration because FERC's order issuing the license and finding that the Project does not require a certification pursuant to section 401 of the Clean Water Act had become final. Petitioners Gary Cruz, Hildeberto Sanchez, Ralph Figueroa, and LIUNA responded to the notice by withdrawing their petition for reconsideration. The

remaining petitioner, National Parks Conservation Association and San Bernardino Valley Audubon Society (collectively, NPCA), did not comment on the notice. The Project applicant, Eagle Crest Energy Company, did not object to the proposed dismissal of the pending petitions.

The petition for reconsideration filed by NPCA on August 13, 2013, sought review of the State Water Board's issuance of the certification for the Project on the basis that the certification did not comply with CEQA. Among other matters, NPCA raised concern that the environmental impact analysis had occurred before completion of "several interagency investigations designed to develop baseline data on [ground]water trends and to better understand the cumulative impacts of several proposed renewable energy projects." (NPCA Petition for Reconsideration, p. 5.) NPCA's petition for reconsideration is now moot, based on FERC's determination that the State Water Board lacked jurisdiction to issue the certification. Additionally, because no further discretionary approval of the Project by the State Water Board is required, the State Water Board is not in a position to consider whether a subsequent EIR may be necessary for future discretionary approvals based on changes to the Project, changes in circumstances, or new information of substantial importance that was not known and could not have been known at the time the previous EIR was certified. (Cal. Code Regs., tit. 14, § 15162.)

For these reasons, the remaining petition for reconsideration filed by NPCA is dismissed as moot.

Dated: 11/27/17



Eileen Sobeck
Executive Director