

DOCKETED

Docket Number:	15-AFC-01
Project Title:	Puente Power Project
TN #:	214475
Document Title:	Robert Simpson Comments: Notice of Litigation (Stay of Proceedings)
Description:	N/A
Filer:	System
Organization:	Robert Simpson
Submitter Role:	Public
Submission Date:	11/14/2016 12:03:06 PM
Docketed Date:	11/14/2016

Comment Received From: Robert Simpson

Submitted On: 11/14/2016

Docket Number: 15-AFC-01

Notice of Litigation (Stay of Proceedings)

Additional submitted attachment is included below.

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FOR COURT USE ONLY
ENDORSED FILED
San Francisco County Superior Court
NOV - 8 2016
CLERK OF THE COURT
BY: MADONNA CARANTO
Deputy Clerk

ATTORNEY FOR (Name):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister St.
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, 94102
BRANCH NAME:

CASE NAME:
Helping Hands Tools et al. v. Cal. Energy Res. Con. and Dev. Comm. et al

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
CPF - 16-515351
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PII/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PII/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PII/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PII/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 5
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 11/8/2016
Andrew Kingsdale
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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ENDORSED
FILED
San Francisco County Superior Court

NOV - 8 2016

CLERK OF THE COURT
BY: MADONNA CARANTO
Deputy Clerk

*Counsel for Petitioners
Helping Hand Tools and Rob Simpson*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

HELPING HAND TOOLS and ROB
SIMPSON,

Petitioners,

vs.

CALIFORNIA ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT
COMMISSION, JANEA SCOTT, in her
capacity as Commissioner, KAREN
DOUGLAS, in her capacity as
Commissioner, ALANA MATHEWS, in
her capacity as the Energy
Commission's Public Advisor,
CALIFORNIA COASTAL COMMISSION,
JOHN AINSWORTH, in his capacity
as acting Executive Director of
the CALIFORNIA COASTAL
COMMISSION, and DOES 1 to 20,

Respondents,

NRG OXNARD ENERGY CENTER, LLC,

Real Party in Interest

Case No. **CPF-16-515351**

**PETITION FOR ADMINISTRATIVE
MANDAMUS (CCP § 1094.5)
AND/OR WRIT OF MANDATE (CCP
§ 1085), AND/OR DECLARATORY
RELIEF, AND/OR INJUNCTIVE
RELIEF TO STAY PROCEEDINGS
BEFORE THE CALIFORNIA ENERGY
RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**

1 Petitioners Helping Hand Tools and Rob Simpson petition
2 this Court for writs of mandate under either Code of Civil
3 Procedure § 1094.5 and/or § 1085 directed to Respondents, and/or
4 declaratory relief, by this verified petition. Petitioners also
5 request issuance of an immediate stay of the CALIFORNIA ENERGY
6 COMMISSION's certification proceedings concerning the Puente
7 Power Project. Petitioners allege as follows:

8 **BENEFICIAL INTERESTS OF PETITIONERS;**

9 **CAPACITIES OF RESPONDENTS AND REAL PARTY IN INTEREST**

10 1. Petitioner HELPING HAND TOOLS is a California non-
11 profit organization that has members throughout California.
12 HELPING HAND TOOLS and its members are beneficially interested
13 in environmental justice, due process, civic participation,
14 ecological values, human health, and continued productivity of
15 the land and air throughout California, including in Ventura
16 County.

17 2. Petitioner ROB SIMPSON is an individual and resident
18 of California. He is the Executive Director of HELPING HAND
19 TOOLS and commented in the COASTAL COMMISSION's administrative
20 hearing and ENERGY COMMISSION proceedings at issue in this
21 petition.

22 3. Respondent CALIFORNIA ENERGY RESOURCES CONSERVATION
23 AND DEVELOPMENT COMMISSION ("ENERGY COMMISSION") is part of the
24 Resources Agency of the State of California, and was created
25 pursuant to California Public Resources Code section 25200 et.
26

1 seq. The ENERGY COMMISSION is responsible for certification and
2 compliance of thermal power plants 50 megawatts (MW) and larger,
3 including all project-related facilities in California,
4 including OXNARD NRG's proposed Puente Power Project.

5 4. Respondent JANE SCOTT, is an ENERGY COMMISSION
6 Commissioner and also Presiding Member of the committee
7 overseeing OXNARD NRG's application for certification of the
8 Puente Power Project, and is named herein as a Respondent solely
9 in that capacity.

10 5. Respondent KAREN DOUGLAS, is an ENERGY COMMISSION
11 Commissioner and also the Associate Member of the committee
12 overseeing OXNARD NRG's application for certification of the
13 Puente Power Project, and is named herein as a Respondent solely
14 in that capacity.

15 6. Respondent ALANA MATHEWS, is the ENERGY COMMISSION's
16 Public Advisor responsible for ensuring that full and adequate
17 participation by all interested groups and the public at large
18 is secured in Commission proceedings. She is named herein as a
19 Respondent solely in that capacity.

20 7. Respondent CALIFORNIA COASTAL COMMISSION ("COASTAL
21 COMMISSION") is a state administrative body required under
22 California Public Resources code to enforce the California
23 Coastal Act of 1975, Public Resources Code § 30000 et seq., and
24 other laws, statutes, and regulations.

1 12. Venue is proper under Code of Civil Procedures section
2 395 and 401(1) because the ENERGY COMMISSION is a state agency
3 and the California Attorney General has an office in San
4 Francisco.

5 13. This Petition is timely because it was filed within
6 the 60 days of the final decision of the COASTAL COMMISSION on
7 September 9, 2016 to approve its recommendation letter to the
8 ENERGY COMMISSION about the P3 Power Plant. See Pub. Res. Code
9 section 30801.

10 14. HELPING HAND TOOLS has standing because its members
11 will be directly, adversely, and irreversibly affected by the
12 ENERGY COMMISSION 's certification of NRG OXNARD's proposed P3
13 Power Plant in Oxnard, California. Furthermore, the COASTAL
14 COMMISSION's and ENERGY COMMISSION's defective hearing notices
15 have denied HELPING HAND TOOLS's members opportunity to
16 participate in the COASTAL COMMISSION's and ENERGY COMMISSION s
17 public hearings about the P3 Power Plant.

18 15. Petitioner ROB SIMPSON has standing because he
19 commented on the issues in this Petition, on his own behalf and
20 on behalf of HELPING HAND TOOLS, at the COASTAL COMMISSION's
21 September 9, 2016 hearing, through correspondence with the
22 COASTAL COMMISSION, and through written comments to the ENERGY
23 COMMISSION. Additionally, the matter at hand involves a public
24 interest. The purpose of this petition it to enforce
25 environmental justice, public notice, and due process laws
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1 (including the Public Trust Doctrine), statutes, and
2 regulations, and to increase the civic participation of
3 environmental justice communities whose health and environment
4 will be directly affected by the P3 Power Plant. Additionally,
5 Petitioner SIMPSON has a strong personal interest in air quality
6 because he held his father, of Mexican heritage, when his father
7 died from respiratory failure from air quality impacts at his
8 work, contracted because his father was uninform of health
9 risks. He also held mother as she died from cancer. He is
10 committed to helping to protect others from dying from
11 environmental impacts and ensuring that they are informed
12 regarding the dangers of pollution. SIMPSON has two children on
13 whose behalf he strives to preserve the environment. SIMPSON
14 enjoys recreational opportunities along the California Coast,
15 including in Oxnard, visits friends and family in that area, and
16 has business interests in that area.

17 **STATEMENT OF FACTS**

18 16. The Puente Power Project ("P3 Power Plant") is a
19 proposed power plant currently under consideration for
20 certification by the ENERGY COMMISSION pursuant to Pub. Res.
21 Code § 25500, et seq.

22 17. On or around April 15, 2015, NRG OXNARD filed an
23 Application for Certification ("AFC") to build and operate the
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1 P3 Power Plant before the ENERGY COMMISSION. [Application for
2 Certification, TN #204219-1¹]

3 18. The P3 Power Plant, if approved, would be a 262-
4 megawatt (MW) electric power plant sited on the coast in the city
5 of Oxnard in Ventura County California. It would include a gas-
6 fired combustion turbine generator. [Revised Preliminary Staff
7 Assessment Part 1, TN 211885]

8 19. The P3 Power Plant would have a potential to emit
9 10.84 tons per year of reactive organic compounds, 32.95 tons
10 per year of nitrogen oxides, 10.68 tons per year of particulate
11 matter, 5.91 tons per year of sulfur oxides, 54.43 tons per year
12 of carbon monoxide, and 17.62 tons per year of ammonia. [TN #
13 214005-2]

14 20. According to statistics and the ENERGY COMMISSION's
15 own Preliminary Staff Assessment, the citizens and residents
16 living within 6-mile radius of the P3 Power Plant constitute an
17 "environmental justice" (or "EJ") community. [Revised
18 Preliminary Staff Assessment Part 1, TN 211885-1, pp. 4.9-1 and
19 6.1-43]

20 21. According to statistics and the ENERGY COMMISSION's
21 own Preliminary Staff Assessment, Oxnard and the communities
22 surrounding Oxnard have high rates of people living beneath the
23 federal poverty line. The cities of Oxnard and Port Hueneme have

24 ¹ "TN" numbers refer to documents on the ENERGY COMMISSION's
25 docket for the Puente Power Project, available at
26 [https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=15-
AFC-01](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=15-AFC-01)

1 poverty rates approximately five and seven percent higher,
 2 respectively, than Ventura County.

3
 4
 5 **Socioeconomics Table 3**
Poverty Data within the Project Area

Cities in the six-mile radius	Total	Income in the past 12 months below poverty level	Percent below poverty level (%)
	Estimate*	Estimate	Estimate
Oxnard	200,076 ±394	31,956 ±2,320	16.00 ±1.2
Port Hueneme	21,020 ±310	3,848 ±838	18.30 ±4
San Buenaventura (Ventura)	106,870 ±262	11,532 ±1,399	10.80 ±1.3
Reference geography			
Ventura County	824,329 ±959	91,912 ±3,350	11.10 ±0.4

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 11
 12 **Notes:** * Population for whom poverty status is determined. Staff's analysis of the 2010 – 2014 estimates returned CV values less than 15, indicating the data is reliable. **Source:** US Census 2015b.

13 [Revised Preliminary Staff Assessment Part 1, TN 211885-1, pp.
 14 4.9-2]

15 22. According to California EPA's CalEnviro Screen
 16 2.0² much of the city of Oxnard is environmentally disadvantaged,
 17 with some census tracts ranking it within the top 10% of
 18 environmentally-burdened California communities. Overall, the
 19 city ranks within the top 20% of environmentally-burdened
 20 California communities. Over 50,000 Oxnard residents live in
 21 census tracts within the 70th percentile of pollution burden or
 22 above. The proposed P3 Power Plant site location is immediately
 23 adjacent to public beach recreational areas used extensively by

24
 25 ² The CalEnviro Screen 2.0 database is available at
 26 <http://oehha.ca.gov/calenviroscreen/report/calenviroscreen-version-20>.

1 working-class immigrant community members from throughout
2 Oxnard, as well as between half a mile and four miles away from
3 agricultural fields surrounding the proposed site where between
4 1,000 and 3,000 farmworkers labor daily. [See, "The CAUSE
5 Comments: Add Socioeconomics to Issues Identification," TN
6 206369]

7 23. Oxnard residents' ethnic composition is approximately
8 70% minority. Furthermore, approximately 61.6% of Oxnard
9 residents speak Spanish. Only approximately 50% of Oxnard's
10 residents speak English "very well."³

11 24. The ENERGY COMMISSION's home page for the "Puente
12 Power Project (P3)" is translated into Spanish. But, the Docket
13 Log listing all available documents lists entries **in English**
14 **only**, unless a particular docketed entry is for a document
15 titled in Spanish.⁴

16 25. On or around April 24, 2015, the ENERGY
17 COMMISSION posted to its docket a five-page notice titled
18 "Notice of Receipt of an Application for Certification for the
19 Puente Power Project," **in English only**. This notice described
20 the project, certification process, as well as details regarding
21

22 ³ U.S. Census Bureau, 2010-2014 American Community Survey 5-
23 Year Estimates, Language spoken at home, available at
[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF)
24 [.xhtml?src=CF](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF).

25 ⁴ See ENERGY COMMISSION's Docket Log for the Puente Power
26 Project, available at
[https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=15-AFC-01)
27 [15-AFC-01](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=15-AFC-01)

1 how to receive information about the process and how to comment
2 on the application. "Agencies and members of the public who
3 wish to provide written comments on the project are asked to
4 submit comments to the Energy Commission Dockets Unit. Please
5 include the docket number, 15-AFC-01, in the subject line or
6 first paragraph of your comments. Those submitting comments
7 electronically should provide them in either Microsoft Word
8 format or Portable Document Format (PDF) to
9 docket@energy.ca.gov. Please include your name or organization's
10 name in the subject line." On information and belief, this
11 notice was mailed to "all property owners located within 1000
12 feet of the proposed project site and 500 feet of a project
13 linear feature (e.g. pipeline)" also **in English only**. [Notice of
14 Receipt of an Application for Certification for the Puente Power
15 Project, TN 204392]

16 26. Also on or around April 24, 2015, the ENERGY
17 COMMISSION posted to its docket a three-page notice addressed
18 "To: MEMBERS OF THE PUBLIC" and titled "Public Participation in
19 the Review of the Puente Power Project (15-AFC-01)." This notice
20 stated, "Over the coming months, the Energy Commission will
21 conduct public workshops and hearings to determine whether the
22 proposed project should be approved for construction and
23 operation and under what set of conditions. These workshops and
24 hearings will provide the public as well as local, state and
25 federal agencies the opportunity to ask questions about, and
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1 provide input on, the proposed project. The Energy Commission
2 will issue notices for these workshops and hearings at least 10
3 days prior to each meeting." The notice further stated that,
4 "This notice of receipt has been mailed to all property owners
5 located within 1000 feet of the proposed project site and 500
6 feet of a project linear feature (e.g. pipeline)." This notice
7 was posted to the docket **in English only**. Furthermore, on
8 information and belief, this notice was mailed to "all property
9 owners located within 1000 feet of the proposed project site and
10 500 feet of a project linear feature (e.g. pipeline)" also **in**
11 **English only**. [Public Participation in the Review of the Puente
12 Power Project, TN 204393

13 27. On or around April 27, 2015 and June 20, 2016, the
14 ENERGY COMMISSION mailed notices **in English only** to librarians
15 in Oxnard, Eureka, San Francisco, Sacramento, Fresno, Los
16 Angeles, and San Diego. [Document Handling for the Puente Power
17 Project, dated April 24, 2015, TN 204394; Request for Comments
18 on the Preliminary Staff Assessment, TN 211906] Those notices
19 included, and were intended to notify the public about, NRG
20 OXNARD's Application for Certification and the ENERGY
21 COMMISSION's Preliminary Staff Assessment. On information and
22 belief, the Application for Certification and Preliminary Staff
23 Assessment were and still are made available to the public **in**
24 **English only**.

1 28. On or around June 5, 2015, the ENERGY COMMISSION
2 published notice in two newspapers ads for an informational
3 hearing and site visit that took place on August 27, 2015. One
4 notice was published in English, and the other in Spanish.

5 29. On or around July 7, 2015 and July 31, 2015, the
6 ENERGY COMMISSION posted on its docket, in both English and
7 Spanish, notices of an August 27, 2015 public site visit.

8 30. On or around March, 11, 2016 the ENERGY
9 COMMISSION posted to its docket notice "public status conference
10 to review and discuss progress made in the proceeding," to be
11 held on March 28, 2016. The agenda for this conference included
12 a "Public Comment" period during which, "Members of the public
13 and other interested persons and entities may speak up to three
14 minutes on a matter appearing on this agenda." This notice was
15 posted **in English only**. [Notice of Status Conference, TN 210676]

16 31. On or around July 5, 2016, the ENERGY COMMISSION
17 posted to its docket English notice of a Committee Conference to
18 be held on July 15, 2016 -- ten days before the conference. The
19 agenda for this conference included a "Public Comment" period
20 during which, "Members of the public and other interested
21 persons and entities may speak up to three minutes on a matter
22 appearing on this agenda." On July 7, 2016, the ENERGY
23 COMMISSION posted to its docket a Spanish translation of this
24 notice -- **only eight days before the conference**. [AVISO DE LA
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1 CONFERENCIA COMISIÓN (SESIÓN CERRADA), TN 212187; Notice of
2 Committee Conference (Closed Session), TN 212120]

3 32. On or around July 8, 2016, the ENERGY COMMISSION
4 posted to its docket, in English only, a "Notice of Public
5 Workshop for the Puente Power Project Preliminary Staff
6 Assessment (15-AFC-01)" to take place on July 21, 2016 --
7 thirteen days before the workshop. "The purpose of the workshop
8 is to allow Energy Commission staff, NRG Oxnard Energy Center
9 LLC (Applicant), intervenors, interested agencies, and the
10 public to discuss the Preliminary Staff Assessment (PSA) for the
11 Puente Power Project Application for Certification (AFC), to
12 receive comments from individuals and organizations, to identify
13 and resolve areas of disagreement." [PSA Workshop Notice, TN
14 212205] On July 12, 2016, the ENERGY COMMISSION posted to its
15 docket a Spanish translation of this notice -- **only nine days**
16 **before the workshop.** [Aviso De Taller Publico Para La Evaluacion
17 Preliminar De Personal De Proyecto Poder Puente, TN 212247]

18 33. On or around August 25, 2016, the COASTAL COMMISSION
19 distributed a written notice **in English only, and only to a**
20 **limited list of "interested parties" provided by the ENERGY**
21 **COMMISSION,** about its September 9, 2016 public meeting and
22 hearing about the Commission's report and recommendations to the
23 ENERGY COMMISSION regarding the P3 Power Plant. A copy of list
24 of "interested parties" is attached to this Petition as **EXHIBIT**
25 **1.** On information and belief, no notice in Spanish (such as
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1 through a newspaper) was more widely distributed to the citizens
2 and residents of Oxnard. Oxnard is located a mere two-hour
3 drive from where the September 9, 2016 public meeting and
4 hearing was held.

5 34. On or around August 25, 2016, the ENERGY COMMISSION
6 published that same COASTAL COMMISSION hearing notice on the
7 ENERGY COMMISSION's docket for this certification application,
8 again **in English only**. [TN # 212940] On information and belief,
9 the COASTAL COMMISSION did not advise the ENERGY COMMISSION to
10 publish or circulate the notice in Spanish. A copy of the notice
11 is attached to this Petition as **EXHIBIT 2**.

12 35. On or around August 25, 2016 the COASTAL COMMISSION
13 published notice of the Meeting Agenda for the September 9, 2016
14 meeting and hearing in English and Spanish on its website. On
15 the COASTAL COMMISSION's website, **the notice defaults to**
16 **English**, but members of the public can click "Español" to
17 translate the notice to Spanish.⁵

18 36. On September 9, 2016, the COASTAL COMMISSION held a
19 public hearing to discuss approving its report and
20 recommendation to the ENERGY COMMISSION about the P3 Power
21 Plant.

22 37. The COASTAL COMMISSIONS public hearing was in Newport
23 Beach, a two-hour drive from the affected community.

24 _____
25 ⁵ See, Energy, Ocean Resources and Federal Consistency -
26 Proposal to Upgrade Mandalay Generating Station, available at
<https://www.coastal.ca.gov/meetings/mtg-mm16-9.html>

1 38. Mr. Simpson submitted written comments electronically
2 to the COASTAL COMMISSION prior to the decision. These comments
3 are attached as **EXHIBIT 3**.

4 39. At the September 9, 2016, public hearing, Petitioner
5 ROB SIMPSON commented to the COASTAL COMMISSION: "Your staff
6 believes you don't have an environmental justice obligation, but
7 under executive order from the governor and the president you do
8 have that responsibility. It's codified in your code that the
9 notice of this meeting should have been in Spanish. This is a
10 majority minority community, but there has been no notice in
11 Spanish. If this proceeds in no notice in Spanish, we would have
12 to address that."⁶

13 40. In conjunction with his comments at that September 9
14 hearing, Mr. Simpson also provided a letter to staff before the
15 hearing for the COASTAL COMMISSION's consideration during the
16 hearing. The letter, attached as **EXHIBIT 4**, is from a USC
17 professor and explains the potential environmental impacts of
18 power plant plumes (such as would be formed by the P3 Power
19 Plant) on bird species. On information and belief, Commission
20 staff did not present this letter to the hearing officers.

21 41. After the public comment period of the hearing ended,
22 Commission Chair Steve Kinsey asked the Commission's staff for
23 any final comments. Chief Deputy Director Susan Hatch discussed

24
25 ⁶ See, video of Coastal Commission's September 9, 2016
26 public hearing, at the 2:00 minute mark, available at
<http://www.cal-span.org>.

1 the COASTAL COMMISSION's role in the proceedings, but did not
2 address Petitioner SIMPSON's comments regarding defective and
3 inadequate notice in Spanish to the citizens of Oxnard and other
4 surrounding and affected communities, or the letter SIMPSON
5 submitted.

6 42. Commissioner Tom Gibson then moved to adopt the report
7 and to forward the report and recommendations to the ENERGY
8 COMMISSION (the "§ 30413(d) Report"). When asked by Commission
9 Chair Kinsey to speak to his motion, Commissioner Gibson did not
10 address Petitioner SIMPSON's comments about the defective
11 hearing notice or the letter.

12 43. Supervisor Carole Groom, Commissioner Erik Howell, and
13 Commission Chair Kinsey all made comments about the Staff
14 Report, but again did not address Petitioner SIMPSON's comments
15 or letter.

16 44. Commission Chair Kinsey called for a vote and the
17 COASTAL COMMISSION unanimously approved submitting the report.

18 45. On September 15, 2016, COASTAL COMMISSION staff
19 submitted to CEC docket the final report. [California Coastal
20 Commission 30413(d) Report -- Final Approved Report, TN 213667]

1 **RELEVANT LAWS, ORDINANCES, REGULATIONS, AND STATUTES**

2 46. The Equal Protection Clause of the United States
3 Constitution's Fourteenth Amendment states, "no state shall make
4 or enforce any law which shall . . . deny to any person within
5 its jurisdiction equal protection of the laws."

6 47. Title VI of the federal Civil Rights Act prohibits
7 recipients of federal financial assistance from discriminating
8 based on race, color, or national origin in any program or
9 activity. See 42 U.S.C. 2000d et seq.

10 48. Executive Order No. 12898, titled "Federal Actions to
11 Address Environmental Justice in Minority Populations and Low-
12 Income Populations," which calls on any state agency receiving
13 federal funding -- such as the ENERGY COMMISSION and the COASTAL
14 COMMISSION -- to develop strategies to address the environment
15 and human health conditions of minority communities. On
16 information and belief, both the Energy Commission and Coastal
17 Commission receive federal financial assistance. Executive Order
18 12898 further states that "in accordance with Title VI of the
19 Civil Rights Act of 1964, each Federal agency shall ensure that
20 all programs or activities receiving Federal financial
21 assistance that affect human health or the environment do not
22 directly, or through contractual or other arrangements, use
23 criteria, methods, or practices that discriminate on the basis
24 of race, color, or national origin." Under Executive Order
25 12898, the ENERGY COMMISSION and the COASTAL COMMISSION are
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1 "required to identify and address any disproportionately high
2 and adverse human health or environmental effects of their
3 programs, policies, and activities on minority and/or low-income
4 populations." [Revised Preliminary Staff Assessment Part 1, TN
5 211885-1, p. 2-5]

6 49. Under California law, "No person in the State of
7 California shall, on the basis of race, national origin, ethnic
8 group identification, religion, age, sex, sexual orientation,
9 color, genetic information, or disability, be unlawfully denied
10 full and equal access to the benefits of, or be unlawfully
11 subjected to discrimination under, any program or activity that
12 is conducted, operated, or administered by the state or by any
13 state agency, is funded directly by the state, or receives any
14 financial assistance from the state." Cal. Gov. Code Section
15 11135(a).

16 50. California law defines environmental justice as "the
17 fair treatment of people of all races, cultures and income with
18 respect to the development, adoption, implementation, and
19 enforcement of environmental laws, regulations, and policies"
20 (Gov. Code §65040.12; Pub. Resources Code, §§ 71000-71400). All
21 departments, boards, commissions, conservancies and special
22 programs of the Resources Agency, including the ENERGY
23 COMMISSION and COASTAL COMMISSION, "must consider EJ in their
24 decision-making process if their actions have an impact on the
25 environment, environmental laws, or policies. Such actions that
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1 require EJ consideration may include: adopting regulations;
2 enforcing environmental laws or regulations; making
3 discretionary decisions or taking actions that affect the
4 environment; providing funding for activities affecting the
5 environment; and interacting with the public on environmental
6 issues." [Revised Preliminary Staff Assessment Part 1, TN
7 211885-1, p. 1-2]

8 51. Because the P3 Power Plant would have capacity to
9 generate more than 50 megawatts of electricity, the ENERGY
10 COMMISSION has sole siting authority. The siting certification
11 process is a functional equivalent of the California
12 Environmental Quality Act ("CEQA") environmental impact review
13 process. The ENERGY COMMISSION is the lead agency, required to
14 seek input from other agencies with overlapping jurisdiction,
15 such as the COASTAL COMMISSION. See Pub. Res. Code § 25531; 20
16 CCR § 1714.

17 52. The ENERGY COMMISSION must: "Prescribe the form and
18 content of applications for facilities; conduct public hearings
19 and take other actions to secure adequate evaluation of
20 applications; and formally act to approve or disapprove
21 applications, including specifying conditions under which
22 approval and continuing operation of any facility shall be
23 permitted." Pub. Res. Code § 25216.5(a) (underline added).

24 53. Under statutes governing the ENERGY COMMISSION's power
25 facility and site certification process, the Commission's public
26

1 advisor "shall require that adequate notice is given to the
2 public and that the procedures specified by this division are
3 complied with." Pub. Res. Code § 25519 (underline added).

4 54. Another statute governing ENERGY COMMISSION
5 certification procedures states: "No earlier than 90 nor later
6 than 240 days after the date of the filing of an application,
7 the commission shall commence a public hearing or hearings on
8 the application . . . The commission hearing shall provide a
9 reasonable opportunity for the public and all parties to the
10 proceeding to comment upon the application and the commission
11 staff assessment and shall provide the equivalent opportunity
12 for comment as required." Pub. Res. Code. § 25521 (underline
13 added).

14 55. Public Resources Code section 25543 further states:
15 "It is the intent of the legislature to improve the process of
16 siting and licensing new thermal electric power plants to ensure
17 that these facilities can be sited in a timely manner, while
18 protecting environmental quality and public participation in the
19 siting process." Pub. Res. Code § 25543 (underline added)

20 56. The California Code of Regulations applicable to the
21 ENERGY COMMISSION's proceedings state: "(a) At any time, staff
22 may initiate voluntary meetings with the applicant, other
23 parties, interested agencies, stakeholders, or the public on
24 matters relevant to a proceeding. Such meetings may include
25 workshops, site visits, or other information exchanges. (b)

1 Public meetings shall be noticed pursuant to Section 1209 of
2 these regulations. The notice shall list the topics and purposes
3 of the meetings." 20 CCR § 1207.5(a) (underline added).

4 57. Section 1209 of the California Code of Regulations
5 applicable to the ENERGY COMMISSION's proceedings states: "(a)
6 Unless otherwise required by law or directed by the presiding
7 member, all public events, such as workshops and hearings, in
8 all proceedings shall be noticed at least 10 days before the
9 event. Notice consists of sending the notice electronically to
10 all persons on the appropriate commission listserv and
11 applicable proceeding's service list. (b) In addition, when the
12 presiding member, the public adviser, or the executive director
13 believes that a significant number of members of an affected
14 community lack internet access or are otherwise unlikely to be
15 exposed to notice provided under subdivision (a), the presiding
16 member may order other methods of notice to be used, such as
17 first class mail. (c) The public adviser shall be consulted on
18 the scheduling, location, and noticing of all commission public
19 events, so as to promote full and adequate public
20 participation." 20 CCR § 1209 (underlines added).

21 58. CEQA regulation 14 CCR § 15201 states: "Public
22 participation is an essential part of the CEQA process. Each
23 public agency should include provisions in its CEQA procedures
24 for wide public involvement, formal and informal, consistent
25 with its existing activities and procedures, in order to receive
26

1 and evaluate public reactions to environmental issues related to
2 the agency's activities. Such procedures should include,
3 whenever possible, making environmental information available in
4 electronic format on the Internet, on a web site maintained or
5 utilized by the public agency."

6 59. The environmental justice analysis, as identified by
7 the ENERGY COMMISSION, requires providing notice in appropriate
8 languages and opportunities for participation in public
9 workshops. [Preliminary Staff Assessment, TN 211885, p. 1-29]

10 60. ENREGY COMMISSION must consider comments and
11 recommendations about siting certifications from "local and
12 state agencies having jurisdiction or special interest in
13 matters pertinent to the proposed site and related facilities
14 shall provide their comments and recommendations on the project
15 within 180 days of the date of filing of an application." Pub.
16 Res. Code § 25519(h). In such circumstances "[t]he adviser
17 shall require that adequate notice is given to the public and
18 that the procedures specified by this division are complied
19 with." Pub. Res. Code § 25519(i) (underline added). See also,
20 Pub. Res. Code § 25526(a) ("The commission shall not approve as
21 a site for a facility any location designated by the California
22 Coastal Commission pursuant to subdivision (b) of Section 30413,
23 unless the California Coastal Commission first finds that such
24 use is not inconsistent with the primary uses of such land and
25 that there will be no substantial adverse environmental effects

1 and unless the approval of any public agency having ownership or
2 control of such land is obtained."); Pub. Res. Code. § 30413(d).

3 61. The COASTAL COMMISSION has jurisdiction and a special
4 interest in the P3 Power Plant certification process because the
5 facility would be sited within a coastal zone in Oxnard.

6 62. The California Coastal Act states "The Legislature
7 further finds and declares that the public has a right to fully
8 participate in decisions affecting coastal planning,
9 conservation, and development; that achievement of sound coastal
10 conservation and development is dependent upon public
11 understanding and support; and that the continuing planning and
12 implementation of programs for coastal conservation and
13 development should include the widest opportunity for public
14 participation." Pub. Res. Code. § 30006.

15 63. Under "Duties, generally," the Coastal Act requires,
16 "The commission shall: (a) Ensure full and adequate
17 participation by all interested groups and the public at large
18 in the commission's work program. (b) Ensure that timely and
19 complete notice of the commission meetings and public hearing is
20 disseminate to all interested group and the public at large. (c)
21 Advise all interested groups and the public at large as to
22 effective ways of participating in the commission proceedings.
23 (d) Recommend to any local government preparing or implementing
24 a local coastal program and to any state agency that is carrying
25 out duties or responsibilities pursuant to this division,

1 additional measures to assure open consideration and more
2 effective public participation in its programs or activities."
3 Pub. Res. Code § 30339 (underline added).

4 64. "The commission shall make the notice of any public
5 meeting or hearing of the commission available in both English
6 and Spanish." Pub. Res. Code. § 30315.5 (underline added).

7 65. COASTAL COMMISSION regulations state "the commission
8 shall also mail the notice and agenda of the commission hearings
9 to public libraries, building departments and city halls
10 throughout its coastal zone area with a request that they be
11 regularly posted on public bulletin boards or other places
12 readily accessible to the public and shall provide the agenda to
13 newspapers of general circulation." 14 CCR § 13016.

14 **FIRST CAUSE OF ACTION**

15 (Writ of Mandate; CCP § 1094.5 against Respondents
16 CALIFORNIA COASTAL COMMISSION and JOHN AINSWORTH)

17 66. Petitioners refer to and re-allege all of the above
18 paragraphs, and by this reference incorporate those paragraphs
19 as though fully set forth at length.

20 67. Petitioners request a writ of mandate declaring
21 Respondents report and recommendations to the ENERGY COMMISSION
22 about the P3 Power Plant (titled a "30413(d) Report") to be
23 invalid, and directing Respondents to hold another public
24 hearing about this Report after notice of the hearing is

1 adequately and timely distributed throughout the coastal area
2 and with the ENERGY COMMISSION in Spanish.

3 68. Respondents abused their discretion when the agency
4 did not proceed in the manner required by the law. The Coastal
5 Act states "the commission shall make the notice of any public
6 meeting or hearing of the commission available in both English
7 and Spanish." Pub Res. Code. § 30315.5. Despite this clear
8 mandate, Respondents did not make notice of the September 9,
9 2016 public meeting readily "available" to residents of Oxnard
10 and other affected environmental justice communities, and
11 published notice in English only, in violation of Pub Res. Code.
12 §§ 30315.5, 30339, Equal Protection Clause, Title VI of the
13 federal Civil Rights Act, Executive Order No. 12898, Cal. Gov.
14 Code Section 11135(a).

15 69. Respondents breached their duties to make notice of
16 the Commission's public meetings and hearing available in
17 Spanish. The Commission should have published and circulated
18 notice of the September 9, 2016 meeting in Spanish. The
19 Commission also should have recommended that the ENERGY
20 COMMISSION publish notice of the September 9, 2016 public
21 meeting in Spanish "to assure open consideration and more
22 effective public participation in its programs or activities."
23 Pub Res. Code. § 30339(d).

24 70. Respondents failed to grant Petitioners, and the
25 general public, a fair trial by not adequately disseminating
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1 timely notice in Spanish. Without widely distributing notice in
2 Spanish, a large portion of the affected communities did not
3 have the power to participate in the hearing.

4 71. Respondents abused their discretion by not proceeding
5 in the manner required by the law--the Commission's own
6 regulations--requiring that notice of its September 9, 2016
7 public meeting be disseminated in throughout the relevant
8 coastal zone. The Coastal Act states "the commission shall also
9 mail the notice and agenda of the commission hearings to public
10 libraries, building departments and city halls throughout its
11 coastal zone area with a request that they be regularly posted
12 on public bulletin boards or other places readily accessible to
13 the public and shall provide the agenda to newspapers of general
14 circulation." 14 CCR § 13016. On information and belief, the
15 COASTAL COMMISSION failed to follow this regulation. For
16 example, the COASTAL COMMISSION failed to publish the agenda in
17 newspapers of general circulation in and around Oxnard, the
18 affected community located a mere two-hour drive from where the
19 Commission's September 9, 2016 public hearing was held.

20 72. Even assuming that Respondents did adequately
21 distribute general notice as prescribed by 14 CCR § 13016, they
22 did not adequately distribute the notice in Spanish as required
23 by Pub Res. Code. § 30315.5.

1 participation. Alternatively, Petitioners have a beneficial
2 interest in the proceedings because a public right is at stake.
3 This petition involves environmental justice, due process, civic
4 participation, and fundamental public rights (including
5 protection of the principles of the Public Trust Doctrine).
6 Respondents denied these rights when they did not give proper
7 notice to a large segment of the affected, low-income, primarily
8 Spanish-speaking community.

9 78. Petitioners do not have a plain, speedy, and adequate
10 remedy at law. Petitioners are informed and believe that there
11 are no available legal procedures to redress the harms that were
12 suffered if the requested reliefs are denied.

13 **THIRD CAUSE OF ACTION**

14 (Declaratory Relief - CCP § 526(a) against Respondents
15 CALIFORNIA COASTAL COMMISSION and JOHN AINSWORTH)

16 79. Petitioners refer to and re-allege all of the above
17 paragraphs and by this reference incorporate those paragraphs as
18 though fully set forth at length.

19 80. An actual controversy exists between Petitioners and
20 Respondents as to whether the COASTAL COMMISSION violated its
21 duties by failing to provide adequate notice of its September 9,
22 2016 hearing in Spanish.

23 81. Respondents were required to distribute notice widely
24 to the affected communities, and not merely post notice on the
25 Commission's website and to a limited list of "interested
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1 parties." Additionally, Petitioners contend that the COASTAL
2 COMMISSION must follow its regulations on promoting public
3 participation, including distributing general notice and that
4 the general notice must be in Spanish as well.

5 82. Petitioners request a judicial determination that
6 Respondents breached their legal duties by failing to provide
7 adequate notice of its September 9, 2016 meeting, and in doing
8 so unlawfully discriminated against an environmental justice
9 community. Pub Res. Code. §§ 30315.5, 30339.

10 83. Petitioners also request a judicial determination that
11 Respondents unlawfully have discriminated against the
12 environmental justice communities in and around Oxnard,
13 California by denying these communities adequate opportunity to
14 participate in the COASTAL COMMISSION's public hearings,
15 including by failing to widely disseminate adequate notice in
16 Spanish of the Commission's September 9, 2016 hearing, failing
17 to consider Petitioner SIMPSON's comments, and failing to
18 instruct the ENERGY COMMISSION to publish notice of its
19 September 9, 2016 hearing in Spanish. These actions violated
20 the Equal Protection Clause, Title VI of the federal Civil
21 Rights Act, Executive Order No. 12898, Gov. Code section
22 11135(a), Gov. Code section 65040.12, Pub. Resources Code, §§
23 71000-71400.

24 84. These determinations are necessary and proper because
25 without this determination important public rights -- including
26

1 but not limited to environmental justice, due process, and civic
2 participation -- have been trampled and will continue to be
3 trampled.

4 **FOURTH CAUSE OF ACTION**

5 (WRIT OF MANDATE - CCP § 1085 against Respondents
6 CALIFORNIA ENERGY COMMISSION, JANEA SCOTT, KAREN DOUGLAS,
7 and ALANA MATHEWS)

8 85. Petitioners refer to and re-allege all of the above
9 paragraphs and by this reference incorporate those paragraphs as
10 though full set forth at length

11 86. The ENERGY COMMISSION and other Respondents had a
12 legal ministerial duty to timely and adequately notify, in
13 Spanish, the communities that will be directed by the P3 Power
14 Plant of all public meetings, workshops, and relevant events.
15 The above cited statutes and regulations require "adequate
16 notice is given to the public" and that notice be given "at
17 least 10 days before the event," and under both federal
18 executive orders and state guidelines the notice must be "to the
19 greatest extent practicable and permitted by law." Pub. Res.
20 Code §§ 25216.5, 25519, 25521, and 25543, 20 CCR § 1209,
21 Executive Order 12898. See Also, Gov. Code. § 65040.2 and the
22 "environmental justice policy" created by the California
23 Resources Agency to guide agencies like the ENERGY COMMISSION
24 attached as **EXHIBIT 5**.

1 87. Respondents knowingly had a duty to provide all
2 notices and the Docket Log in Spanish to residents of the City
3 of Oxnard and the other surrounding environmental justice and
4 predominately Spanish-speaking communities. This is shown both
5 by the Commission's requirements under statutes, regulations,
6 and executive orders cited in the Commission Staff's Primary
7 Staff Assessment, as well as by the Commission's occasional
8 practice of giving notice in Spanish.

9 88. The ENERGY COMMISSION violated its legal duties, when
10 it inadequately informed the public on at least four separate
11 occasions. First, the Commission failed entirely to publish
12 notice in Spanish of a public status conference held on March
13 28, 2016.

14 89. ENERGY COMMISSION failed its ministerial duty a second
15 time when it posted Spanish notice on July 7, 2016, eight days
16 before the conference. The law is clear: notice must be posted
17 10 days before the conference. 20 CCR § 1207.5(a); 20 CCR §
18 1209. This was possible; English notice was posted 10 days
19 before the conference

20 90. The ENERGY COMMISSION failed its duties a third time,
21 when it failed to post Spanish notice 10 days before the Staff
22 Assessment Workshop. Notice was posted on July 12, 2016, nine
23 days before the workshop.

1 day notice requirement period. Fourth, on August 25, 2016 the
2 Commission failed to post notice in Spanish about the COASTAL
3 COMMISSION's September 9, 2016 hearing

4 95. Petitioners request a judicial determination that
5 Respondents have violated their legal duties to provide timely
6 and adequate notice in Spanish to an underserved and primarily
7 Spanish-speaking community where a power plant is proposed to be
8 sited.

9 96. Petitioners also request a judicial determination that
10 Respondents unlawfully have discriminated against the
11 environmental justice communities in and around Oxnard,
12 California by denying these communities timely and adequate
13 notice in Spanish, including the Docket Log, "Notice of Receipt
14 of an Application for Certification for the Puente Power
15 Project," notice of "Public Participation in the Review of the
16 Puente Power Project (15-AFC-01)," NRG OXNARD's Application for
17 Certification, and the Commission's Preliminary Staff
18 Assessment.

19 97. These determinations are necessary and proper because
20 without judicial declaration the ENERGY COMMISSION will continue
21 to provide untimely and/or inadequate notice to an indisputably
22 disadvantaged community.

NECESSITY OF A STAY

1
2 98. Petitioners refer to and re-allege all of the above
3 paragraphs and by this reference incorporate those paragraphs as
4 though fully set forth at length.

5 99. A stay against of the ENERGY COMMISSION' proceedings
6 related to OXNARD NRG's application for certification of the
7 Puente Power Project is necessary, because the issues described
8 in this Petition involve fundamental public rights (including
9 due process, fairness, public participation, and environmental
10 justice) that will be severely harmed if the proceedings are
11 allowed to continue. Both the ENERGY COMMISSION and the COASTAL
12 COMMISSION have shown a consistent pattern and practice of not
13 adequately including the residents of Oxnard and other
14 surrounding environmental justice communities in public
15 meetings, and not adequately notifying these communities about
16 the status of proceedings related to a massive, highly-polluting
17 power plant potentially sited in their backyard. If the
18 proceedings are allowed to continue, that pattern and practice
19 will continue and more fundamental rights will be trampled.

20 100. Petitioners are likely to prevail on the merits of
21 this petition, because Respondents have clear legal duties to
22 adequately inform and notify the public (especially residents of
23 an affected environmental justice community) about public
24 hearings, and they have failed to do so by failing to provide
25 timely notice in Spanish.

1 A copy of this email is attached hereto as attached as **EXHIBIT**
2 **6.**

3 104. On or around August 4, 2016, Mr. SIMPSON and Mr.
4 Robert Sarvey, a member of HELPING HAND TOOLS, commented on the
5 ENERGY COMMISSION's failure to address environmental justice
6 problems associated with the P3 Power Plant, stating: "The PDOC
7 fails to acknowledge that the population around the project is
8 primarily minority. The population around the Puente Power plant
9 of Oxnard has been recognized by the CEC, CalEnviroscreen and
10 EPA's EJSCREEN as an environmental justice community. The VCAPCD
11 seems to have no policies related to environmental justice or at
12 least they have no Environmental Justice policies or information
13 on their website. As a recipient of federal funding they are
14 required to consider environmental justice in their permitting
15 decisions." [Robert Sarvey's Comments on the Puente Power Plant
16 PDOC, TN 212634]

17 **PRAYER**

18 WHEREFORE, Petitioners pray for judgment as follows:

19 1. A peremptory writ of mandate directing the ENERGY
20 COMMISSION to stay its proceedings on OXNARD NRG's P3 Power
21 Plant application for certification unless and until the
22 Commission timely and adequately re-issues, in Spanish, public
23 notice to the environmental justice communities in and around
24 Oxnard, California for the public conferences and workshops held
25 on March 28, 2016, July 15, 2016, and July 21, 2016.

1 2. A peremptory writ of mandate directing the ENERGY
2 COMMISSION to re-open and re-hear the public conferences and
3 workshops held on March 28, 2016, July 15, 2016, and July 21,
4 2016.

5 3. A declaration that the ENERGY COMMISSION has
6 unlawfully discriminated against the environmental justice
7 community in and around Oxnard, California by failing to provide
8 timely and adequate notice and information to these communities,
9 in Spanish, including the Docket Log, "Notice of Receipt of an
10 Application for Certification for the Puente Power Project,"
11 notice of "Public Participation in the Review of the Puente
12 Power Project (15-AFC-01)," Application for Certification, and
13 Preliminary Staff Assessment.

14 4. A declaration that the ENERGY COMMISSION has violated
15 its legal duties under Pub. Res. Code § 25519, 25521, 25543, 20
16 CCR § 1209, and executive order and executive order No. 12898
17 and other laws to enable full public participation in the P3
18 Power Plant application for certification process by denying the
19 environmental justice communities in and around Oxnard,
20 California timely notices and information in Spanish.

21 5. A peremptory writ of mandate directing the COASTAL
22 COMMISSION to re-hear and re-vote on its staff report to the
23 ENERGY COMMISSION after timely and adequate notice has been
24 given to the environmental justice communities in and around
25 Oxnard, California.

1 6. A peremptory writ of mandate directing the COASTAL
2 COMMISSION to timely and adequately re-notify, in Spanish, the
3 environmental justice communities in and around Oxnard,
4 California about the Commission's re-hearing and re-vote on its
5 staff report to the ENERGY COMMISSION.

6 7. A declaration that the COASTAL COMMISSION unlawfully
7 discriminated against the environmental justice community in and
8 around Oxnard, California by failing to provide timely and
9 adequate notice in Spanish of its September 9, 2016 meeting.

10 8. A declaration that the COASTAL COMMISSION violated its
11 legal duties under Pub Res. Code. § 30315.5, 30006, 30339, and
12 other laws to enable full public participation in its decisions
13 regarding the P3 Power Plant by failing to provide timely and
14 adequate notice in Spanish of its September 9, 2016 meeting.

15 9. A declaration that Petitioners' due process rights
16 were violated by the COASTAL COMMISSION because it did not
17 consider documents presented before Petitioner SIMPSON's public
18 comment at the September 9, 2016 meeting.

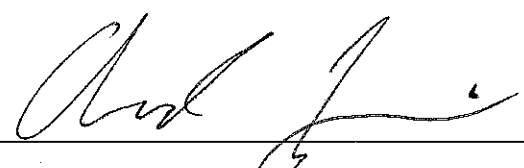
19 10. For reasonable attorney's fees under California Code
20 of Civil Procedure section 1021.5 and California Government Code
21 section 800.

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11. For costs of suit.

12. For such other and further relief as the court deems proper.

Dated this Eighth day of
November, 2016



Andrew Kingsdale
Attorney for Petitioners

1
2
3 VERIFICATION

4 Helping Hand Tools and Rob Simpson v. CALIFORNIA ENERGY
5 RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION, et al.

6 I, Robert Simpson, declare that:

7 I am a Petitioner in this action. I also am the executive
8 director of Helping Hand Tools, another Petitioner in this
9 action, and I am authorized by Helping Hand Tools to execute
10 this verification on its behalf.

11 All the facts alleged in the foregoing Petition for Writ of
12 Mandate are true to my own knowledge, except as to those matters
13 that are therein stated upon my information or belief, and to
14 those matters I believe them to be true.

15 I declare under penalty of perjury, under the laws of the
16 State of California, that the foregoing is true and correct.

17 Executed on the 8th day of November at Hayward

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22 

23
24 Robert Simpson

EXHIBIT INDEX

Exhibit 1.	Puente Power Project List of Interested Parties used by the COASTAL COMMISSION to send the notice listed in Exhibit 2.
Exhibit 2.	COASTAL COMMISSION's Hearing Notice for the Puente Project 30413(d) report hearing on September 9 th , 2016.
Exhibit 3.	September 9, 2016 e-mail from Rob Simpson to Joseph Street of the COASTAL COMMISSION.
Exhibit 4.	Letter from Dr. Travis Longcore submitted by Rob Simpson at the COASTAL COMMISSION's September 9 th meeting.
Exhibit 5.	Environmental Justice Policy created by the California Natural Resources Agency.
Exhibit 6.	October 12, 2016 e-mail from Rob Simpson to Joseph Street of the COASTAL COMMISSION.

EXHIBIT 1

Proposal to Upgrade Mandalay Generating Station (Puente Power Plant), HN/SR mailed: 8/23/16; 8/26/16 F13a, 9/9/16, Newport Beach

George Piantka
NRG Energy
5790 Fleet Street, Suite 200
Carlsbad, CA 92008

Michael Carroll
Latham & Watkins
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626

OCEAN VISTA POWER GENERATION
1111 LOUISIANA, 16TH FL
HOUSTON, TX 77002

R-W AGENT
COUNTY OF VENTURA
800 S VICTORIA AVE
VENTURA, CA 93009-0001

SOUTHERN CALIF EDISON CO
PO BOX 800
ROSEMEAD, CA 91770-0800

REAL ESTATE SERV DIVISION
STATE OF CALIF/DEPT OF GEN SRVCS
915 CAPITOL MALL RM 110
SACRAMENTO, CA 95814-4801
Ret. 9/6/16 (see new address next page)

STATE OF CALIFORNIA
DEPT OF PARKS & RECREATION
1416 NINTH STREET
SACRAMENTO, CA 95814

CHARLEY C PARK,
PARKS HARBOR LLC
15048 ROCKFOLD DR
HACIENDA HEIGHTS, CA 91745-4012

OXNARD PUBLIC LIBRARY/
DOWNTOWN MAIN LIBRARY
251 SOUTH A STREET
OXNARD, CA 93030

OXNARD PUBLIC LIBRARY/
COLONIA BRANCH
1500 CAMINO DEL SOL, #26
OXNARD, CA 93030

OXNARD PUBLIC LIBRARY/
SOUTH OXNARD BRANCH LIBRARY
4300 SAVIERS ROAD
OXNARD, CA 93033

Rosario Aston,
LA Reg Water Quality Control Bd
320 W. 4th Street Ste. 200
Los Angeles, CA 90013

Dan Blankenship, Sr. Env Scientist
CA Dept of Fish and Wildlife
P.O. Box 802619
Santa Clarita, CA 91380

Bryan Brice, Fire Chief/CUPA
City of Oxnard
360 W. Second St
Oxnard, CA 93030

Lisa Cline, Asst Superintendent
Oxnard School District
1051 S. A Street
Oxnard, CA 93030

Chris Dellith, Sr. Biologist
US Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Mike Florio, Commission
CA Public Utilities Commission
505 Van Ness Ave
San Francisco, CA 94102

Tim Flynn, Mayor
City of Oxnard
303 W. Third St
Oxnard, CA 93030

Ashley Golden, Dev Svcs Dir
City of Oxnard
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Oxnard, CA 93030

Charlyn Hook, Legal Counsel
CA Public Utilities Commission
505 Van Ness Ave., Room 5123
San Francisco, CA 94102

Terry Kirsch
Water Resources
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Oxnard, CA 93030

Chris Kroll, Project Manager
California Coastal Conservancy
1300 Broadway Ste., 1300
Oakland, CA 94612

Jeff Lambert, Director
City of Ventura
501 Poli Street, Room 133
Ventura, CA 93002

Mary Meyer, Sr Env Scientist
California Dept of Fish and Wildlife
226 W. Ojai Ave., Ste 101 PMD: 501
Ojai, CA 93023

Stephen McFarland, Dis. Maint. & Ops
Oxnard Union High School
309 K Sreet
Oxnard, CA 93030

Greg Nyhoff, City Manger
City of Oxnard
303 W Third St
Oxnard, CA 93030

Dennis Peters
California Independent System Operator
P.O. Box 639014
Folsom, CA 95736-9014

Rich Rozzelle
California State Parks Department
911 San Pedro Street
Ventura, CA 93001

Molly Sterkel, InFrast. Plnng
California Public Utilities Commission
505 Van Ness Ave
San Francisco, CA 94102

John Zaragoza, Supervisor Dist. 5
County of Ventura
800 S. Victoria Ave
Ventura, CA 93009

Proposal to Upgrade Mandalay Generating Station (Puente Power Plant), HN/SR mailed: 8/23/16; 8/26/16 F13a, 9/9/16, Newport Beach
Chris Williamson, Principal Planner Shawn Pittard, Compliance Project Mgr
City of Oxnard CEC Siting, Transmissn & Env Protect Div
303 W Third St 1516 Ninth Street, MS-12
Oxnard, CA 93030 Sacramento, CA 95814

REAL ESTATE SERV DIVISION
STATE OF CALIF/DEPT OF GEN SRVCS
707 3rd Street, 4th Floor
WEST SACRAMENTO, CA 95605

EXHIBIT 2

DOCKETED

Docket Number:	15-AFC-01
Project Title:	Puente Power Project
TN #:	212940
Document Title:	CALIFORNIA COASTAL COMMISSION Hearing Notice
Description:	Energy, Ocean Resources, and Federal Consistency Division Hearing Notice for Friday, September 9, 2016 at 9:00 a.m.
Filer:	Cenne Jackson
Organization:	California Coastal Commission
Submitter Role:	Public Agency
Submission Date:	8/25/2016 8:27:49 AM
Docketed Date:	8/25/2016

CALIFORNIA COASTAL COMMISSION

ENERGY, OCEAN RESOURCES & FEDERAL CONSISTENCY DIVISION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**ENERGY, OCEAN RESOURCES, AND FEDERAL CONSISTENCY DIVISION****HEARING NOTICE**

Newport Beach Civic Center
City Council Chambers
100 Civic Center Drive
Newport Beach, CA 92660

(415) 407-3211

[The phone number will only be in service during the meeting.]

Staff reports pertaining to the matters listed below are not sent to all recipients of this hearing notice. To review a staff report and recommendation or for more meeting information, please see the Commission's website at www.coastal.ca.gov. If you wish to receive a hard copy of a report, please contact the Commission's Energy, Ocean Resources and Federal Consistency Division at (415) 904-5240.

The California Coastal Commission will consider the following Energy, Ocean Resources, and Federal Consistency Division items:

FRIDAY, SEPTEMBER 9, 2016, 9:00 A.M.

10. **ENERGY, OCEAN RESOURCES and FEDERAL CONSISTENCY.** Report by the Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, negative determinations, matters not requiring public hearings, and status report on offshore oil & gas exploration & development. For specific information contact the Commission's Energy, Ocean Resources, and Federal Consistency Division office at (415) 904-5240.
 - a. **Proposal to Upgrade Mandalay Generating Station.** Report by Commission staff and possible Commission action under Coastal Act §30413(d) on application for certification to California Energy Commission by NRG, Inc. to replace Units 1 and 2 of Mandalay Generating Station with 262-MW Puente Power Project, in Oxnard, Ventura County. (JS-SF)
11. **CONSENT CALENDAR (removed from Regular Calendar).**

[Items 12a and 13a below, will be combined into a single staff report and hearing.]

12. NEW APPEALS

- a. **Appeal No. A-5-HNB-10-225 (Poseidon Water, Huntington Beach)** Appeal by Orange County Coastkeeper, Surfrider Foundation, Residents For Responsible Desalination, and Commissioners Wan and Mirkarimi from decision of City of Huntington Beach granting permits and conditions to Poseidon Water for removal of storage tanks, conduct remediation, and construction and operation of seawater desalination facility within site of Huntington Beach Generating Station, 21730 Newland Ave., Huntington Beach, Orange County. (TL-SF)

13. COASTAL PERMIT APPLICATION

- a. **Application No. 9-15-1361 (Poseidon Water, Huntington Beach)** Application of Poseidon Water to construct and operate seawater desalination facility at Huntington Beach Generating Station, 21730 Newland Ave., Huntington Beach, and intake and outfall structures in waters of the Pacific Ocean offshore of Huntington Beach, Orange County. (TL-SF)

HEARING PROCEDURES

Permits and Consistency Items.

The Commission will conduct a public hearing on applications for permits and consistency items. The Commission may vote on an application at the conclusion of the public hearing, or it may, if additional information is needed, vote at a subsequent meeting. For federal consistency matters, in the event the Commission's action differs substantially from the staff recommendation, it may be necessary for the Commission to consider adoption of revised findings on a day following the day on which the public hearing on the matter is scheduled to occur. People wishing to testify on these matters may appear at the hearing and/or may present their concerns in writing to the Commission on or before the hearing date. All speakers must fill out a speaker's form (which will be available at the meeting) and turn it in to staff. If you wish to submit written materials for review by the Commission, please observe the following suggestions:

- We request that you submit your materials to the Commission staff no later than three working days before the hearing (staff will then distribute your materials to the Commission).
- Mark the agenda number of your item, the application number, your name and your position in favor or opposition to the project on the upper right hand corner of the first page of your submission. If you do not know the agenda number, contact the Commission lead staff person for the item.
- If you wish, you may obtain a current list of Commissioners names and addresses from any of the Commission's offices and mail the material directly to the Commissioners. If you wish to submit materials directly to Commissioners, we request that you mail the materials so that the Commissioners receive the materials no later than Thursday of the week before the Commission meeting. Please mail the same materials to all Commissioners, alternates for Commissioners, and the four non-voting members on the Commission with a copy to the Commission lead staff person for the item.
- You are requested to summarize the reasons for your position in no more than two or three pages, if possible. You may attach as many exhibits as you feel are necessary.

Please note: While you are not prohibited from doing so, you are discouraged from submitting written materials to the Commission on the day of the hearing, unless they are visual aids, as it is more difficult for the Commission to carefully consider late materials. The Commission requests that if you submit written copies of comments to the Commission on the day of the hearing, that you provide 20 copies.

Oral testimony may be limited to five minutes or less for each speaker, depending on the number wishing to be heard. If the project is to be voted on at this meeting, the applicant may reserve some time for rebuttal after the opponents speak.

The above permit items may be moved to the Consent Calendar by the Executive Director if, prior to Commission consideration of the Consent Calendar, staff and the applicant are in agreement on the staff recommendation. If this item is moved to the Consent Calendar, the Commission will either approve it with the recommended conditions in the staff report or remove the item from the Consent Calendar by a vote of three or more Commissioners. If the item is removed, the public hearing described above will still be held at the point in the meeting originally indicated on the agenda.

Local Coastal Programs (LCPs).

LCPs are prepared by local governments in two parts (a land use plan and implementing ordinances) and will provide the basis for issuing coastal permits after approval by the local government and the Commission. Copies of LCP staff reports are available on request from the Commission office. *(Note: Persons wishing to testify on these matters may appear at the hearing or may present their concerns by letter to the Commission on or before the hearing date. Copies of all correspondence will be provided to the Commission. Written comments may be of any length; oral*

testimony may be limited to five minutes or less for each speaker, depending on the number wishing to be heard.)

New Appeals.

On the recommendation of staff or of three members of the Commission, a public hearing will be held to determine whether the decision being appealed raises a substantial coastal issue under the certified LCP. The time limits for this public hearing are: three minutes combined total per side to address the question of substantial issue.

Unless a majority of the Commissioners present find that "no substantial issue" is raised by an appeal, the Commission will consider the original project "de novo" under the same rules as for Permits and Consistency items.

Who Can Testify On Appeals.

Section 13117 of the Commission's regulations specifies who can testify before the Commission on an appeal. The regulations state:

"Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify at the Commission hearings at any stage of the appeal process. All other persons may submit comments in writing to the Commission or executive director, copies or summaries of which shall be provided to all Commissioners pursuant to Sections 13060-13061."

When Will My Agenda Item Be Heard?

The items listed above will be considered by the Commission at a meeting at which other items are also scheduled. It is not possible to specify the exact time at which each matter will be heard, or to guarantee that an item will not be postponed. No one can predict how quickly the Commission will complete agenda items or how many will be postponed to a later date. The Commission begins each session at the time listed and considers each item in order, except in extraordinary circumstances. The Energy and Ocean Resources staff at the Commission's Headquarters Office in San Francisco can give you more information prior to the hearing date and you can call the staff at the hearing location for last minute information.

Further Information.

For further information or if you would like a copy of any of the staff reports prior to the meeting, contact the Energy and Ocean Resources Unit at 45 Fremont Street, Suite 2000, San Francisco, California 94105-2219, (415) 904-5240. A limited number of staff reports will be available at the meeting. Correspondence should be sent to the Coastal Commission office at the above address.

EXHIBIT 3



Andrew Kingsdale <andrew@kingsdalelaw.com>

[FWD: comments on puente]

rob@redwoodrob.com <rob@redwoodrob.com>
To: Andrew Kingsdale <andrew@kingsdalelaw.com>

Thu, Sep 29, 2016 at 11:28 AM

----- Original Message -----

Subject: comments on puente
From: <rob@redwoodrob.com>
Date: Fri, September 09, 2016 11:18 am
To: Greg.Cox@coastal.ca.gov

item 10

Thank you for this opportunity to speak. I appreciate you.

Rob Simpson

Helping Hand Tools

We litigate against polluting energy projects from Humboldt to San Diego

Coastal Commission Is participating Funding constraints restricted other participation

CEC provision to reimburse the Coastal Commission these guys made 4 billion dollars last year. They do not need corporate welfare from the taxpayers or coastal commission.

I do not think that any of you are here to promote polluting power plants on the shoreline which cause sea level rise which ironically threatens the very power plant developments

Tension between various laws

Authority manifested in the Public trust doctrine codified in the coastal zone management act and delegated to the Coastal commission. The Coastal commission then delegate's authority to local coastal programs there is an extensive procedure entailing public notice responsibilities and appeal procedures.

Define your jurisdiction under Section 30321 or otherwise.

Delegate or usurp

Is this a permit waiver?

Tail wagging the dog

You have the federal nexus

Supervise the energy commission

The CEC will Disregard your position and do whatever it takes to license the facility.

What are the appeal procedures

The applicant has argued on page 20 of 175 September 7, 2016 addendum that you do not have authority under 30413 that you do not have authority to submit Coastal Commission role jurisdiction to oppose Section 30320
The Decision states; "Intervener Rob Simpson asks that we clarify whether or not our certification of this project serves as the Coastal Act development permit that would otherwise issue from either the Coastal Commission or a delegated local agency. This is that permit." 8.1-14. This information should have been disclosed in Public Notices and throughout the proceeding. The Commission violated Due process by failing to inform the public of its intended action.
Although we believe that the CECP is consistent with the Coastal Act requirements, given the vociferous opposition from the City of Carlsbad and other project opponents, we will assume, for the sake of argument that the proposed project is not consistent with the Act and adopt overrides for any inconsistencies that might be found.
If you do not allow the development the retired project will remain in the shoreline for 30 more years outfall

Proposal to Upgrade Mandalay Generating Station

You have made it clear that this project violates the coastal act.

If the CEC decides to violate the Coastal act or Coastal Commission Decision.

If the CEC determines that no feasible, less environmentally damaging alternative exists, this Report recommends that the CEC require compensatory mitigation (wetland restoration) at a 4:1 ratio.

Final decision which allows violation of the coastal act

Offramp to an alternatives analysis

Oxnard is a majority minority community.

Environmental Justice. Executive and other order from the governor and president

2 hours drive from Oxnard

16 U.S.C. § 1457, Section 311 of the CZMA, requires 30 days notice of hearings;

Section 30315.5 Meeting Notices Notwithstanding any other law, the commission shall make the notice of any public meeting or hearing of the commission available in both English and Spanish, and may also make the notice available in any other language.

Section 30339 Section 30620.6 Section 30320

LONGCORE

Not boilers gently billowing into the air. Intermittent high temperature high velocity toxic thermal plumes that can knock planes out of the air Any bird within 1000 feet will likely be killed.

Snowy plover least tern

Rescue flight Emergency flights highway patrol commercial flights including those who fly advertising planes over the coast

Alternative site

1425 Mariner Dr.

EXHIBIT 4

DOCKETED

Docket Number:	15-AFC-01
Project Title:	Puente Power Project
TN #:	213736
Document Title:	California Coastal Commission 30413(d) Report - Additional Public Comment
Description:	Materials submitted by Rob Simpson at CCC hearing, Sep 9 ,2016
Filer:	Joseph Street
Organization:	California Coastal Commission
Submitter Role:	Public Agency
Submission Date:	9/19/2016 4:44:39 PM
Docketed Date:	9/19/2016

USC Dornsife

Dana and David Dornsife
College of Letters, Arts and Sciences

SPATIAL SCIENCES INSTITUTE
Travis Longcore, Ph.D.
Associate Professor (Research)

July 5, 2015

Rob Simpson
Executive Director
Helping Hand Tools

Dear Mr. Simpson:

I am responding to your email in which you brought to my attention citation to my research on avian collisions with regard to the Carlsbad Energy Center Project Amendment: Final Staff Assessment. As I understand the project, it would involve replacing one 400-ft stack with six 90-ft stacks that would emit high-velocity, high-temperature plumes extending several thousand feet into the air. I looked over relevant sections of the Final Staff Assessment and have the following observations, which you are welcome to share with the California Energy Commission. I have prepared this letter for you *pro bono* as an effort to ensure that the best available science is used in the environmental review process. My use of letterhead is meant to provide contact information and establish my identity. It does not represent any endorsement by the University of Southern California as an institution. The contents of this letter are my professional opinion and not the position of my employer.

The Final Staff Assessment relies on our paper in *The Auk* (Longcore et al. 2008) to conclude that avian collisions with the new stacks would be less than with the old stacks. The *Auk* paper addresses avian collisions with tall communication towers and therefore is limited to the impacts on the species that tend to collide with those towers, which are almost entirely nocturnally migrating songbirds. The proposed project is adjacent to a wetland, which poses collision risks for a different suite of avian species. Our 2008 research was updated with a quantitative estimate of mortality by tower height classes (Longcore et al. 2012), but this work was not cited. Ignoring any potential impacts of the thermal plumes and looking at the potential collisions resulting from the height of the stacks themselves, both configurations (existing and proposed) would kill very few of the birds for which risk of collision increases with height (i.e., nocturnally migrating songbirds). A 400-ft obstruction lit only with strobe lights might result in 4 collisions per year, while a 90-ft obstruction similarly lighted would result in less than 1 collision per year, but these numbers apply to the suite of species that are sensitive to obstruction height and do not take into account collision risk that derives from proximity to the wetland habitat or the impacts of the thermal plumes.

The issue of nocturnally migrating songbirds colliding with the proposed stacks is not the most relevant impact at the project site, which is located adjacent to a significant coastal wetland with large numbers of migratory waterbirds, waterfowl, and shorebirds. The impacts to waterbirds and other species associated with the lagoon and Pacific Ocean are much more relevant than potential collisions by nocturnal migrant songbirds. Our research does not address collisions with structures next to wetlands. Avian collisions with structures are generally higher next to wetland sites (Drewitt and Langston 2008) and indeed researchers

University of Southern California
3616 Trousdale Parkway, Los Angeles, California 90089-0374 • Tel: 213 740 1310 • Fax: 213 740 9687



are particularly concerned about collisions with power lines that are located next to wetlands, where waterbirds, waterfowl, and shorebirds collide with obstructions (Willard and Willard 1978, Erickson et al. 2005). A study of effects of the project on waterbirds, waterfowl, and shorebirds as they approach and take off from Agua Hedionda Lagoon, which is bisected by the project site, would be far more relevant to the impact analysis than is our research. It is critically important that impact analysis concentrate on the different groups and species of birds that will be impacted and not on a generalized idea of "birds" that obscures differential impacts on different groups (Longcore et al. 2013, Longcore and Smith 2013).

Our research does not address the impacts of production of high-velocity, high-temperature plumes extending upward from the stacks into the atmosphere. As described in the Final Staff Assessment, these plumes would extend several thousand feet up into the air and the shorter height of the tower does not offset this feature. The Final Staff Assessment refers to an unpublished white paper to argue that these plumes have no significant impact on birds:

The Energy Commission closely monitors all projects under its jurisdiction, including solar thermal, coal- and gas-fired. Evidence of significant and predictable injury or mortality from thermal or exhaust plumes has not been reported or documented at other power plants; has not been noticed at the Encina plant, and is not expected to occur with the proposed CECP project. The question of impacts associated with thermal plumes and/or exhaust stacks has been raised in previous siting cases. In 2009, the Contra Costa County Airport Land Use Commission (ALUC), filed a letter with the Energy Commission requesting data on potential avian—specifically raven—attraction to the Mariposa Energy Project (MEP) cooling stacks. The MEP consultants performed a literature review investigating avian interactions exhaust stacks and plumes (CH2M Hill, 2010). This technical paper included interviews with CEC senior biologist Rick York, and failed to identify any significant mortality or injury associated with these project features at operating power plant sites. Staff has conducted an updated literature review, and, as mentioned, has no further internal Energy Commission data or published data that would indicate impacts would occur with a frequency or intensity that would have an adverse biological effect. It is not uncommon for raptors and scavenging species such as vultures to utilize thermal currents to search for prey and carcasses. While it is possible that a raptor may be attracted to a thermal upcurrent emanating from the stacks, there is no data to suggest that a raptor could be injured or killed while doing so, and staff is unaware of any significant documented events of this nature, although it certainly is possible. The stacks would not provide roosting or nesting opportunities for birds or bats, and given the industrial characteristics and pervasive human presence on the CECP site, the data indicates that most wildlife would have sufficient environmental cues to avoid the site (Final Staff Assessment, p. 4.3-21).

This analysis, and the report upon which it relies, are insufficient to conclude that the high-velocity, high-temperature plumes would not have an impact on birds and bats at the project site. The cited memorandum is focused on attraction of ravens to thermal plumes and relies on anecdotal reports from staff at power stations to assess any adverse impacts to wildlife. It is not clear that the observations were at stacks with high-velocity, high-temperature plumes from gas-fired turbines. The text of the report does not specify that any of the power plants described in that report were in fact of the type proposed for the Carlsbad Energy Center Project Amendment. The conclusion that birds will "avoid the site" is likewise tenuous, given that the project site is adjacent to wetlands and in fact birds might fly over the site to get from one part of the lagoon to another or to move from the ocean to the lagoon. Furthermore, the plumes reaching up several thousand feet would provide no visual cues whatsoever and birds approaching the lagoon would have no warning of them until they were encountered.

July 5, 2015

Page 3

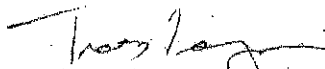
As a scientist interested in bird collision issues and anthropogenic avian mortality in general, I am unaware of any published studies addressing the impacts of high-velocity, high-temperature thermal plumes on birds, especially in sensitive locations such as next to wetlands. The information put forth in the Final Staff Assessment is unconvincing, especially because the main focus of the reference cited in support of the evaluation has to do with raven attraction to thermal plumes and not the potential for accidental flight through high-temperature plumes causing injury or death, such as what occurs when birds encounter the solar flux at concentrating solar power plants (McCrary et al. 1986, Kagan et al. 2014). No information is presented on the effects of thermal plumes from gas-fired power plants on small passerines, shorebirds, waterbirds, waterfowl, or bats, all of which might attempt to fly over the project site.

As a final item, I noticed that the Final Staff Assessment uses the "60-decibel rule" in assessing impacts to wildlife from noise. This threshold does not have biological validity and is not supported by current scientific research. The 60 dB(A) Leq threshold for impacts on avian species was first put forward in 1991 in an unpublished study conducted for the San Diego Association of Governments in which "it was theoretically estimated that noise levels in excess of 60 dB(A) Leq in [Least Bell's] vireo habitat would mask the bird's song, subsequently reducing the reproductive success of this species during their breeding season..." (County of San Diego 2000). This study has never been published or peer reviewed. The only citation in the scientific literature to the rule is a conference presentation by Bowles and Wisdom (2005), and this paper did not support the 60 dB(A) Leq standard:

The rule was originally intended to prevent masking of species-typical songs of endangered birds such as the Coastal California Gnatcatcher. However, no research is available to demonstrate the effectiveness of the rule for any noise-related impact. Although A-weighting is probably a conservative estimator of bird exposure in the range from 125 Hz to 8 kHz, it may underestimate exposure at very low frequencies. Its utility as a weighting function has not been tested against other possible weighting procedures, such as use of the species-typical auditory threshold function. Additionally, where sources are intense but intermittent, Leq is unlikely to be a useful metric (Bowles and Wisdom 2005).

Scientific understanding of the effects of noise on birds has improved greatly, with studies published that present heuristic and mathematical models that quantify the pattern of impacts caused by noise (Hill 1990, Reijnen and Foppen 1994, Reijnen et al. 1996, Reijnen et al. 1997, Forman et al. 2002, Peris and Pescador 2004, Slabbekoorn and Ripmeester 2008, Barber et al. 2010, Naguib 2013, Halfwerk and Slabbekoorn 2015). Evidence shows that breeding bird habitat can be degraded at noise levels as low as 36 dB(A) (Reijnen et al. 1996, Reijnen et al. 1997). Rather than relying on undocumented research that has never been published in a peer-reviewed journal, the CEC should incorporate published scientific evidence of the impacts of noise on wildlife into its analysis.

Sincerely,



Travis Longcore, Ph.D.

Associate Professor (Research) of Spatial Sciences

Literature Cited

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EXHIBIT 5

ENVIRONMENTAL JUSTICE POLICY

California Resources Agency

Mission Statement of the California Resources Agency

To restore, protect and manage the state's natural, historical and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration and respect for all the communities and interests involved.

Environmental Justice Definition

California law defines Environmental Justice as “the fair treatment of people of all races, cultures and income with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies” (Government Code Section 65040.12 and Public Resources Code Section 72000).

Background

The concept behind the term “environmental justice” is that all people – regardless of their race, color, nation or origin or income – are able to enjoy equally high levels of environmental protection. Environmental justice communities are commonly identified as those where residents are predominantly minorities or low-income; where residents have been excluded from the environmental policy setting or decision-making process; where they are subject to a disproportionate impact from one or more environmental hazards; and where residents experience disparate implementation of environmental regulations, requirements, practices and activities in their communities. Environmental justice efforts attempt to address the inequities of environmental protection in these communities.

Agency Actions

All Departments, Boards, Commissions, Conservancies and Special Programs of the Resources Agency must consider environmental justice in their decision-making process if their actions have an impact on the environment, environmental laws, or policies. Such actions that require environmental justice consideration may include:

- Adopting regulations
- Enforcing environmental laws or regulations
- Making discretionary decisions or taking actions that affect the environment
- Providing funding for activities affecting the environment
- Interacting with the public on environmental issues

Policy

It is the policy of the Resources Agency that the fair treatment of people of all races, cultures and income shall be fully considered during the planning, decision-making, development and implementation of all Resources Agency programs, policies and activities. The intent of this policy is to ensure that the public, including minority and low-income populations, are informed of opportunities to participate in the

development and implementation of all Resources Agency programs, policies and activities, and that they are not discriminated against, treated unfairly, or caused to experience disproportionately high and adverse human health or environmental effects from environmental decisions.

Implementation

The Resources Agency is committed to incorporating environmental justice in its processes, decisions, and programs by making reasonable efforts toward:

1. Identifying relevant populations that might be adversely affected by programs or projects submitted by outside parties, as appropriate.
2. Seeking out and consulting with community groups and leaders to encourage communication and collaboration prior to taking actions that may have an impact on the environment, environmental laws or policies.
3. Broadly distributing public information, in multiple languages if appropriate, to encourage participation in public processes.
4. Ensuring that public documents and notices relating to environmental issues that may have an impact on human health are concise, understandable, and readily accessible to the public, printed in multiple languages if appropriate.
5. Holding required public meetings, hearings, and workshops at times and in locations that encourage meaningful public participation by members of affected communities.
6. Working in conjunction with other federal, state, regional, and local agencies to ensure consideration of disproportionate impacts on relevant populations.
7. Fostering broad access to existing and proposed data sets and technology to better identify, analyze, and respond to environmental justice issues.
8. Providing appropriate training to staff on environmental justice issues so that recognition and consideration of such issues are incorporated into daily program activities.

This policy is intended only to improve the internal management of the Resources Agency and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the State of California, its agencies or instrumentalities, its officers or employees, or any other person.

EXHIBIT 6



Andrew Kingsdale <andrew@kingsdalelaw.com>

records and rehearing request Puente

rob@redwoodrob.com <rob@redwoodrob.com>
To: Andrew Kingsdale <andrew@kingsdalelaw.com>
Cc: joseph.street@coastal.ca.gov

Wed, Oct 12, 2016 at 6:29 PM

Re. Puente power plant public hearing

Hi Mr. Street,

Thank you for submitting the documents, that I provided to you for your commissioners consideration prior to the hearing, to the Energy commission. I am still concerned that the commissioners did not consider my submission prior to making a decision. I followed the instructions of the commission staff who were outside greeting and ostensibly advising the public on the procedures for participation, and gave the documents to you. I am therefore hereby formally requesting that the CCC withdraw its determination, comply with the below rules and consider my submission prior to any subsequent decision after holding a hearing which is readily accessible to the affected community. Also, are there any administrative appeal opportunities for a CCC decision such as this? I found none.

I found no notice on the energy commission website in Spanish for your hearing. I also note that the hearing was a 2 hour drive from the affected community and no transportation for interested members of the environmental justice community seemed to have been offered. AB 2616 recently offered the CCC further guidance on its EJ duties. Please identify and provide documentation of what (if any) actions the CCC took to comply with;

Section 30315.5 Meeting Notices

Notwithstanding any other law, the commission shall make the notice of any public meeting or hearing of the commission available in both English and Spanish, and may also make the notice available in any other language.

Section 30339 Duties, generally

The commission shall:

- (a) Ensure full and adequate participation by all interested groups and the public at large in the commission's work program.
- (b) Ensure that timely and complete notice of commission meetings and public hearings is disseminated to all interested groups and the public at large.
- (c) Advise all interested groups and the public at large as to effective ways of participating in commission proceedings.
- (d) Recommend to any local government preparing or implementing a local coastal program and to any state agency that is carrying out duties or responsibilities pursuant to this division, additional measures to assure open consideration and more effective public participation in its programs or activities.

Thank you

Rob Simpson
Executive Director
Helping Hand Tools (2HT)