



Eagle Crest
Energy Company

STATE WATER RESOURCES
CONTROL BOARD

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December 31, 2013

Mr. Oscar Biondi
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 98512-2000

Re: Response to Petitions for Reconsideration, Final Water Quality Certification, Eagle Mountain Pumped Storage Project (Federal Energy Regulatory Commission Project No. 13123)

Dear Mr. Biondi:

On July 15, 2013, the State Water Board issued a water quality certification (certification) pursuant to section 401 of the Clean Water Act (33 U.S.C. § 1341) and certified the final Environmental Impact Report (EIR) for the Eagle Mountain Pumped Storage Project. Within 30 days of certification issuance, the State Water Board received three Petitions for Reconsideration (Petitions) from the following parties:

- A. National Parks Conservation Association and San Bernardino Valley Audubon Society - represented by Deborah Sivas and Alicia Thesing of the Stanford Law School Environmental Law Clinic;
- B. Gary Cruz, Hildeberto Sanchez, Ralph Figueroa, and Laborers International Union of North America, Local Union 1184 - represented by Michael Lozeau and Richard Drury of Lozeau Drury LLP; and
- C. Kaiser Eagle Mountain, LLC- represented by Tracy Egoscue and Tarren Lopez of Egoscue Law Group.

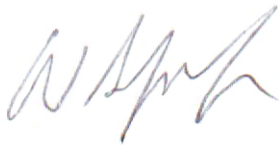
On September 18, 2013, Eagle Crest Energy Company (ECE) requested an extension of time to respond to the Petitions. On September 26, 2013, the State Water Board extended the time to respond to the Petitions to 12:00 PM on January 3, 2014.

This letter and supporting materials is being filed in response to the Petitions.

We are providing detailed responses to each Petition. All of the responses are based upon the information already contained in the EIR and agency documents. The Petitions are similar to each other in that they do not present any new information or issues that were not previously considered during the State Water Board's environmental process and the issuance of the Water Quality certification. The administrative record contains substantial competent evidence to support the factual determinations along with the methodology employed to reach those determinations. We respectfully request that the State Water Board deny the Petitions for Reconsideration as no new material issues have been raised.

Thank you for this opportunity to respond. We look forward to continuing to work with the Water Board in implementation of the Final WQC. Please do not hesitate to contact me at (310) 450-9090, or our Project Director, Dr. Jeff Harvey at (916) 799-6065, if you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Lowe", is written over a light blue horizontal line.

Stephen Lowe, President

Attachments

As required by the State Water Board, copies of these responses have also been sent to:

Mr. Robert E. Perdue, Executive Officer
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

Ms. Tracy J. Egoscue
Egoscue Law Group
3777 Long Beach Boulevard, Suite 280
Long Beach, CA 90807

Ms. Deborah A. Sivas
Mills Legal Clinic at Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305

Mr. Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607

A. Response to Petitions for Reconsideration, Final Water Quality Certification, Eagle Mountain Pumped Storage Project (Federal Energy Regulatory Commission Project No. 13123) filed by National Parks Conservation Association and San Bernardino Valley Audubon Society.

Response prepared by Eagle Crest Energy Company, December 31, 2013.

The National Parks and Conservation Association (NPCA) and San Bernardino Valley Audubon Society (SBVAS) Petition for Reconsideration fails to identify any new issues which were not addressed within the Final Environmental Impact Report prepared by the State Water Board. A detailed response to each issue raised in their Petition follows:

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
As demonstrated by uncontradicted evidence and expert comments in the record, the State Board has not accurately analyzed or adequately disclosed the greenhouse gas emissions associated with the Project's net 300 MW energy expenditure.	Section 3.15.3.3 and Responses to Comments Volume IV Package 4.	This statement is factually incorrect. The Final EIR does contain a substantial analysis of potential Project GHG impacts, and did take into consideration and respond to all comments in the record. The GHG analysis does account for all pump-back power demands and power generation of the proposed project. The GHG analysis is based on the existing and foreseeable future electrical generation dispatch order in California that does support the assumption that the proposed Project's generation will displace emissions from simple cycle power plants (natural gas-fired peaker plants). As explained in the FEIR (Section 3.15.3.3) and in responses to comments (responses to Citizens for Chuckwalla Valley, #32, page CCV-27 in the Final EIR), the project will be operated to meet peak power demands, and as needed to support transmission grid operations, both of which are now met with simple-cycle natural gas-fired peaker plants. For that reason, this source of power – and its attendant emissions - would be displaced by power generation from the proposed Project.
Operation of the Project will have significant – but not yet fully evaluated – adverse impacts on groundwater quality and quantity and on sensitive species, vulnerable desert ecosystems, and Joshua Tree National Park's wilderness values.	Sections 3, 6, 10, 11 and 12.	Potential environmental impacts of the project on groundwater quality and quantity (Section 3.3.3), biological resources (Sections 3.5, 3.6, 10.0, 11.0, and 12.14), and Joshua Tree National Park (JTNP) (Sections 3.7, 3.8, 3.9, 3.10, 3.13, 3.14) are fully evaluated and disclosed in the Final EIR. A comprehensive mitigation program has been developed to address potentially significant impacts (see Mitigation Monitoring and Reporting Program (MMRP) in Section 6 of the Final EIR).
The EIR and Certification documents concede that a full and thorough evaluation of these potential impacts has not yet been completed.	Section 6 of FEIR and Findings of Fact and Statement of Overriding Considerations for the WQC	In certifying the FEIR the State Board found that it had thoroughly evaluated potential impacts of the proposed project, and had identified mitigation measures required to avoid, minimize or offset those impacts. There is always a degree of uncertainty in conducting impact assessment of future conditions, and that is recognized in the FEIR and addressed in the mitigation measures that have been imposed as conditions of approval of the WQC. Environmental performance standards have been identified to be applied in the implementation of the mitigation measures, and adaptive management is required to respond to monitoring results that require design or operational

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
		adjustments. In no case does the FEIR conclude that there is insufficient information to evaluate potential impacts of the Project.
Assumptions about sources of “displaced” power - no supporting analysis or documentation in the record.	Section 3.15.3.3	The rationale for the analysis that the project would displace natural gas-fired peak power generation sources is clearly stated in the Final EIR, and is based upon grid operations and generation dispatch in the SCE service region. See the discussion on pages 3.15-10 to 3.15-15 of the Final EIR on the sources of energy in California and the energy source currently on the margin in California.
There are significant, unexplained discrepancies and contradictions within the EIR’s analysis of greenhouse gas emissions.	Section 3.15.3.3	As explained in the notes for Table 3.15-2 of the Final EIR, the analysis assumes 2,278 GWh of annual generation for the proposed Project (1300 MW for 20% of total annual hours). The relationship between project operations and emissions is linear, so that different amounts of annual generation would have directly proportional benefits of displacing CO2 emissions.
Project may result in a net increase of more than 13,000 metric tons of greenhouse gas emissions	Section 3.15.3.3	This comment appears to be based upon use of an incorrect efficiency factor in its calculation. See Table 3.15-2 of the Final EIR for the estimate of GHG emissions under different scenarios of pump back power sources.
Project does not provide a net public benefit and is not consistent with applicable state law.	Section 2	The goals and objectives of the project are described in Section 2 of the Final EIR. The project will assist the state with meeting goals set in law and policy, including AB 2514 and SB X1-2.
Construction of the Project may produce sufficient ozone precursors to bring the area into nonattainment with the federal standards for a Class 1 area.	Sections 3.13, 12.10, and 6.0 and Findings of Fact and Statement of Overriding Considerations for the WQC.	No data are available that supports this conclusion that the project will bring the area into nonattainment with any federal air quality standards. Air quality impacts of construction and operation are fully described in Sections 3.13.3 and 12.10. An MMRP is proposed to reduce the potential air quality impacts of the project. The Findings and Statement of Overriding Considerations (page 28 of Attachment) explains that in order to limit the NOx emissions to below a significant level, the only feasible alternative is to limit the number of heavy industrial pieces of equipment that could operate on any particular day. This would extend the construction period from an estimated 3-4 years to 10-12 years. This alternative would increase other impacts, including but not limited to noise and habitat disturbance. There would also be additional costs of a

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
		markedly extended construction period that could undermine Project viability and affect Project feasibility. An extended construction period is the only known way to reduce short term NOx impacts and this alternative was rejected by the State Water Board as infeasible and unreasonable. Further, as described in the Final EIR, Responses to Comments, Volume IV, Package 1, the amount of ozone that would be generated by the proposed transmission line would not be cumulatively considerable. There is no evidence to suggest that the minor levels of ozone produced by the project's transmission line could affect the JTNP which is a Class I area subject to meeting NAAQS, and only a few miles away.
The groundwater analysis "grossly over-estimates the amount of natural recharge coming into the Chuckwalla Valley, Pinto Valley, and Orocopia Valley" and therefore, under-estimates the amount of groundwater drawdown.	Sections 3.3.2.9 and 12.4	Recharge to the Chuckwalla aquifer was estimated at 12,700 acre-feet per year (AFY) in the Final EIR. As explained in detail in the FEIR, this recharge estimate is near the mean estimate of recharge for the aquifer as developed by numerous investigators. Figure NPS-1 in the Responses to Comments in the Final EIR (Volume IV, Package 1) shows a summary of groundwater recharge estimates for the Chuckwalla and tributary valleys using the estimates developed during previous studies. Estimates of recharge for the Chuckwalla aquifer range from a low of 3,000 AFY as suggested by the National Park Service in its October 2010 comment letter on this project, to 10,431 acre-feet suggested by the National Park Service in its comment letter on the Genesis Solar project in July 8, 2010, to a high over 30,000 AFY in the Palen Solar Power Project Draft EIS (BLM, CEC, 2010). The recharge estimates at the very low range of values would predict drawdown in the valley much greater than has been actually observed in groundwater levels since the early 1980s. Therefore, these very low estimates of recharge were deemed inaccurate and unreasonable for use in water balance modeling by the State Water Board.
The EIR neglected important, credible analysis prepared by the U.S. Geological Service in 2004, showing very limited groundwater recharge in the area.	Responses to Comments by National Park Service, Volume IV, Package 1	As described in the Final EIR, Responses to Comments, Volume IV, Package 1, the USGS 2004 report was reviewed in the development of the Draft and Final EIRs. It was found that inconsistencies within the USGS report limit its usefulness as a model for estimating recharge in other basins. Figure NPS-1 (Final EIR, Responses to Comments, Volume IV, Package 1) shows a summary of groundwater recharge estimates for the Chuckwalla and tributary valleys

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
		including estimates developed by other authors, including the approach contained in the USGS 2004 report. The average of the average of the range of estimates is 12,100 AFY. The estimate of recharge used in the EIR was 12,700 AFY, which is well within the middle of the range of recharge estimates, indicating that the recharge estimate used in the EIR was reasonable.
Petitioner incorporates by reference, and directs the State Board, to the Park Service’s detailed discussion in that agency’s Standard Review Form for the Draft Environmental Impact Report Eagle Crest Pumped Storage Energy Project	Responses to Comments by National Park Service, Volume IV, Package 1, pages NPS 1- NPS 77.	The State Water Board considered these comments and prepared detailed responses that are contained in the Final EIR (Volume IV, Package 1, pages NPS 1- NPS 77). Those responses also explain the revisions to the Draft EIR that were made in response to these comments.
The Bureau of Land Management reiterated that despite the initiation of recent efforts to study groundwater in the Chuckwalla Basin, “abundant uncertainty” continues to exist concerning the basin’s recharge rate, perennial yield, and water budget.	Sections 3.3 and 12.4	The BLM has clarified their position regarding groundwater in the Chuckwalla Valley ¹ . In this letter, BLM stated that BLM cannot defer a decision until all uncertainty is eliminated, and must make a decision with information at hand. The letter states that BLM views the State Water Board as the expert water agency for the state, and the governmental entity with authority to ultimately regulate the amount of water consumed in the basin. Therefore the BLM analysis of groundwater impacts will rely on the State Water Board’s analyses and conclusions. It should also be noted that BLM as an agency and decision-making body has found sufficient certainty in the available groundwater data to complete its own recent environmental review processes and NEPA analysis of other projects which use groundwater in the Chuckwalla Basin and to authorize construction of these projects. In each of its recent EISs for solar projects in the Chuckwalla Valley, BLM determined that annual recharge rates ranged from 12,088 AF (Genesis Solar Energy Project, 2010 and Palen Solar Energy Project, 2010) to

¹ Letter from Teresa A. Raml, District Manager, California Desert District, Bureau of Land Management to Mr. Oscar Biondi, State Water Resources Control Board, Division of Water Rights. April 19, 2013.

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
		12,948 for the Desert Harvest Project, 2011. These figures are entirely consistent with the 12,700 AF used by the State Water Board for this project.
BLM expressed substantial concern about groundwater depletion and recharge.	Sections 3.3 and 12.4	The FEIR and Water Quality Certification require extensive monitoring and mitigation of groundwater impacts. Note the responses to BLM’s comments in the FEIR, Volume IV, Package 1, and the letter prepared by Eagle Crest Energy April 24, 2013 in response to the BLM’s letters of April 10 and April 19, 2013. As noted above, BLM has found sufficient certainty in the available groundwater data to complete its own recent environmental review processes and NEPA analysis of projects which use groundwater in the Chuckwalla Basin and to authorize construction of these projects. In each of its recent EISs for solar projects in the Chuckwalla Valley, BLM determined that annual recharge rates ranged from 12,088 AF (Genesis Solar Energy Project, 2010 and Palen Solar Energy Project, 2010) to 12,948 for the Desert Harvest Project, 2012. These figures are entirely consistent with the 12,700 AF used by the State Water Board for this project.
BLM commented that groundwater recharge is likely overestimated.	Responses to comments from NPS and BLM, which are found in Volume IV, Package 1 of FEIR.	In the clarification letter submitted to the State Water Board, April 19, 2013, the BLM wrote that “There has been and continues to be considerable debate between agency staff, the proponent and various stakeholder groups regarding the "correct number" to assign to groundwater recharge for the basin. Here again is where the BLM will defer ultimately to the experience of the Board, as it is a stated goal of the Board to maintain the long-term sustainability of the groundwater resource; and issuance of a water quality certificate that would potentially place the basin into overdraft conditions would be contradictory to the Board's legislative mandate.” Therefore, the BLM is clearly not questioning either the authority of the State Water Board or the technical expertise of the State Water Board to make a scientific evaluation of the recharge rates of the Chuckwalla Aquifer. Also, as explained above, extensive reanalysis of groundwater recharge was undertaken in response to comments submitted by both the BLM and NPS, (Volume IV, package 1). It is also important to note that BLM has completed its own recent environmental review processes and NEPA analysis of other projects which use groundwater in the Chuckwalla Basin, and

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
		in each case, they determined that annual recharge rates ranged from 12,088 AF (Genesis Solar Energy Project, 2010 and Palen Solar Energy Project, 2010) to 12,948 for the Desert Harvest Project, 2011. These figures are entirely consistent with the 12,700 AF used by the State Water Board for this project.
Some suggestion that very little, if any, recharge has occurred in the basin in the last half century.	Responses to comments from NPS and BLM, which are found in Volume IV, Package 1 of FEIR.	The citation given is to a personal communication, but no written citation has been provided to substantiate this suggestion. As described in the Responses to Comments Volume IV of the FEIR, the available data do not support an estimate of very low levels of recharge. Water levels in wells in the Chuckwalla Aquifer show recovery since the time of the heavy agricultural uses of the 1980's, which would not be the case if no recharge was occurring. Based on the USGS's preliminary results for all of the basins in the GAMA study area, the average uncorrected carbon-14 age for groundwater in these basins (a total of 26) is about 11,000 years old. Given an understanding of groundwater recharge processes in these desert regions (mountain front recharge, tributary inflow, etc.) and the location and depth of the wells in which these data are collected, these data confirm the scientific understanding of the groundwater system. We note again that BLM has published and certified recent EISs for solar power projects in the Chuckwalla Valley citing recharge rates ranging from 12,088 AF to 12,948 AF are entirely consistent with the 12,700 AF used by the State Water Board for this project.
BLM's careful evaluation and discussion of the groundwater situation, letter dated April 10, 2013	See BLM letter dated April 19, 2013, cited above.	BLM submitted a clarification on April 19, 2013 which stated "The BLM views the [State Water] Board as the expert water agency for the state, and the governmental entity with authority to ultimately regulate the amount of water consumed in the basin. Therefore our analysis of groundwater impacts will rely heavily on your work and will consider new information as required in the National Environmental Policy Act (NEPA)."
BLM conclusion that the Project poses a real risk of harm to the BLM, its management goals in the Chuckwalla Basin, and renewable energy projects	See BLM letter dated April 19, 2013, cited above.	BLM has subsequently revised their conclusion about the Project to say "We commend the [State Water] Board in adoption of an adaptive management framework that imposes modification of project operations in the event resource impacts exceed those identified in the environmental review process. This approach can help address the uncertainty generated during the

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
		environmental review and comment period.” We note again that in contrast to the comments cited from a single letter from one BLM staff member, as cited above, BLM has also recently made and published careful evaluations of groundwater conditions in the Chuckwalla Valley citing recharge rates ranging from 12,088 AF to 12,948 AF that are entirely consistent with the 12,700 AF used by the State Water Board for this project.
The Executive Director apparently does not see the Project as significant water use	See Findings and Statement of Overriding Considerations	The petitioner is mistaken regarding the conclusions of the Final EIR. The State Water Board concluded that the use of groundwater is reasonable and beneficial under State water law, but that the project’s cumulative contribution to temporary overdraft of the aquifer was a significant impact. This discussion and rationale for approving the project is provided in the Statement of Overriding Considerations.
The Executive Director concluded that the potential for subsidence is at less than significant levels	Section 3.1 and 3.3	The statement quoted concerns the potential impact of subsidence. This risk is less than significant because the basin has already been ‘exercised’ during the period of intensive agricultural water use in the late 1970s and early 1980s. Therefore, based upon actual physical conditions known to have occurred in the Valley, drawdown caused by the project, being less than historic drawdown, is not expected to result in ground subsidence.
The Project will not entirely deplete the aquifer, thus the Executive Director concluded that project groundwater use is not problematic	Findings and Statement of Overriding Consideration	The State Water Board found that the project’s proposed groundwater use is reasonable and beneficial under State water law, and that the total project water use over 50 years is equal to about one percent of the total water presently in storage, and not including any natural recharge over the 50 year period.
The Executive Director did not evaluate how a 12% increase in current overdraft will affect competing uses of the ecological resources dependent on the aquifer.	Potential impacts of water use on other water users is discussed in section 3.3. Potential impacts of water use on ecological resources are discussed in Section 3.5.	There will not be a 12% increase in the <i>current</i> overdraft because, as described in Section 3.3, the basin is not currently estimated to be in overdraft. The Project will contribute to overdraft for the first 3 to 4 years of the initial fill with pumping rates of approximately 8,000 AF per year. After that, pumping rates are reduced to about 1,800 AF per year for the life of the project, during which time the aquifer will begin to recover.
With insufficient data to assess	Seepage modeling was	The FEIR does include a detailed assessment of well-documented geologic

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
seepage impacts or even to develop an appropriate seepage model, the State Board cannot accurately or adequately evaluate potential contamination impacts on groundwater.	conducted, the report is found in Section 3.1 and 12.5 of the FEIR.	conditions in the mine pits that are proposed to form the reservoirs, and does identify numerous seepage control methods that are required to be employed in design and construction of the project including grouting, fine tailings liners, roller-compacted concrete liner, and pump-back recovery wells. The MMRP specifies performance standards for groundwater quality and seepage control that will be accounted for in final engineering design, construction, and monitoring and operations for the life of the project.
Biological impacts are not adequately addressed	Section 3.5, 3.6, 12.14 and Section 10.1 – Sensitive Species in Project Area – Plants. Section 11.0 Fish and Wildlife Observed in Project Area (table includes plants observed during sensitive species surveys of the project site).	Potential biological impacts are discussed in detail in the Final EIR in the sections cited. Biological impacts were assessed based upon years of field surveys, reliance on the BLM’s EIS (which includes a Biological Opinion (BO) issued by the USFWS) for the previously proposed landfill project in the mined lands, aerial photography, and consultation with the USFWS and CDFW that resulted in issuance of a BO from the USFWS and a Consistency Determination (CD) from the CDFW for this project. The State Water Board reviewed the BO and the CD at the time that they were issued (letter from Oscar Biondi, State Water Board to Kimberly Bose, FERC, October 3, 2012) and used the information in these documents to modify the mitigation measures for the Project to be consistent with the requirements of the federal and state wildlife management agencies.
Water will attract feeding and nesting ravens	Section 3.6 and 12.14	The potential impact of ravens is discussed at length, and a Predator Control Program is required as a condition of approval in both the BO and in the FEIR to control raven predation on desert tortoise, as determined to be appropriate by the USFWS.
The Park Service believes that the Project effects on declining desert tortoise populations could be devastating to the wildlife preservation directive of the agency	Section 3.6, 6.0, and 12.14	The USFWS – the federal agency with primary jurisdiction to evaluate and protect endangered species, including desert tortoise, explicitly addresses biological impacts and required protection and mitigation measures for desert tortoise in its BO. The BO concludes that, “although tortoises within critical habitat may experience increased risk of raven predation, such predation is unlikely to occur across a sufficient acreage to significantly reduce the value of primary constituent element (PCE) 6 [which is habitat protected from disturbance and human-caused mortality] within the Chuckwalla Critical Habitat

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
		<p>Unit. Moreover, the Applicant proposes to acquire suitable habitat for any modification of critical habitat.” Based upon the USFWS’s findings in the BO, the State Water Board adopted 29 mitigation measures to protect biological resources including desert tortoise.</p> <p>On May 11, 2012, the California Department of Fish and Wildlife (CDFW) issued a consistency determination (CD) for the Project. The CDFW determined that, “the BO, including the incidental take statement (ITS), is consistent with the California Endangered Species Act (CESA) as to the Project and desert tortoise because the mitigation measures contained in the BO and ITS, as well as the conditions in the final Biological Assessment (BA) and final Environmental Impact Statement (EIS), meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, DFG finds that: (1) take of desert tortoises will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO, ITS, BA and EIS, will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of, those measures; and (4) the Project will not jeopardize the continued existence of the desert tortoise.”</p>
<p>Impacts may be compounded by placement of the transmission line and power substation in or near key desert tortoise habitat</p>	<p>Section 3.6 and 12.14</p>	<p>The route for the environmentally preferred transmission corridor was selected because it avoids the Desert Wildlife Management Area and therefore had the least potential for impacts to critical desert tortoise habitat of any alternative. The substation location was selected by the BLM and SCE to serve nearby solar projects and the Eagle Mountain project. That substation site has been approved by all regulatory agencies – including the BLM and USFWS - and is currently under construction.</p> <p>The USFWS BO states that, “the proposed action is not likely to jeopardize the continued existence of the desert tortoise or destroy or adversely modify designated critical habitat.”</p> <p>The BO also states that “impacts to critical habitat would total less than 1 ac, associated impacts to PCEs would be minor, and suitable habitat will be</p>

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
		acquired elsewhere at a 5:1 ratio.”
The EIR does not evaluate or address the potential impact on desert tortoises from likely increased raven activity on Project land adjacent to the Park	Section 3.6 and 12.14	As noted above, the USFWS – the federal agency with primary jurisdiction to evaluate and protect endangered species including desert tortoise explicitly addresses biological impacts and required protection and mitigation measures for desert tortoise in its BO. Based upon the USFWS’s findings in the BO, the State Water Board adopted 29 mitigation measures to protect biological resources, of which seven were explicitly directed to desert tortoise (Section 6 of FEIR). The Predator Control Plan was prepared in consultation with State and federal wildlife managing agencies.
The EIR assumes there will be no increase in raven presence or activity.	Section 3.6 and 12.14	The petitioners incorrectly characterize the conclusion of the Final EIR which states: “If raven populations were to increase in response to additional water resources at the Project, these ravens could forage in the JTNP or disperse into the JTNP from enhanced reproductive opportunities at the Project. This potentially significant and subject to the mitigation program (MM TE-5).” As noted above, the USFWS – the federal agency with primary jurisdiction to evaluate and protect endangered species including desert tortoise explicitly addresses biological impacts and required protection and mitigation measures for desert tortoise, including consideration of ravens. Based upon the USFWS’s findings in the BO, the State Water Board adopted seven mitigation measures to protect desert tortoise (Section 6 of FEIR).
Mitigation measures will not protect the important desert tortoise habitat in the Park from the effects of raven predation.	Section 3.6 and 12.14	Raven predation will have no effect on desert tortoise habitat. The FEIR does acknowledge that raven predation can impact desert tortoises. No data are presented to support the conclusion that mitigation measures will fail to protect desert tortoise habitat in the Park. In fact, no data are presented to support the conclusion that the project will have any impact on desert tortoise habitat in the Park.
Project will adversely affect many other native species, as well as wilderness values, visual, night-sky, invasive species and other adverse effects on wilderness	Sections 3.5, 3.6, 3.7, and 3.10.	Consideration of potential effects on the JTNP is presented throughout the FEIR, including the chapters on aesthetics, biological resources, and recreation, as cited.

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
values.		
Creation of large-scale artificial lakes will inevitably promote exotic plant invasion and spread.	Section 12.14.3	The proposed project does not include any landscaping or planting of exotic species. If any exotic plants should be becomes established in the reservoir shoreline areas, they will not spread into the Park. This is because the Park will remain a dry desert habitat, and will continue to be unsuitable for the growth of plants which require surface water in order to survive. A Weed Control Plan (Section 12.14.3) is a mitigation measure adopted in the FEIR, which requires that the Project control any weedy plant species which may become established inside the project boundary.
The State Board and their consultants have not conducted site-specific evaluation. The Executive Director elected to certify the project and undertake studies at a later date.	Section 3	The FEIR analyses are very specific to the lands and surrounding environments for this proposed project. Field surveys of sensitive species, cultural resources, and visual conditions were conducted on the linear features of the project in 2008, 2009 and 2010. The only portions of the project site not accessible were within the old mine site, a highly disturbed landscape with little existing ecological or environmental resources value. This area was evaluated based upon extensive data and site-specific analyses that were conducted by the BLM in its EIS for the previously proposed landfill project, supplemented by geologic data available from historic mining evaluations and recent aerial photography.
This approach violates CEQA because it defers both evaluation of potentially significant site-specific impacts and formulation of potential mitigation measures for those impacts until after certification of the EIR and approval of the project.	Section 6	The use of performance standards and ongoing studies and monitoring is permitted by both the 401 certification process and the CEQA process, and is an essential part of short- and long-term monitoring and adaptive management.
By relying on outdated or incomplete information and ignoring the persistent comments of various entities the EIR and the Certification frustrate the	See entirety of the FEIR.	The FEIR has been developed over a period of nearly five years that has included extensive research and data collection, consultation with interested parties and jurisdictional agencies, opportunities for public and agency review and comment, mandated consultation processes for biological and cultural resources, comprehensive responses to all comments received on the DEIR, and

Comment from NPCA and SBVAS	Section of Final EIR where comment addressed	Reply
disclosure and accountability objectives of CEQA and undermine the nature of the section 401 review process.		a very clear Statement of Findings, in fulfillment of all of the State's CEQA reporting obligations for full disclosure of potential impacts, required mitigation measures, identification of significant unavoidable impacts, and Statement of Overriding Considerations for those unavoidable impacts.

The Petition for Reconsideration filed by the NPCA and the SBVAS includes an Exhibit D, titled *Impacts of the Eagle Mountain Pumped Storage Project, Interpretation of Existing Science*, July 2013, prepared by the National Park Service, U.S. Department of Interior, Joshua Tree National Park. This document had never before been submitted to the State Water Board as part of the project record. ECE questions the validity and conclusions of this document. This document is particularly disturbing since it contains significant misinformation on almost every point, and cites numerous technical studies that are inapplicable and do not support the “science” claims. The alleged “interpretation” ignores the technical analyses presented in the State Water Board’s FEIR, the FEIS prepared by the Federal Energy Regulatory Commission (FERC) for this project, the Biological Opinion prepared by the U.S. Fish and Wildlife Service, the Consistency Determination prepared by the California Department of Fish and Wildlife, and science findings of the BLM’s EISs on nearby solar projects.

ECE filed a Freedom of Information Act (FOIA) request to determine the origins of this report. We are attaching a copy of the response that we received from the NPS in response to our FOIA request in its entirety.

It is clear from the internal NPS correspondence that the “*Interpretation of Existing Science*” was prepared by staff at JTNP in response to a directive from Park Superintendent Mark Butler to prepare a “concise and compelling one to two page write up outlining the **adverse impacts** [emphasis added] of the pump storage project on the park” (email from Mark Butler to Andrea Compton and Karin Messaros dated March 4, 2013). Although the document is titled “Interpretation of Existing Science”, there was clearly never an intention for this document to be a scientific review. The bias of the authors was pre-determined by the direction they received from their supervisor regarding the intent of the paper. This is in stark contrast to the diligent efforts of the State Water Board to conduct a transparent, scientific, fact-based approach to the assessment of the environmental impacts of the Eagle Mountain Pumped Storage Project.

Furthermore, the “*Interpretation of Existing Science*” was originally prepared as a review of the Eagle Mountain Landfill Project (see document titled *Potential Effects to Desert Tortoise from Proposed Eagle Mountain Landfill*, dated October 2011 in the FOIA response package). The review of the landfill project was modified by NPS staff to become a review of the pumped storage project, with no apparent attempt to consider the differences between a landfill and a pumped storage project. Despite its brevity, the NPS inaccurately or incorrectly cites published literature throughout the document.

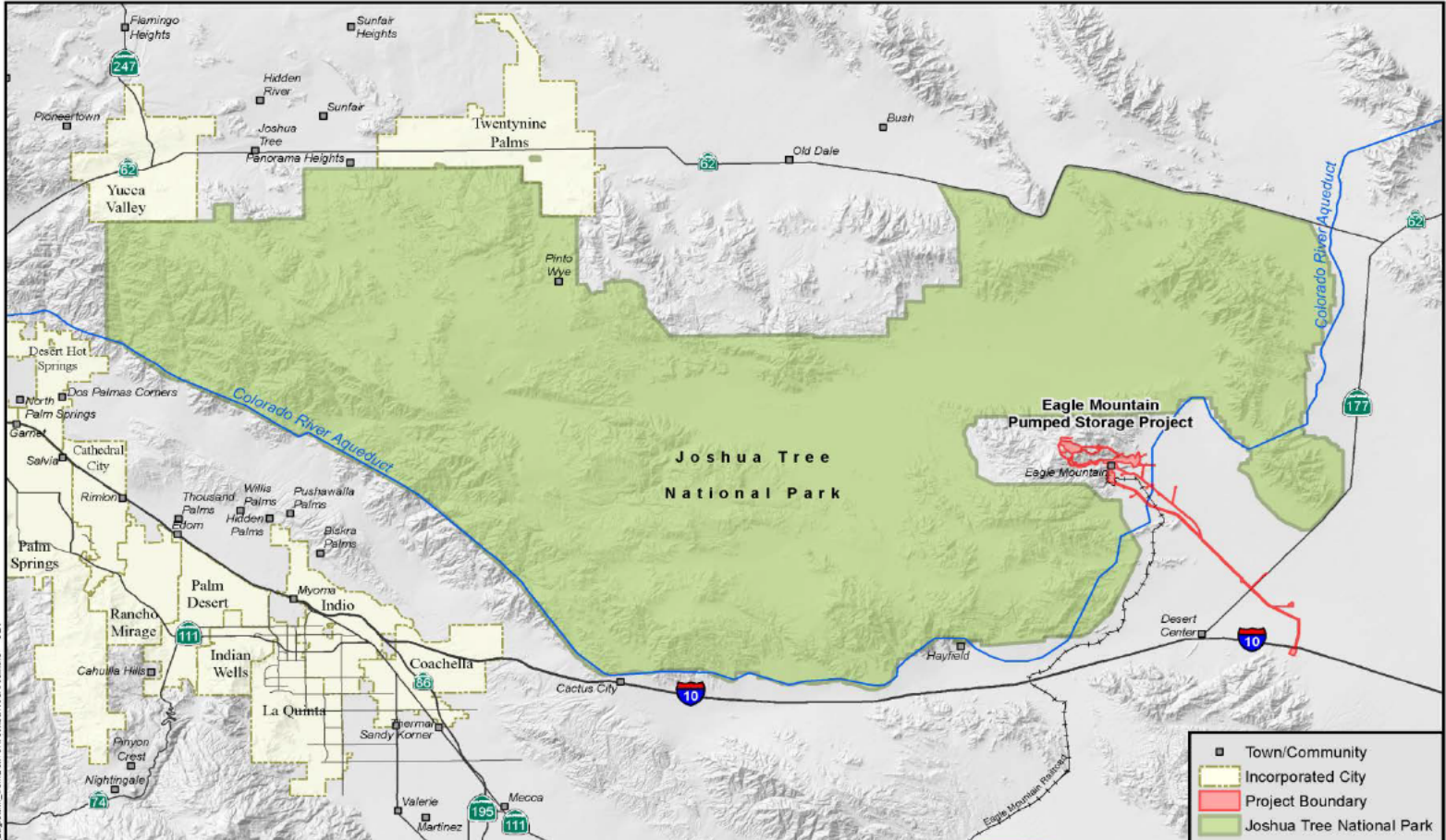
We are including copies of the papers cited by the NPS so that the State Water Board may review them directly, without relying on our interpretation. In addition, we are also attaching copies of the Biological Opinion prepared by the U.S. Fish and Wildlife Service and the Consistency Determination prepared by the California Department of Fish and Wildlife in the attached electronic file, along with the NPS FOIA response.

Our detailed response follows:

NPS “Interpretation of Existing Science”	Response
<p>“The facility would require 1,600 MW per day to operate, resulting in a 300 MW daily net loss of energy.”</p>	<p>The author is confusing units of power and energy. A MW is a unit of power which is the rate at which energy is generated or consumed and is measured in units that represent 'energy per unit time'. The terms '1,600 MW per day' and '300 MW daily' are incorrect.</p>
<p>Ravens are a known predator of desert tortoise and preferentially utilize anthropogenic resources (Boarman 1995). In 1995, a study at Edwards Air Force Base (EAFB) documented raven abundance and usage of anthropogenic sites by studying tagged ravens (Boarman 1995). This study found that, on average, tagged ravens were recaptured 6.39 km away from human subsidies with the maximum travelled distance of 31 km to utilize resources outside of the site.</p>	<p>This citation is inapplicable and incorrect. Boarman et.al. 1995 tagged ravens at a landfill. They found that ravens use landfills more than any other resource type. 95% of the movements of ravens were within the EAFB cantonment area (landfill, housing, and operations areas), an average distance of 4.46 km. Only 5% of observations were of ravens traveling in excess of 10 km from a landfill. The number of ravens were not significantly different between desert control sites, sewage ponds, city street surveys, and golf courses. Only the landfill had a significantly larger number of ravens than the other sites.</p>
<p>Joshua Tree National Park has estimated the potential impacts to desert tortoise from the PSP by extrapolating the findings from Boarman’s 1995 raven data in conjunction with a robust habitat model (Maxent) developed by United States Geologic Survey (USGS) (Nussear et al. 2009).</p>	<p>This citation is inapplicable and incorrect. The distance traveled in the Boarman et.al. 1995 report was measured not from “human subsidies” but from a landfill. The proposed project is not a landfill. We also note that JTNP analyses completely ignore the fact that the National Park is surrounded by human development on all sides. There are multiple communities (such as Twentynine Palms, Desert Hot Springs, Indio, Desert Center, and Lake Tamarisk) with all of their associated human subsidies (golf courses, open water courses, residential and commercial areas, and landfills) within just a few miles of the JTNP border (see Figure, below). The NPS analysis implies that the Park is a wilderness in an untouched and undeveloped setting. In reality, the Park itself is partially developed and it is set among cities, towns, resorts, and a major military base.</p>
<p>The number of tortoises in Joshua Tree National Park has decreased significantly in the past two decades. Surveys estimate a desert tortoise population range from 29-31/km² in 1978 (Barrow 1979), to 67/km² in 1991–96 (Freilich et al. 2000), to an average of only 3/km² since 2007 (USFWS 2012).</p>	<p>These citations are inapplicable and incorrect. Freilich, et. al. 2000 estimated the population size of their sample area at 67, with a density of 42 adults per km². They also noted that apparent changes in population size was most strongly related to the animals varying susceptibility to capture. In dry years, home ranges decrease, captures decrease, and the effort to find tortoises nearly doubled. They concluded that low tallies for a given day or poor estimates for a bad year were artifacts, and that the population of desert tortoise neither increased nor</p>

NPS “Interpretation of Existing Science”	Response
	<p>decreased throughout their study.</p> <p>USFWS (2012) gives the density of desert tortoises in Joshua Tree as 3.4 per km². There is no information in this report on desert tortoise densities in the 2007 to 2011 time period. The study methodology and sites surveyed in USFWS 2012 is different than Freilich et. al. 2000.</p> <p>Freidman, et.al, 2005 discuss the abundance of riparian plants collected at sites throughout the western United States. They note the frequency of occurrence of some species varies with annual minimum temperature. At no point in the paper do they discuss the impact of altered hydrologic regimes, or how that may impact native vs invasive species. However, they do point out the limited knowledge of underlying environmental influences on non-native species distribution and abundance.</p>
<p>Scientific literature on invasive plants in North American deserts suggests that any alteration of the hydrologic regime favors invasive plants over native riparian vegetation (Friedman, Auble et al. 2005; Merritt and Poff 2010).</p>	<p>These citations are inapplicable and incorrect. Merritt and Poff (2010) studied the effect of flow alteration on riparian plants along rivers in semi-arid and arid regions of the western United States. The study did not in any way attempt to evaluate the effect of creating a water body in an area that is currently dry.</p> <p>The actual conclusion of Merritt and Poff (2010) was that “the analysis of the extensive data set does not support the widely held notion that river regulation of perennial streams has facilitated or promoted the recruitment of <i>Tamarix</i>...They found the highest levels of recruitment of <i>Tamarix</i> at the lowest levels of flow alteration.”</p>
<p>The USGS report (Mathany et al. 2012) prepared for SWRCB clearly indicates no modern recharge has occurred in the Chuckwalla Basin.</p>	<p>This citation is inapplicable and incorrect. The Mathany et. al. 2012 study was designed to provide a spatially unbiased assessment of untreated-groundwater quality in the primary aquifer system, and to facilitate statistically consistent comparisons of untreated-groundwater quality throughout California. Regarding recharge in the project area the report quotes California Department of Water Resources, “Groundwater recharge in the region occurs from a mixture of ambient recharge (infiltration of runoff from the surrounding mountains into alluvial fan deposits, direct percolation of precipitation, and seepage from ephemeral rivers, streams, and washes) and subsurface inflow (from non-alluvial</p>

NPS “Interpretation of Existing Science”	Response
	geologic units that bound the alluvial basins)” No data interpretation is provided to support the conclusion stated by the NPS.



SOURCE: Joshua Tree National Park Boundary from National Park Service, 2011

0 8 16 Miles

by GEI Consultants, Inc.
 Eastern Riverside County, California



COMMUNITIES NEAR JOSHUA TREE NATIONAL PARK

December 2013

SOURCE: 2013 Z:\Projects\080472_EagleCrest_Energy\JoshuaTreeArea.mxd SET

B. Response to Petitions for Reconsideration, Final Water Quality Certification, Eagle Mountain Pumped Storage Project (Federal Energy Regulatory Commission Project No. 13123) Gary Cruz, Hildeberto Sanchez, Ralph Figueroa, and Laborers International Union of North America, Local Union 1184 - represented by Michael Lozeau and Richard Drury of Lozeau Drury LLP.

Response prepared by Eagle Crest Energy Company, December 31, 2013.

Laborers International Union of North America, Local Union 1184 (LIUNA) never participated in the State Water Board's CEQA process, and filed its first comments after the Final Environmental Impact Report (EIR) had been released by the State. LIUNA's Petition for Reconsideration fails to identify any new issues which were not addressed within the Final Environmental Impact Report prepared by the State Water Board, and as documented again herein, contains misinformation throughout. The letter submitted by Eagle Crest Energy April 13, 2013 to the State Water Board in response to LIUNA's March and April 2013 comment letters addresses the points brought up in the LIUNA Petition in some detail. That letter is incorporated by reference to this response.

A point by point response to each issue raised in the LIUNA Petition follows:

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
<p>A more appropriate baseline that should be considered in a revised FEIR would focus on the power consumed by the Project and determine the amount of greenhouse gasses that would be emitted by current sources of power available to the Project. A revised FEIR should incorporate published default CO2 emissions factors for the power consumed by the Project from currently available sources. The California Energy Commission specifies the use of a default CO2 emissions factor of 1000 lbs/MWh for “in-state unspecified sources.”³</p>	<p>Section 3.15.3.3</p>	<p>As fully explained in the FEIR, the analysis of potential Project GHG impacts is based on the assumption that the proposed Project generation will displace emissions from simple cycle power plants (natural gas-fired peaker plants). According to the CPUC (CPUC, 2010), the least-cost marginal source of power available on the California grid during night-time and weekend periods is combined-cycle natural-gas fired power. This is based on current analysis of the California energy supply stack (Figure 3.15-3 of the Final EIR), not a projection of a hypothetical future condition. The most reasonably foreseeable scenario is that pump-back power would result in the dispatch of power from natural gas-fired combined-cycle power plants. Daytime peak power needs are met at present with simple-cycle natural gas-fired peaker plants. For that reason, this source of power would be displaced by power generation from the proposed Project. CO2 emission factors used in the Final EIR for the calculations of GHG emissions were obtained from the California Energy Commission, as cited in the Final EIS.</p>
<p>The EIR would have to describe how many such power plants would be decommissioned and contain some level of discussion of the environmental impacts that would ensue from “displacing,” i.e. decommissioning many no longer needed peaker plants.</p>	<p>Sections 2.2 and 3.15</p>	<p>Energy demand in California continues to grow, as discussed in Section 2.2 of the Final EIR. There is no expectation that any power plants will be decommissioned as a result of the Eagle Mountain Pumped Storage Project. The ‘displacement’ discussed in the Final EIR is of the amount of energy produced from peaker plants, not a ‘displacement’ of the actual power plants themselves.</p>
<p>It is likely that during the daytime, much of the “displaced” energy would</p>	<p>Section 3.15.3.3</p>	<p>As described in the Final EIR, the CAISO dispatches energy in order, based on cost. Renewable energy is ‘must-take’, meaning it has to be used when generated. The Eagle Mountain project will not be</p>

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
otherwise be produced by a mixture of combined cycle plants, peaker plants, and renewable facilities (solar, wind, hydro) that produce no GHGs.		dispatched to displace renewable energy sources, only to supplement and/or augment them. Combined cycle plants provide base load and intermediate load energy. The Eagle Mountain Pumped Storage Project will not be dispatched to ‘displace’ these generation facilities.
The FEIR’s use of a skewed baseline “mislead(s) the public” and “draws a red herring across the path of public input.”	Section 3	The environmental baseline used in the Final EIR is based on current conditions on-the-ground, not a hypothetical baseline.
The Project’s use of 1,600 MW of power required to pump water to the upper reservoir would result in significant new GHG emissions	Section 3.15.3.3	As explained in the notes for Table 3.15-2 of the Final EIR, the pump-back efficiency of the Eagle Mountain Project is estimated to be 79%, resulting in more GWh/year required for the pump-back power requirements than are generated annually.
The FEIR provides no details on sources of the power that are assumed in estimating GHG emissions offsets. No documentation is provided in the FEIR to support the contention that power needs for pumping would displace energy supplied only by simple cycle plants.	Section 3.15.3.3	See the discussion on pages 3.15-10 to 3.15-15 of the Final EIR on the sources of energy in California and the energy source currently on the margin in California. The rationale for the analysis that the project would displace single cycle energy is clearly stated in the Final EIR.
The FEIR uses arbitrary numbers to calculate GHG emissions in Table 3.15-2	Section 3.15.3.3	As explained in the notes for Table 3.15-2 of the Final EIR, the analysis assumes 2,278 GWh of annual generation for the proposed Project (1.3 MW for 20% of the annual hours). Different amounts of annual generation would have directly proportional benefits of displacing CO2 emissions.
The Project would contribute to an increase in GHG emissions of 13,607 metric tons of CO2 per year, even assuming that the	Section 3.15.3.3	See Table 3.15-2 of the Final EIR for the estimate of GHG emissions under different scenarios of pump back power sources.

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
FEIR can subtract displaced peaker power emissions from the GHG baseline... would constitute a significant impact		
FEIR has not conducted the necessary studies, evaluations and surveys of the Project site.	Section 3	Field surveys of sensitive species, cultural resources, and visual conditions were conducted on the linear features of the project in 2008, 2009 and 2010. The only portions of the project site not accessible were within the old mine site, a highly disturbed landscape with little existing ecological or environmental resources value. This area was evaluated based upon extensive data and site-specific analyses that were conducted by the BLM in its EIS for the previously proposed landfill project, supplemented by geologic data available from historic mining evaluations and recent aerial photography. Note that the U.S. Fish and Wildlife Service has stated that “Because vegetation recovery in the desert can take decades or longer, we consider all ground disturbing impacts ...to be effectively permanent.” <i>Biological Opinion on the Proposed Eagle Mountain Pumped Storage Hydroelectric Project (No. 13123-002), Riverside County, California. Dated April 10, 2012.</i> Therefore, baseline studies in the old mine site done for the proposed landfill project are reasonably assumed to reflect accurate baseline conditions. This conclusion was confirmed with the use of recent aerial photography.
The FEIR’s current baseline for biological resources fails to reflect “real conditions on the ground” at the Project site	Sections 3.5, 3.6, 10.0, 11.0, and 12.14.	The results of the site specific field surveys are fully disclosed in the Final EIR, including results from surveys done specifically for this project as well as surveys done in the project area for other recent projects. Site specific field surveys were conducted of the linear features of the project in 2008, 2009 and 2010. In addition, other recent, relevant biological surveys in the Project area include: - Southern California Edison Devers-Palo Verde 2 – Surveyed in 1985, 1987, 2002, 2003, 2004, 2005 and 2008 (see Blythe Energy LLC, 2004; EPG, 2004; Tetra Tech EC, Inc., 2005; and Karl, 2009 for recent data) -FPL Energy Blythe Energy Project Transmission Line – 2004 (Blythe

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
		Energy LLC, 2004; EPG, 2004) and 2005 (Tetra Tech EC, Inc., 2005) -District Desert Southwest Transmission Line Project – 2002 (BLM and IID, 2005) and 2005 (Tetra Tech EC, Inc., 2005) - Eagle Mountain Landfill and Recycling Center – 1989-90 and 1995 EIS (Riverside County and BLM, 1996), BA (RECON, 1992) and supporting studies for the Eagle Mountain Landfill permits
The United States Fish and Wildlife Service commented on the need to defer project approval until project area data could be obtained and analyzed.	Section 12.14	The project has received both a Biological Opinion from the U.S. Fish and Wildlife Service and a Consistency Determination from California Department of Fish and Wildlife.
The FEIR fails to adequately survey bats to establish an accurate baseline	Section 3.5, see in particular page 3.5-44 (Bats) and MM BIO-15 (Bats).	In 2009 and 2010, pedestrian transects were completed consistent with the NECO Plan, USFWS “protocol” desert tortoise transects (DOI and USFWS, 1992; Revised Draft, 2008), and the California Burrowing Owl Consortium (CBOC) Guidelines (CBOC, 1993). The surveys identified maternity roosts for Townsend’s Bat within 5 miles of riparian habitat and all significant roosts for other bats within 1 mile of the project. Mitigation measures have been specified for potential impacts to bats.
The FEIR fails to adequately survey the occurrence of raven population at the Project site	Section 12.14.5 – Predator Monitoring and Control Plan.	The presence and location of ravens were also noted during baseline surveys, as described in the Final EIR. The Predator Monitoring and Control Plan requires that a predator population baseline be established prior to the start of construction (See section 4.1 of the Predator Monitoring and Control Plan).
The FEIR failed to conduct late-season annual plant surveys to establish an accurate baseline for special-status plant species	Section 10.1 – Sensitive Species in Project Area – Plants. Section 11.0 Fish and Wildlife Observed in Project Area (table includes plants observed during sensitive species surveys of the project site).	In 2009 and 2010, pedestrian transects were completed consistent with the NECO Plan, USFWS “protocol” desert tortoise transects (DOI and USFWS, 1992; Revised Draft, 2008), and the California Burrowing Owl Consortium (CBOC) Guidelines (CBOC, 1993).
The FEIR improperly dismisses	Section 12.14	This issue is discussed in detail in Section 12.14 of the Final EIR. The

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
<p>the potential for Coachella Valley milkvetch to occur in the Project area, which was detected during a previous survey of the Project area.</p>		<p>information in the Final EIR is summarized here: Coachella Valley Milkvetch <i>Astragalus lentiginosus var. coachellae</i> is known primarily from the Coachella Valley. A population was also allegedly found in the aeolian areas of Chuckwalla Valley, along State Route-177 (BLM and California DFG, 2002; Consortium of California Herbaria, 2011). However, it is likely that this record was mistakenly identified and is actually a population of <i>Astragalus lentiginosus var. variabilis</i> instead. During spring 2008 surveys for the project, all of the plants found in the aforementioned population keyed to <i>A. l. var. variabilis</i>. In 2009, Dr. A.E. Karl and the USFWS conducted thorough investigations of this taxonomic issue that included discussions with species experts, reviews of relevant unpublished literature, and re-keying of herbarium specimens by herbaria botanists in three herbaria where samples from Desert Center were filed. As a result, it was determined that the populations of <i>A. lentiginosus</i> at Desert Center were <i>var. variabilis</i>, not <i>var. coachellae</i>. The USFWS concurred with this conclusion (Englehardt, 2009a). Therefore, Coachella Valley milkvetch is not expected to be found on the project due both to lack of habitat and lack of verified populations. It also was not seen on the spring 2009 or 2010 project surveys, nor on several previous surveys in the area (BLM and Imperial Irrigation District, 2003; Karl, 2002, 2004a, 2005, and 2007 field notes; Environmental Planning Group, 2004; Blythe Energy, 2004).</p>
<p>The FEIR fails to disclose the presence of all special-status plants detected during previous surveys, including federally endangered and rare plants.</p>	<p>Section 10.1 – Sensitive Species in Project Area – Plants. Section 11.0 Fish and Wildlife Observed in Project Area (table includes plants observed during sensitive species surveys of the project site).</p>	<p>The results of the site specific field surveys are fully disclosed in the Final EIR, including results from surveys done specifically for this project as well as surveys done in the project area for other recent projects. Site specific field surveys were conducted of the linear features of the project in 2008, 2009 and 2010. In addition, other recent, relevant biological surveys in the Project area include: - Southern California Edison Devers-Palo Verde 2 – Surveyed in 1985, 1987, 2002, 2003, 2004, 2005 and 2008 (see Blythe Energy LLC, 2004; EPG, 2004; Tetra Tech EC, Inc., 2005; and Karl, 2009 for recent data)</p>

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
		<p>-FPL Energy Blythe Energy Project Transmission Line – 2004 (Blythe Energy LLC, 2004; EPG, 2004) and 2005 (Tetra Tech EC, Inc., 2005)</p> <p>-District Desert Southwest Transmission Line Project – 2002 (BLM and IID, 2005) and 2005 (Tetra Tech EC, Inc., 2005)</p> <p>- Eagle Mountain Landfill and Recycling Center – 1989-90 and 1995 EIS (Riverside County and BLM, 1996), BA (RECON, 1992) and supporting studies for the Eagle Mountain Landfill permits</p>
<p>The FEIR fails to adequately analyze the extent of the Project’s impacts to the groundwater supply by potentially underestimating the recharge rate of Chuckwalla Valley Groundwater Basin. If more conservative recharge estimates are used (i.e. lower amounts of recharge to the groundwater basin), predicted decreases in water levels will be greater than those estimated in the FEIR.</p>	<p>Sections 3.3.2.9 and 12.4</p>	<p>Recharge to the Chuckwalla aquifer was estimated at 12,700 acre-feet per year (AFY) in the Final EIR. This recharge estimate is near the mean estimate of recharge for the aquifer as developed by numerous authors. Figure NPS-1 in the Responses to Comments in the Final EIR (Volume IV, Package 1) shows a summary of groundwater recharge estimates for the Chuckwalla and tributary valleys using the estimates developed during previous studies. Estimates of recharge for the Chuckwalla aquifer range from a low of 3,000 AFY as suggested by the National Park Service in its October 2010 comment letter, to a high over 30,000 AFY in the Palen Solar Power Project Draft EIS (BLM, CEC, 2010). The recharge estimates at the very low range of values would predict drawdown in the valley much greater than has been actually observed in groundwater levels. Therefore, these very low estimates of recharge were deemed inaccurate and unreasonable for use in water balance modeling by the State Water Board.</p>
<p>Results of the recharge estimates should be incorporated into the groundwater models to predict additional drawdown scenarios.</p>	<p>Sections 12.4 and 3.3</p>	<p>As noted above, the very low estimates of recharge were deemed inaccurate and unreasonable for use in water balance modeling by the State Water Board.</p>
<p>The FEIR should be revised to include enforceable maximum drawdown limits.</p>	<p>Section 3.3</p>	<p>Maximum drawdown limits are already incorporated into MM GW-1, which states: If monitoring indicates that groundwater is being drawn down at greater levels and faster rates than expected</p>

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
		(exceeding the “Maximum Allowable Changes” identified in Table 3.3-8), pumping rates for the initial fill will be reduced to a level that meets the levels specified in Table 3.3-8. The initial fill period would therefore be extended to a maximum of 4.5 to 6 years.
One such mechanism would be to enter into an agreement with Riverside County to establish a “floor” for the maximum amount of drawdown that would be acceptable. If the levels of the floor were exceeded, automatic management measures would be triggered such as a reduction in pumping until groundwater levels reached agreed-upon levels.	MM GW-1 of the Final EIR and Condition 5 of the Water Quality Certification	Project pumping must comply with the maximum drawdown levels specified in Table 3.3-8.
The FEIR should have analyzed and disclosed the true extent of impacts of contaminated seepage on groundwater quality.	Sections 3.2, 3.3, and 12.5 and Condition 7 of the Water Quality Certification	Section 12.5 of the Final EIR is a detailed analysis of potential seepage at the project site. Condition 7 of the Water Quality Certification specifies the specific water quality standard that must be maintained for groundwater quality.
No direct tests of the potential for water in the reservoir to generate acid was conducted in the preparation of the FEIR	Section 3.2.3 – Surface Water Potential Environmental Impacts	In 1993, ECE collected five samples from the ore body in the East Pit that were analyzed for standard soil analyses and water soluble leachate from saturate paste extracts. The results of these surveys are included in the Final EIR.
The FEIR must conduct tests to analyze the potential of the reservoir water to contain metals.	Condition 6 – Surface Water Quality, Water Quality Certification	Monitoring of metals in the surface waters is required as a mitigation measure in the FEIR. This information will provide actual results regarding surface water quality, rather than hypothetical results.
The FEIR fails to provide sufficient details on how to implement the reverse osmosis system and brine lagoon to	Section 2.4.9 – Reverse Osmosis Water Treatment System	As stated in the Final EIR, the treatment goal will be to maintain water quality levels in the reservoirs comparable to the input groundwater quality.

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
adequately mitigate impacts to water quality.		
The FEIR provides for mitigation, few details are provided to document how the ponds will be constructed and how monitoring will be conducted. The FEIR should be revised to disclose this information in a draft Report of Waste Discharge which will be required by the Regional Water Quality Control Board for operation of the brine ponds.	Section 2.4.9 – Reverse Osmosis Water Treatment System and Condition 8 of Water Quality Certification	The commenter is mistaken regarding the requirement for a Report of Waste Discharge.
The FEIR must be revised to analyze and disclose details on how to successfully implement Mitigation Measure GW-2	Section 2.4.9 – Reverse Osmosis Water Treatment System	The reverse osmosis water treatment system is described in the project description. The performance standards for water quality in the reservoirs are clearly stated in MM GW-6, which says, the proposed Project: 1) must not cause or contribute to the degradation of background water quality; and 2) water quality in the reservoirs will be maintained at the existing quality of the source groundwater.
The FEIR's proposed habitat compensation (MM BIO-22) is inconsistent with the CDFW's guidelines	Section 3.5	The Project will be required to comply with the habitat compensation specified in the Consistency Determination from California Department of Fish and Wildlife and current guidelines.
The FEIR's Revegetation Plan, Weed Plan, and Predator Monitoring and Control Plan are insufficient to mitigate the significant impacts to biological resources	Section 12.4	The LIUNA letter is not specific regarding the insufficiency in the cited plans. These plans were reviewed and accepted by the USFWS and the CDFW, and on that basis, were accepted by the State Water Board and incorporated in required mitigation measures in the FEIR.
The Project's extensive site preparation and construction activities may emit significant	Section 3.15	No data are provided to support the stated conclusion. GHG emissions are analyzed in detail in Section 3.15 of the Final EIR.

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
amount of GHGs		
No documentation that modeling was done in support of this estimate is included in the FEIR and no quantification of the amount of GHGs produced by project construction components (e.g., dam and spillway construction, tunnel construction).	Section 3.13 and 3.15	The comment is incorrect. Construction emissions are specified in Tables 3.13-4 and 3.13-5 of the FEIR.
Considerations for mitigation for construction emissions in a revised FEIR should quantify emissions reductions with use of available mitigation for construction and off-road equipment	Section 6.2.11	A series of 13 mitigation measures to reduce emissions (MM AQ-1 to MM AQ-13) are specified in the MMRP that is a part of the FEIR.
The FEIR thus fails to disclose how many UXOs are present at the Project site and which portions of the Project site may contain them.	Section 3.16	As stated in the Final EIR, historical use of the project site included General George Patton’s Desert Training Camps during World War II. Live-fire training occurred throughout the area. In addition, military training has been conducted on Kaiser lands in the Central Project Area. To date, field surveys of the project area have not found any unexploded ordinance. However, MM HM-1 requires an unexploded ordinance plan to protect workers in the event that unexploded ordinance is discovered on the project site.
In addition to conducting a review of the specific military activities conducted within Project boundaries, a survey of the Project site, using visual and geophysical techniques should be conducted by trained	Section 3.16	The MMRP requires the development of a UXO Plan to be implemented no less than 60 days prior to the initiation of construction activities at the site.

Comment from LIUNA, Local Union 1184.	Section of Final EIR where comment addressed	Reply
personnel.		
The State Board has no authority to delegate to the Executive Director or other staff the Board's duties to issue water quality certifications pursuant to Water Code § 13160 or certify EIRs pursuant to CEQA Guidelines § 15090		The commenter provides no legal basis for this claim. We have relied upon the State Water Board to interpret its proper authority and procedures.

C. Response to Petitions for Reconsideration, Final Water Quality Certification, Eagle Mountain Pumped Storage Project (Federal Energy Regulatory Commission Project No. 13123) filed by Kaiser Eagle Mountain, LLC- represented by Tracy Egoscue and Tarren Lopez of Egoscue Law Group.

Response prepared by Eagle Crest Energy Company, December 31, 2013.

Kaiser Eagle Mountain LLC's (Kaiser) Petition for Reconsideration fails to identify any new issues which were not addressed within the Final Environmental Impact Report prepared by the State Water Board.

A detailed response to each issue raised in their Petition follows:

Comment from Kaiser Eagle Mountain LLC.	Section of Final EIR where comment addressed	Reply
The Project could impede future economic growth in the Eagle Mountain region.	Section 5.2 Growth Inducing Impacts	CEQA requires an examination of environmental impacts rather than economic impacts. The CEQA Guidelines Section 15131(a) state that “Economic or social effects of a project shall not be treated as significant effects on the environment”. Growth inducing impacts are discussed in Section 5.2.
The 401 Certification does not adequately discuss and analyze the Project's impacts on the mineral resources at Eagle Mountain, including the possible loss of valuable mineral resources, jobs and income for the California State Teachers Retirement System.	Section 3.1.3.3.3 Active and Inactive Mines	It is not the purpose of the 401 Certification to address impacts of a project on mineral resources related jobs. The potential impact of the project on future mining is thoroughly discussed in the Final EIR. Note that the FEIR information on future mining plans for the site is based upon Kaiser’s 2011 annual report, filed with the Securities and Exchange Commission March 30, 2012.
It is likely that large-scale iron ore mining could resume at the location of the Project at some time in the near future	Section 3.1.3.3.3 Active and Inactive Mines	Note that the FEIR information on future mining plans for the site came from Kaiser’s 2011 annual report, filed with the Securities and Exchange Commission March 30, 2012. CEQA Guidelines § 21159 states that lead agency, “shall not be required to engage in speculation or conjecture.” Since there are no mining proposals that have been submitted to any regulatory agency for review, any assumption that a mining proposal is forthcoming would be speculative in nature.
Project disruption of mining within the Project boundaries would in fact disrupt mining on the whole Eagle Mountain Mine site. Mining operations at Eagle Mountain Mine were designed to be a cohesive mining unit and will likely not be economically	Section 3.1.3.3.3 Active and Inactive Mines	CEQA requires an examination of environmental impacts rather than economic impacts. Kaiser’s 2011 annual report (cited in the Final EIR) state that, “ <i>Portions of the iron ore reserves, including the coarse and fine tailings which contain recoverable iron ore, are located on the current Landfill Project property. Thus, if there should be a landfill project, any development of the iron ore opportunity would require the cooperation of the owner of the Landfill Project. However, based upon a very preliminary analysis, there does not appear to be at this time any</i>

Comment from Kaiser Eagle Mountain LLC.	Section of Final EIR where comment addressed	Reply
profitable in small pieces given the large investment that would be required to resume large-scale iron ore mining. The Project would completely prevent the resumption of large-scale extractive iron ore mining.		<i>material reason why the mining and processing of the iron ore reserves and tailings would be physically incompatible with a landfill project.</i> Logically, if potential future mining is compatible with the previously proposed landfill project that would have utilized a much greater area of the site than the pumped storage project does, then potential future mining could also be compatible with the pumped storage project.
The lack of access means that the environmental documentation and analysis for the Project fails to accurately describe the physical environmental conditions, as they currently exist. These studies cannot provide an accurate baseline as required by CEQA.	Section 3	Baseline conditions were fully documented for all portions of the site that will be utilized by the pumped storage project. The only portions of the project site not accessible to the applicant were within the old mine site, a highly disturbed landscape with little existing ecological or environmental value. For those portions of the site, baseline conditions were evaluated based upon very in-depth and site-specific environmental studies completed for the proposed landfill project, including a Final EIR/EIS completed in the 1990s by the BLM and Riverside County, and a Biological Opinion issued by the USFWS in the early 1990s. These were augmented by site specific data collected for the first iteration of the pumped storage project in the early 1990s, geologic information from historic mine records, and visual reconnaissance using recent aerial photography. Note that the U.S. Fish and Wildlife Service has stated that <i>“Because vegetation recovery in the desert can take decades or longer, we consider all ground disturbing impacts ...to be effectively permanent.”</i> (Source: Biological Opinion on the Proposed Eagle Mountain Pumped Storage Hydroelectric Project (No. 13123-002), Riverside County, California. Dated April 10, 2012.)
The State Board has issued a CWA 401 Certification that fails to comply with CEQA guidelines by improperly delaying required site investigations.	Section 6- Mitigation Summary	The mitigation measures specified in the Final EIR contain performance standards as required by CEQA for measures that are reasonably implemented during early stages of project development – in this case, as a key part of completion of final engineering studies.
The CWA 401 Certification		The use of performance standards and ongoing studies and monitoring is

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cannot ensure that all activities will comply with applicable water quality standards because proper site investigations and studies have not been completed at the Project location.		permitted by both the 401 certification process and the CEQA process, and is an essential part of short- and long-term monitoring and adaptive management.
The CWA 401 Certification states that if acid production potential is found, a water treatment facility will be designed to be able to neutralize the acid. This mitigation measure lacks any explanation or analysis of how or whether it would be feasible to do so.	Section 3.2.3 – Surface Water Potential Environmental Impacts	Note the performance standard included within the Final EIR in MM SW-1: As a performance standard, the proposed Project must not cause or contribute to the degradation of background water quality of the aquifer, as required by the Region 7 Colorado River Water Quality Control Plan. Water quality in the reservoirs will be maintained at the existing quality of the source groundwater. As explained in the FEIR, this measure can be implemented through installation of a modular treatment unit in the Reverse Osmosis (RO) system that is required for the project.
The failure to conduct direct tests of the potential for water in the reservoir to generate acid or to contain metals constitutes inadequate disclosure.	Section 3.2.3 – Surface Water Potential Environmental Impacts	In 1993, ECE collected five samples from the ore body in the East Pit that were analyzed for standard soil analyses and water soluble leachate from saturate paste extracts. The results of these surveys are included in the Final EIR. The mineralogy of the geologic units in the vicinity of the pits indicates that there is primarily oxide mineralization with minor pyrite and gypsum and therefore minor potential to generate acid leachate. Additionally there do not seem to be any oxide or sulfide minerals that contain significant toxic metals. Pyrite, which averaged 3 to 4 percent in the ore body (which has been mined from the pit areas) was detected at levels of 1.5 to 3 percent in some samples reported by Force (2001). While Force (2001) does report local concentrations of pyrite as high as 10 to 50 percent in the lower portions of the ore, this would be atypical as pyrite is typically present in low concentrations as reported by Force (3 to 4 percent) and by Lamey (1945) (averages 3 to 4 percent, ranges to no more than 10 percent).

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It is unclear whether and how the brine ponds could successfully mitigate the significant impacts of seepage containing metals and total dissolved solids to water quality.	Section 3.2.3 – Surface Water Potential Environmental Impacts	Note that Kaiser misunderstands the purpose of the brine ponds. The brine ponds do not mitigate for seepage, which will be managed instead using a system of monitoring and pump-back recovery wells, and added modules to the RO system if and as needed. The brine ponds are also a component of the RO water treatment facility. It is the RO water treatment plant that maintains reservoir water quality by removing salts from the reservoir water, producing brine as a residual.
The data regarding background groundwater quality is preliminary in nature has not been fully analyzed. The CWA 401 Certification cannot certify that a water quality standard will be maintained by the conditions in the CWA 401 Certification if the current water quality is unknown.	Section 3.3.2.11 – Groundwater Quality and also see Certification Condition 6.	Table 3.3-4 lists results from water quality testing of wells in the Upper Chuckwalla Valley in bedrock and in alluvium, and in the Palen Valley, northeast of Desert Center. Additional water quality data will be collected as a requirement of the Certification as confirmation of the original testing and analysis. The Deputy Director will have the authority to approve the final determination of existing background groundwater quality.
There is no ability to appropriately protect the groundwater basin from degradation.	Section 3.2 and 3.3.	Multiple measures (10) are required to monitor groundwater quality and protect the groundwater from degradation. These measures are feasible, based on proven technologies, and are required under the conditions of the water quality certification.
Surface water quality should be maintained at levels better than the currently existing preliminary groundwater quality and meet all applicable water quality standards.	Section 3.2	Condition 6 provides that water quality in the reservoirs will be maintained consistent with the background groundwater quality. This requirement meets the non-degradation standard of the Basin Plan.
The CWA 401 Certification should ensure water quality would not be degraded before the Project begins.	Section 3.2	The certification requires extensive monitoring, planning, and reporting which will occur prior to project construction. The certification requires all reports to be approved by the Deputy Director of the State Water Board prior to authorization of the start of construction. See in particular Condition 3, which requires that the Deputy Director must concur that all

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		pre-construction requirements are satisfied, prior to the start of construction.
There is no contingency plan for the possibility of new uses of groundwater in the basin unaccounted for in the CWA 401 Certification and therefore the action by the State Board fails to protect groundwater resources in contravention of State law.	Section 5.4 – Cumulative Effects	Neither CEQA nor the 401 certification process mandate the use of a contingency plan. CEQA Guidelines 14 CCR § 15064 (d)(3) state that, “An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.” For future projects, CEQA requires analysis of cumulative effects, defined to mean an analysis of the incremental effects of an individual project which may be significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of <i>probable</i> [emphasis added] future projects (CEQA Guidelines §15065 (a)(3)). The Final EIR used the list approach to define the past, present, and probable future projects. There is no CEQA requirement to account for unknown future projects which are not probable future projects.
The CWA 401 Certification was signed by the Executive Director despite inadequate information on the actual and potential biological impacts of the Project.	Sections 3.5, 3.6, 10.0, 11.0, and 12.14.	In-depth information on biological impacts is included in the biological assessment (found in Section 12.14 of the Final EIR). Contrary to Kaiser’s opinion, the wildlife agencies with special expertise and jurisdiction over this project found that there was adequate information to assess potential biological impacts as reflected in the Biological Opinion issued by the U.S. Fish and Wildlife Service and the related Consistency Determination issued by the California Department of Fish and Wildlife (previously the California Department of Fish and Game).
The EIR improperly dismisses the potential for Coachella Valley Milkvetch, American Peregrine Falcon, and Gila Woodpecker to occur in the Project area and fails to properly mitigate the potential impact on the Desert Tortoise.	Section 3.6 – Threatened and Endangered Species Section 12.14.8 – Biological Assessment	Again, contrary to Kaiser’s opinion, the wildlife agencies with special expertise and jurisdiction over this project found that there was adequate information to assess potential biological impacts as reflected in the Biological Opinion issued by the U.S. Fish and Wildlife Service and the related Consistency Determination issued by the California Department of Fish and Wildlife Regarding Coachella Valley milkvetch, peregrine falcon, and Gila woodpecker : based on site reconnaissance and literature review, these species are not expected to be located on-

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		site, or in areas that will be affected by the Project. Peregrine falcon is unknown from Riverside and Imperial counties, and has not been found during previous surveys in the Project area, including the Central Project Area. For desert tortoise, as noted, the project has received both a Biological Opinion from the U.S. Fish and Wildlife Service and a Consistency Determination from California Department of Fish and Wildlife. In addition, note the extensive mitigation measures for biological resources proposed in the Final EIR, Section 3.6.4.1.2
The CWA 401 Certification also fails to disclose the presence of all special-status plants detected during previous surveys, including federally endangered and rare plants.	Section 10.1 – Sensitive Species in Project Area – Plants. Section 11.0 Fish and Wildlife Observed in Project Area (table includes plants observed during sensitive species surveys of the project site).	The results of the site specific field surveys are fully disclosed in the Final EIR, including results from surveys done specifically for this project as well as surveys done in the project area for other recent projects. Site specific field surveys were conducted of the linear features of the project in 2008, 2009 and 2010. In addition, other recent, relevant biological surveys in the Project area include: - Southern California Edison Devers-Palo Verde 2 – Surveyed in 1985, 1987, 2002, 2003, 2004, 2005 and 2008 (see Blythe Energy LLC, 2004; EPG, 2004; Tetra Tech EC, Inc., 2005; and Karl, 2009 for recent data) -FPL Energy Blythe Energy Project Transmission Line – 2004 (Blythe Energy LLC, 2004; EPG, 2004) and 2005 (Tetra Tech EC, Inc., 2005) -District Desert Southwest Transmission Line Project – 2002 (BLM and IID, 2005) and 2005 (Tetra Tech EC, Inc., 2005) - Eagle Mountain Landfill and Recycling Center – 1989-90 and 1995 EIS (Riverside County and BLM, 1996), BA (RECON, 1992) and supporting studies for the Eagle Mountain Landfill permits
The CWA 401 Certification provides an inadequate analysis and mitigation of the possible impacts of eutrophication.	Section 3.2 – Eutrophication on page 3.2-12. See also Impact 3.2-12 and PDF GW-2.	Eutrophication is a process whereby water bodies, such as lakes, estuaries, or slow-moving streams receive excess nutrients that stimulate excessive plant growth (e.g., algae, periphyton attached algae, and nuisance plants weeds). This enhanced plant growth, often called an algal bloom, reduces dissolved oxygen in the water when dead plant material decomposes and can cause other organisms to die. Nutrients can come from many sources, such as fertilizers applied to agricultural fields, golf courses, and suburban lawns; deposition of nitrogen from the

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		<p>atmosphere; erosion of soil containing nutrients; and sewage treatment plant discharges. None of these sources will be present at Eagle Mountain other than nitrogen in the atmosphere.</p> <p>In addition, the Project’s water treatment process in the RO system will remove nutrients as well as salts, eliminating the risks of eutrophication. Note also that eutrophication occurs in stagnant water bodies, and the reservoirs for the pumped storage project will be regularly moving as water is pumped to the upper reservoir and then released back to the lower reservoir to produce electricity.</p>
<p>There has been no adequate survey to establish an accurate baseline for bats or ravens to analyze and implement mitigation measures.</p>	<p>Section 3.5, see in particular page 3.5-44 (Bats) and MM BIO-15 (Bats). Section 12.14.5 – Predator Monitoring and Control Plan.</p>	<p>As detailed in the FEIR, in 2009 and 2010, pedestrian transects were completed consistent with the NECO Plan, USFWS “protocol” desert tortoise transects (DOI and USFWS, 1992; Revised Draft, 2008), and the California Burrowing Owl Consortium (CBOC) Guidelines (CBOC, 1993). The surveys identified maternity roosts for Townsend’s Bat within 5 miles of riparian habitat and all significant roosts for other bats within 1 mile of the project. The presence and location of ravens were also noted during baseline surveys, as described in the Final EIR. The Predator Monitoring and Control Plan requires that a predator population baseline be established prior to the start of construction (See section 4.1 of the Predator Monitoring and Control Plan). Mitigation measures have been specified to control ravens and mitigation for impacts to bats.</p>
<p>The State Board must use baseline descriptions of the environment as it exists at the time the EIR is published, not hypothetical conditions based on possibly outdated investigations.</p>	<p>Section 3</p>	<p>Field surveys of sensitive species, cultural resources, and visual conditions were conducted on the linear features of the project in 2008, 2009 and 2010. Note that the U.S. Fish and Wildlife Service has stated that <i>“Because vegetation recovery in the desert can take decades or longer, we consider all ground disturbing impacts associated with the project to be effectively permanent.”</i> (Source: Biological Opinion on the Proposed Eagle Mountain Pumped Storage Hydroelectric Project (No. 13123-002), Riverside County, California. Dated April 10, 2012.) Therefore, baseline studies done for the proposed landfill project reflect accurate baseline conditions. This conclusion was confirmed with the use of recent aerial photography.</p>

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<p>Conditions of the CWA 401 Certification inappropriately delay a robust analysis of the Project's affect on environmental resources and impermissibly requires post Certification studies to "protect water quality and beneficial uses and reduce environmental impacts."</p>		<p>The Clean Water Act does not preclude the use of ongoing monitoring, review and performance standards to protect water quality.</p>
<p>It is poor public policy for the State Board to issue a 401 water quality certification; unless and until a determination is made that the project proponent has an actual legal right to use the property and a determination can be made that the proposed project is consistent with existing and future uses by the existing landowner.</p>		<p>There is no legal requirement for an applicant to acquire lands prior to issuance of any State or federal permit.</p>
<p>The number of studies not undertaken or completed to date were improperly deferred</p>		<p>Kaiser Ventures, the commentor and landowner of the Central Project Area for the Project has refused to grant the Project Applicant access for purposes of data collection, and neither the State Water Board nor FERC can require that access be granted in advance of Project approvals. However, the Central Project Area consists entirely of previously mined lands from the Kaiser iron mine, and consists of mine pits and large mounds of mine tailings. In addition, as reported in the Final EIR, the Central Project Area has been the subject of many years of scientific and environmental investigations for the proposed Landfill, and for previous versions of the Project. Site-specific data are available and were used in the impact assessment for the Final EIR. These included site-specific</p>

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		<p>environmental studies completed for the proposed landfill project, including a Final EIR/EIS completed in the 1990s by the BLM and Riverside County, and a Biological Opinion issued by the USFWS in the early 1990s. These were augmented by site specific data collected for the first iteration of the pumped storage project in the early 1990s, geologic information from historic mine records, and visual reconnaissance using recent aerial photography. All of these sources of information are cited in the State Water Board's FEIR, and are a formal part of the State's administrative record.</p>