

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C. 20426

August 17, 2012

OFFICE OF ENERGY PROJECTS

Project No. 13123-002 – California
Eagle Mountain Pumped Storage
Hydroelectric Project
Eagle Crest Energy Company

Mr. Oscar Biondi
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Pete Sorenson
Division Chief
Palm Springs Fish and Wildlife Office
777 E. Tahquitz Canyon Way, Suite 208
Palm Springs, CA 92262

Reference: Potential Conflict of Draft 401 Water Quality Certificate Conditions and the Terms and Conditions of the Biological Opinion for the Eagle Mountain Pumped Storage Hydroelectric Project.

Dear Messrs. Biondi and Sorenson:

On April 10, 2012 the U.S. Fish and Wildlife Service (FWS) issued its project-specific Biological Opinion for the federally listed desert tortoise . On June 27, 2012 the California State Water Resources Control Board issued a draft Water Quality Certificate for the Eagle Mountain Pumped Storage Hydroelectric Project (project). After review of both documents, we identified a conflict between one of the potential requirements of the draft Water Quality Certificate and the terms and conditions of the Biological Opinion.

Page 35 of the draft Water Quality Certificate states: “The Applicant shall install permanent security fences around the Upper and Lower reservoirs, switchyard, brine ponds and any structure or area that may be dangerous to wildlife in the Project area prior to construction of these facilities. Fences should be constructed in a manner that prevents

wildlife access to Reservoirs *except at designated drinking points. The fencing should contain “dips” where the fence extends below the high water mark to allow wildlife access to drinking water* [our emphasis]. Fences should also include tortoise exclusion fencing.”

Page 53 of the Biological Opinion states: “Temporary and permanent exclusion fencings around the desalination ponds and reservoirs will completely enclose the facilities. *No setbacks will be included* [our emphasis].”

We interpret the “No setbacks” clause in the Biological Opinion to mean the licensee shall not set back fencing from the high water mark. Such a clause would serve to prevent wildlife (and potential predators to the federally listed desert tortoise) access to drinking water. If our interpretation is correct, the conditions of the draft water quality certificate would allow wildlife access to drinking water which may be in direct conflict with the purposes of the terms and conditions of the Biological Opinion.

As a result, we request a meeting among Commission, State Water Resources Control Board and FWS staffs to facilitate resolution of this issue. To schedule a meeting or if you have any questions regarding this letter, please contact Kenneth Hogan by telephone at (202) 502-8434 or by email at: kenneth.hogan@ferc.gov .

Sincerely,

Timothy J. Welch, Chief
West Branch
Division of Hydropower Licensing

cc: Public Files
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