



# State Water Resources Control Board



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**OCT 15 2008**

Dr. Jeffrey G. Harvey  
Eagle Crest Energy Company  
One El Paseo West Building  
74-199 El Paseo, Suite 204  
Palm Desert, CA 92260

Dear Dr. Harvey:

## REQUEST FOR WATER QUALITY CERTIFICATION AND JURISDICTIONAL DETERMINATION, EAGLE MOUNTAIN PUMPED STORAGE PROJECT, FEDERAL ENERGY REGULATORY COMMISSION (FERC) NO. 13123 IN RIVERSIDE COUNTY

Thank you for your letter and accompanying fee, received at the State Water Resources Control Board (State Water Board) on September 26, 2008. Your letter serves as a submission of an application for water quality certification pursuant to section 401 of the Federal Clean Water Act for the Eagle Mountain Pumped Storage Hydroelectric Project (FERC No. 13123). Prior to FERC issuance of a new license, a water quality certification is required. (33 U.S.C. § 1341(a)(1).) Your letter initiates a one-year time clock from the date received for the State Water Board to act on the request for water quality certification.

Issuance of water quality certification is a discretionary action that requires the State Water Board to comply with the California Environmental Quality Act (CEQA). A complete application for water quality certification must include a description of any steps that have been, or will be taken to avoid, minimize, or compensate for loss of significant adverse impacts to beneficial uses of water. (Cal. Code Regs., tit. 23, § 3856, subd. (h)(6).) The Eagle Crest Energy Company's (Eagle Crest) application for a 401 Water Quality Certification has been reviewed and has met the requirements for a complete application and is acceptable for processing. (Cal. Code Regs., tit. 23, §§ 3856, 3835, subd. (c).)

The State Water Board may also request additional information to clarify, amplify, correct, or otherwise supplement the contents of the application. Supplemental information may include evidence of compliance with the applicable water quality control plan. (Cal. Code Regs., tit. 23, § 3836, subd. (a).) Additional information on the proposed best management practices for spoils from the construction of the tunnel between the two reservoirs, the brine pond, the transmission lines, and the extraction and monitoring well networks will be needed to prepare a conditioned water quality certification.

Although a final CEQA document is not required for a complete application, the State Water Board must be provided and have ample time to review a final document prior to taking action. (Cal. Code Regs., tit. 23, § 3856, subd. (f).) Based on recent discussions with Eagle Crest, an applicant-prepared draft CEQA document will be provided for evaluation by State Water Board staff to determine whether a Memorandum of Understanding must be executed for preparation of a final CEQA document. (Cal. Code Regs., tit. 14, § 15084.)

A complete application must identify any receiving water body(ies) that may receive a discharge. (Cal. Code Regulations, tit. 23, § 3856, subd. (h).) The State Water Board

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OCT 15 2008


recognizes groundwater as waters of the State (Wat. Code, § 13050(e)), and groundwater underlying the project is a water body that may receive a discharge from project activities. (Cal. Code Regs., tit. 23, § 3856, subd. (h)(2).) Impairment to groundwater quality may occur from discharges caused by seepage from the former mine pits in the form of acid mine drainage and from the brine pond. State Water Board staff understand that Eagle Crest has proposed many mitigation measures for groundwater protection, which include: fracture analysis and grouting of fractures in the former mine pits; installation of a liner in the former mine pits with a permeability of  $10^{-6}$  centimeter per second; construction of liners and a leachate collection and recovery system for the brine pond; installation of an extraction gallery and monitoring wells; and vadoze zone monitoring using a tensiometer. These and other mitigation measures needed to protect the State's waters against potential discharges from proposed project activities must be identified in the final CEQA document.

In your letter, you request that in taking action on this application the State Water Board clearly state its determination with respect to whether it has jurisdiction to issue a water quality certification for this project. You state that this project is unique in that it does not involve any surface water system (stream, lake or wetland), and has no discharge offsite. The State Water Board asserts that it has jurisdiction of this project because excavated soil and/or rock, and construction spoils from the proposed activities may result in discharges to waters of the U.S.

State Water Board staff appreciates the cooperation of Eagle Crest staff and looks forward to working with you on this matter. Should you have questions regarding this letter, please contact me at (916) 341-5435 or at [pmurphey@waterboards.ca.gov](mailto:pmurphey@waterboards.ca.gov).

Sincerely,



  
Paul Murphey, P.G.  
Engineering Geologist  
Division of Water Rights

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