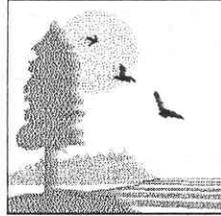


CALIFORNIA STATE LANDS COMMISSION
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May 7, 2013

File Ref: SCH #2009011010

Felicia Marcus, Board Chair
State Water Resources Control Board
Division of Water Rights
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Final Environmental Impact Report (EIR) for the Eagle Mountain Pumped Storage Project, Federal Energy Regulatory Commission Project No. 13123, Riverside County

Dear Ms. Marcus:

The California State Lands Commission (CSLC) staff has reviewed the Final EIR for the Eagle Mountain Pumped Storage Project (Project) prepared by the State Water Resources Control Board (SWRCB). Staff respectfully requests that you do NOT certify the EIR, because:

1. The EIR fails to adequately address CSLC's staff's concerns with regards to the potential for future mining from school lands in the Project area;
2. The EIR fails to identify impacts to Mineral Resources as a Potentially Significant Impact for which no feasible mitigation has been identified; and
3. The Project, if approved, would limit the CSLC's fiduciary duty to manage school lands for the benefit of the California State Teachers' Retirement System.

The SWRCB prepared the EIR as Lead Agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and released the Draft EIR in July 2010. On November 10, 2010, CSLC staff provided comments on the Draft EIR, and on July 27, 2012, staff submitted additional comments on the Project's Draft Water Quality Certification (WQC) (see attached comment letters). The CSLC submitted these comments because of its duty as the trustee of school lands to monitor projects that could directly or indirectly impact these lands.¹ The CSLC has a fiduciary duty to manage school lands for the benefit of the State Teachers' Retirement System.

The Project as proposed would flood the 466.6-acre 100 percent Reserved Mineral Interest school lands owned by the State and managed by the CSLC. In the SWRCB's Responses to Comments on the Draft EIR, the SWRCB concedes that the State's ability to mine the 466.6-acre parcel would be impeded during the life of the Project (as

¹ The CSLC is a CEQA Trustee Agency for school lands (see State CEQA Guidelines §15386).

described in Section 3.1.3.3.3 of the Final EIR), but states that “...no plans have been developed to re-open the [Eagle Mountain] mine, and the resumption of large scale iron mining is not considered to be a ‘probable future project.’”

While the price of iron ore has fluctuated greatly over the past few years, CSLC staff cannot concur with the conclusion that resumption of iron ore mining at Eagle Mountain is not probable. During the past several years, several iron ore mines in the California desert have either resumed operations or are permitted to do so. These include the Beck Spring Iron Mine near Tecopa Pass and the Bessemer Iron Mine in Johnson Valley. In addition, to our knowledge, the Silver Lake Iron Mine is still in production and providing needed iron ore for the cement operations on the north side of Big Bear. Staff further understands that Kaiser is exploring resumption of mining on this property. Resumption of iron ore mining would likely involve the State school land parcel affected by the proposed Project. Under present statutes, development of these minerals would provide funds to the School Land Bank Fund and through it to the State Teachers’ Retirement System.

The threshold of significance for loss of mineral resources, identified in section 3.1.3.2 (g) of the EIR, states that “*The State Water Board concludes that the Project may have significant impacts on geology, soils, and mineral resource if the Project does any of the following: Result in loss of available mineral resource that would be of value to the region and the residents of the state....*” However, the Final EIR subsequently fails to address the loss of available mineral resources; instead, the Final EIR applies a different threshold of significance consisting of whether the resumption of large-scale iron mining would be a ‘probable future project.’ As stated above, CSLC staff disagrees that resumption of iron ore mining on the parcel is not probable, and remains concerned that Project construction would result in the loss of an available mineral resource of value to the region and the residents of the State. Therefore, the impact to mineral resources should be considered Significant, and CSLC staff objects to the development of the Project without compensation to the School Land Bank Fund.

Please refer questions concerning CSLC jurisdiction and minerals to Greg Pelka at (562) 590-5227 or via e-mail at Greg.Pelka@slc.ca.gov. For questions concerning environmental review, please contact Cynthia Herzog, Staff Environmental Scientist, at (916) 574-1310 or via e-mail at Cynthia.Herzog@slc.ca.gov.

Sincerely,

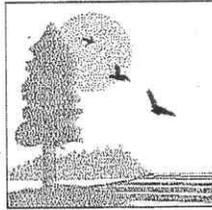


Mark A. Meier
Chief Counsel

Attachments: Letter to Paul Murphey, SWRCB, November 10, 2010
Letter to Oscar Biondi, SWRCB, July 27, 2012

cc: Oscar Biondi, SWRCB
Greg Pelka, Mineral Resources Management Division, CSLC
Cynthia Herzog, DEPM, CSLC
Jim Frey, Legal, CSLC
Pamela Griggs, Legal, CSLC

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July 27, 2012

File Ref: SCH #2009011010
FERC #13123

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

Subject: Draft Water Quality Certification for the Eagle Mountain Pumped Storage Project, Federal Energy Regulatory Commission Project No. 13123, Riverside County

Dear Mr. Biondi:

The California State Lands Commission (CSLC) staff has reviewed the Draft Water Quality Certification (WQC) for the Eagle Mountain Pumped Storage Project (Project), which is being prepared by State Water Resources Control Board (SWRCB).

Background

Currently, as part of the licensing process for the Project, Eagle Crest Energy Company (ECE), as the Applicant, filed an application for a WQC under section 401 of the Clean Water Act with the SWRCB on September 6, 2011. Comments are currently being accepted on this WQC. The CSLC is submitting the following comments on the WQC because of its duty as the trustee of school lands to monitor projects that could directly or indirectly impact these lands.

In addition, the SWRCB prepared a draft Environmental Impact Report (draft EIR) as the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), in July 2010. The CSLC provided comments on the draft EIR during the comment period that ended on October 7, 2010; however, it does not appear that the EIR has been certified. As a responsible agency, the CSLC will need to rely on the EIR for the issuance of any new or amended lease; therefore, CSLC staff request that you consider CSLC's previous comments on the draft EIR prior to certification of the EIR, as well as the comments below.

CSLC Jurisdiction and Public Trust Lands

In 1853, the United States Congress granted to California nearly 5.5 million acres of land for the specific purpose of supporting public schools. In 1984, the State Legislature passed the School Land Bank Act (Act), which established the School Land Bank Fund (SLBF) and appointed the CSLC as its trustee (Pub. Resources Code, § 8700 et seq.). The Act directed the CSLC to develop school lands into a permanent and productive resource base for revenue generating purposes. The CSLC manages approximately 469,000 acres of school lands still held in fee ownership by the State and the reserved mineral interests on an additional 790,000± acres where the surface estates have been sold. Revenue from school lands is deposited in the State Treasury for the benefit of the Teachers' Retirement Fund (Pub. Resources Code, § 6217.5).

After review of the information contained in the Certification, CSLC staff has determined that CSLC has two interests within the Project area. The first is a 466.66-acre 100 percent Reserved Mineral Interest within Section 36, T3S, R14E, SBBM, Riverside County that would be located within the East Pit Lower Reservoir from Sheet B, Plan View and Project Boundary. The legal description of this ownership is Lots 1, 2, 3, 4, 5, 6, 10 and 11, N1/2 of NW1/4, and W1/2 of the NE1/4 of Section 36, T3S, R14E, SBBM, Riverside County. The CSLC had a portion of this interest previously leased and mined by Kaiser Steel under Mineral Extraction Lease PRC 5678.2 for iron ore. These State lands and the pit surrounding them still contain substantial iron ore resources as identified by the California Geological Survey.

The second interest of the CSLC that could be impacted by the proposed Project is a 5.75-acre fee simple interest in the SW4 of S16, T5S, R16E, SBBM, Riverside County, currently leased to Southern California Edison for a transmission line right-of-way.

Project Description

The Project is located near the town of Eagle Mountain (just north of the unincorporated town of Desert Center), located within eastern Riverside County, California.

The Project footprint is up to 2,364 acres: 1,133 acres are located on federal lands managed by the Bureau of Land Management (BLM) and the remaining 1,231 acres on privately owned lands.

The Project would primarily use off-peak energy to pump water from a lower reservoir to an upper reservoir and generate energy during periods of high energy demand by transferring the water from the upper reservoir to the lower reservoir through four reversible turbines. The Project would have an installed capacity of 1,300 megawatts. Two former iron ore mine pits form the reservoirs. The existing East Pit of the mine would form the Project's Lower Reservoir and the existing Central Pit of the mine would form the Project's Upper Reservoir. There is an elevation difference between the reservoirs that would provide an average net head of 1,410 feet.

The Project would link the Upper and Lower Reservoirs by subsurface tunnels that convey water through the four reversible turbines in the underground powerhouse.

Existing access roads within the former mining area would be improved to provide access for heavy machinery to the Project site during construction. Tunneling would be within the reservoir sites, and waste rock from tunnel boring would be used to meet construction needs such as for road base for access roads, miscellaneous backfills for access roads and around structures, flood berms, and potentially for concrete in the dams. Any excess material would be placed in the reservoirs or in spoil areas from which fine tailings have been removed.

Comments

CSLC staff requests that the SWRCB consider the following comments on the Project's WQC:

Land Use

1. Per the description of lands under the jurisdiction of the CSLC, as described above, CSLC staff are concerned that, should the Project be approved, future extraction of iron ore would not be possible within the 466.6-acre 100 percent Reserved Mineral Interest lands. However, staff is aware that iron ore mining at Eagle Mountain would be completely dependent on the availability of rail transportation, that the rail line has been inactive since 1986, and that it would require substantial reconstruction for reoperation.

In addition, the proposed water pipeline within the Groundwater Basins Pipeline Area is located within the 5.75-acre fee simple interest lands, and would likely require a right-of-way lease from the CSLC.

Water Quality

2. The WQC, and previous draft EIR, state that the reservoir and groundwater water quality could be potentially affected by contact with the existing ore body, which can result in water acidity. Although Phase I and II site investigations are planned once access to the Central Project Area is granted, CSLC staff believes that access should be secured and the investigations of the Project area be conducted prior to the approval of the WQC, or certification of the draft EIR, to facilitate the inclusion of appropriate and defensible mitigation measures and conditions.

Biological Resources

3. The WQC acknowledges that surveys for sensitive species have not been conducted due to problems with access to the Central Project Area. Several special-status species have been identified as having the potential to be present within the Project area and protective measures were presented in the draft EIR; however, the WQC states that the measures would be modified based on the proposed surveys. CSLC staff believes that surveys should be conducted, and

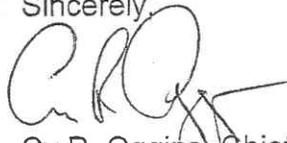
the appropriate mitigation measures and conditions included in both the WQC and the draft EIR, before approval of these documents.

The WQC and the draft EIR also indicate that during the "initial fill" of the reservoirs (between 2014 and 2017) groundwater use would exceed recharge, and groundwater levels are expected to decrease basin-wide. However, the effects on local biological resources during this time period were not sufficiently assessed. CSLC staff suggests that an evaluation of the potentially impacted species and habitat resulting from a minimum three-year decrease in groundwater levels be included in the Project analyses.

In addition, per the WQC and the draft EIR, evaporative water losses from the reservoirs are estimated to be 1,760 acre-feet per year, and the maximum average annual water loss from the upper and lower reservoirs due to seepage is estimated to be approximately 1,200 acre-feet, and 1,700 acre-feet, respectively. Although a mitigation program is proposed for seepage, no mitigation was proposed to reduce the loss of water due to evaporation. CSLC staff request that this issue be further investigated and possible mitigation measures proposed that might significantly reduce water loss due to evaporation.

Thank you for the opportunity to comment on the WQC for the Project. Please send copies of future Project-related documents, including an electronic copy of the Final WQC, EIR, Mitigation Monitoring and Reporting Program (MMRP), Notice of Determination (NOD), CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available, and refer questions concerning environmental review to Cynthia Herzog, Environmental Scientist, at (916) 574-1310 or via e-mail at Cynthia.Herzog@slc.ca.gov. For questions concerning CSLC leasing jurisdiction, please contact Greg Pelka at (562) 590-5227, or by e-mail at greg.pelka@slc.ca.gov.

Sincerely,

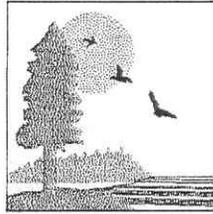


Cy R. Oggins, Chief
Division of Environmental Planning
and Management

Attachment: Letter to Paul Murphey (SWRCB) dated November 10, 2010

cc: Office of Planning and Research
Greg Pelka, MRMD, CSLC
Cynthia Herzog, DEPM, CSLC
Warren Crunk, Legal, CSLC
Jim Frey, Legal, CSLC

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November 10, 2010

File Ref: SCH # 2009011010
W40871

Paul Murphey, Senior Environmental Consultant
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814

Subject: Eagle Mountain Pumped Storage Project

Dear Mr. Murphey,

On August 10, 2010, the California State Lands Commission (CSLC) staff received an electronic version of the Draft Environmental Impact Report (DEIR) for the Eagle Mountain pumped storage project. Upon review of the DEIR, we have the following comments.

We understand that the project would use two reservoirs at different elevations in the now idled open pits of the former Kaiser Eagle Mountain Iron Mine to generate up to 1300 megawatts per day of electrical capacity with four reversible pump-turbine units. On April 8, 2008, Greg Pelka of the CSLC provided verbal comments pertaining to our agency at a meeting held at the University of California, Riverside-Palm Desert Graduate Center, and shared CSLC responsibilities and the State's areas of interest.

The CSLC manages both sovereign (tide and submerged) and State school lands, generally Sections 16 and 36 of each Township and Range. The State school lands were granted by the federal government in 1853 for the economic support of the State school system. Today, the CSLC manages these lands under a fiduciary agency for the economic benefit of the State Teachers' Retirement System (STRS).

CSLC has two interests within the project area. The first is a 466.66-acre 100 percent Reserved Mineral Interest (see attached map) within Section 36, T3S, R14E, SBBM, Riverside County that would be located within the East Pit Lower Reservoir from Sheet B, Plan View and Project Boundary. The legal description of this ownership is Lots 1, 2, 3, 4, 5, 6, 10 and 11, N1/2 of NW1/4, and W1/2 of the NE1/4 of Section 36, T3S, R14E, SBBM, Riverside County. The CSLC had a portion of this interest previously leased and mined by Kaiser Steel under Mineral Extraction Lease PRC 5678.2 for iron ore. These State lands and the pit surrounding them still contain substantial iron ore resources as identified by the California Geological Survey. We are concerned that, should the Eagle

Mountain pumped storage project come to fruition, future extraction of iron ore would not be possible and mineral revenues for STRS would be precluded.

According to the DEIR, if the proposed project is approved and constructed, the State's ability to mine this parcel would be impeded during the life of the Project. The placer deposits at the east end of the lower (East) pit, with an estimated 21.4 million short tons ore reserve in the East Pit – Alluvial resource area, would become inaccessible. This is approximately 6.3 percent of the estimated Eagle Mountain ore reserves.

However, staff is also aware that iron ore mining at Eagle Mountain was completely dependent on the availability of rail transportation. The rail line has been inactive since 1986 and would require substantial reconstruction for reoperation.

The second interest of the CSLC that could be impacted by the proposed project is a 5.75-acre fee simple interest in the SW4 of S16, T5S, R16E, SBBM, Riverside County, currently leased to Southern California Edison for a transmission line right of way. From Figure 3.2 (Groundwater Basins Pipeline Area), the new proposed water pipeline could traverse this area and would likely require a right of way lease.

We appreciate the opportunity to comment on the DEIR and would appreciate if you could keep us advised as this process moves forward so that we may participate appropriately. If you have any questions, please contact Greg Pelka at (562) 590-5227, or by e-mail at greg.pelka@slc.ca.gov.

Sincerely,



Cy R. Oggins, Chief
Division of Environmental Planning
and Management

Attachment

cc: Office of Planning and Research
MRMD, CSLC
DEPM, CSLC