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VIA EMAIL AND U.S. MAIL

October 1, 2013

Mr. Fred Pozzuto
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Mr. John Heiser
California Energy Commission
1516 9th Street (MS-40)
Sacramento, CA 95814-5512

Re: Comments of HECA Neighbors on Hydrogen Energy California Preliminary Staff Assessment, Draft Environmental Impact Statement, June, 2013

Dear Messrs. Pozzuto and Heiser:

We represent a consortium of landowners whose lands are in very close proximity to the site of the proposed Hydrogen Energy California project ("HECA Project"). Our clients have formed an unincorporated association known as HECA Neighbors. The individual members of HECA Neighbors and the association are opposed to the HECA Project. The purpose of this letter is to memorialize for the record some of the comments of HECA Neighbors on the Preliminary Staff Assessment, Draft Environmental Impact Statement dated June, 2013 and associated technical studies and appendices (collectively, "DEIS"). The comments memorialized herein are not exhaustive, as individual members of HECA Neighbors and the association have, from time to time, submitted written comments and testified orally on the deficiencies of the DEIS. For the sake of brevity and in order to not repeat comments made by others, HECA Neighbors has associated itself with the comments of certain individuals and entities as discussed below.

HECA Neighbors hereby associates itself with the comments on the DEIS of Earthjustice (on behalf of the Sierra Club) set forth in a letter to Mr. Fred Pozzuto dated October 1, 2013 that fall under the following headings in the letter:

1. NEPA BACKGROUND
2. THE DEIS FAILS TO PROVIDE A FULL AND FAIR DISCUSSION OF SIGNIFICANT ENVIRONMENTAL IMPACTS AND MUST BE SUPPLEMENTED AND RECIRCULATED FOR PUBLIC COMMENT (including, but not limited to,

comments regarding Waste Management, Water Supply, Traffic and Transportation, Biological Resources, Cultural Resources, Carbon Sequestration and Greenhouse Gas Emissions)

3. THE STATEMENT OF PURPOSE AND NEED IS LEGALLY FLAWED AND WILL NOT BE ACHIEVED BY THE HECA PROJECT
4. DOE FAILED TO CONSIDER A REASONABLE RANGE OF ALTERNATIVES TO HECA PROJECT (including, but not limited to, comments regarding Renewable Energy Projects, Fertilizer Production Alternatives, Gasifier Ratio of Coal and Petcoke, Biomass, Dry Cooling or Wet-Dry Hybrid Cooling Alternative, Enclosed Ground Flare and a Flare Recovery System, Alternative Location, Reduced Project Size, Natural Gas Plant, Dry Scrubbing, and Enhanced Oil Recovery)

The comments of Earthjustice falling under the headings listed above are hereby incorporated by reference as though fully set forth herein and are the comments of HECA Neighbors.

In addition to the foregoing, again for the sake of brevity and in order to not repeat comments made by others, HECA Neighbors hereby associates itself with the written comments on the DEIS of Tom Frantz, President, Association of Irrigated Residents dated September 29, 2013 that fall under the following headings in the comments:

- A. GENERAL COMMENTS
- B. AIR QUALITY
- C. GREENHOUSE GASES
- D. EFFECT OF DUST FROM TRUCKS ON CROPS
- E. ALTERNATIVE WATER SOURCE
- F. TULE ELK PRESERVE
- G. FARMLAND LOSS MITIGATION
- H. DELIVERY OF COAL FROM WASCO
- I. CATASTROPHIC RELEASE OF DEADLY MATERIAL
- J. WASTE HANDLING
- K. AESTHETICS

The comments of Mr. Frantz and Association of Irrigated Residents falling under the headings listed above are hereby incorporated by reference as though fully set forth herein and are the comments of HECA Neighbors.

HECA Neighbors also associates itself with the all of the substantive comments on the DEIS set forth in the Sierra Club Status Report No. 9 (Docket No. 08-AFC-8A), dated September 30, 2013, which are hereby incorporated by reference as though fully set forth herein and are the comments of HECA Neighbors.

HECA Neighbors also associates itself with all of the comments of the Sierra Club on the Preliminary Determination of Compliance on Hydrogen Energy California, Facility # S-7616, Project # S-1121 903 on air quality regulations noticed by the San Joaquin Valley Unified Air Pollution Control District on February 7, 2013 set forth in a letter of May 20, 2013. These comments of the Sierra Club are hereby incorporated by reference as though fully set forth herein and are the comments of HECA Neighbors.

With regard to air quality impacts produced by the proposed HECA Project, it appears that the DEIS relies on the above referenced Preliminary Determination of Compliance published by the San Joaquin Valley Unified Air Pollution Control District for mitigation. This reliance also includes a the San Joaquin Valley Unified Air Pollution Control District Mitigation Agreement and Voluntary Emission Reduction Agreement by and between Hydrogen Energy California LLC and the San Joaquin Valley Unified Air Pollution Control District dated April 18, 2013 ("Mitigation Agreement"). The Mitigation Agreement includes provisions requiring compliance with certain San Joaquin Valley Unified Air Pollution Control District mitigation programs including, but not limited to, payment of in lieu fees. There is nothing in the record to demonstrate a link between the requirements set forth in the Mitigation Agreement, including the payment of in lieu fees, and actual mitigation of air quality impacts produced by the HECA Project. Approval of the HECA project by the Department of Energy is subject to an arbitrary and capricious standard. *Friends of Yosemite Valley v. Norton* (9th Cir., 2003) 348 F. 3d 789, 793. Determining whether an agency has acted in an arbitrary and capricious manner rests with whether it "articulated a rational connection between the facts found and the choices made." *Ibid.* In the case of air quality impacts, it is undisputable that the southern San Joaquin Valley has the most contaminated air in the country. The Department of Energy cannot simply rubber stamp the Mitigation Agreement and determine that it satisfies the requirements of the National Environmental Policy Act ("NEPA"). NEPA requires a) an acknowledgment when relevant scientific information is lacking; b) that the information be obtained; and c) a summary of existing credible scientific evidence relevant to the issue at hand. 40 C.F.R sec. 1502.22. Thus, at a minimum, the Department of Energy must demonstrate that the requirements of the Mitigation Agreement, if implemented, will result in actual mitigation of the air quality impacts associated with the HECA project.

It appears from the DEIS that the HECA Project relies on a contractual arrangement with Occidental of Elk Hills, Inc. To our knowledge, there is no evidence in the record of an agreement between Hydrogen Energy California LLC and Occidental of Elk Hills, Inc. The DEIS fails to address the impacts associated with the HECA Project should no such agreement materialize. Since a contractual arrangement between Hydrogen Energy California LLC and Occidental of Elk Hills, Inc. is an integral part of the HECA Project, any agreement must be

included in the record for public review and comment as the agreement may, in and of itself, produce environmental impacts not assessed in the DEIS and impinge on mitigation measures analyzed therein.

We also note that the Shafter-Wasco Irrigation District has advised in a letter of August 12, 2013 that is included in the record of comments on the DEIS that the water basin in which the HECA Project is located is in an overdraft condition. The DEIS must consider this comment and undertake a full analysis of the groundwater condition and determine whether the HECA Project will exacerbate the overdraft condition.

Finally, the conclusion reached by the Buena Vista Water Storage District that operation of a well field to supply water for the HECA Project will not have a deleterious impact on a water basin that is in an overdraft condition (see p. 7 of Response to CEC Data Request dated March 21, 2013 appended to letter to CEC from Buena Vista Water Storage District dated August 20, 2013) is not supported by substantial evidence or scientific analysis. With regard to the use of water within the Buena Vista Water Storage District territory, HECA Neighbors associates itself with the report submitted for the HECA Project record entitled "Large Scale Utilization of Saline Groundwater for Irrigation of Pistachios Interplanted With Cotton," by Blake Sanden, et al. dated December 31, 2012, with commentary by Beau Antongiovanni, which is hereby incorporated by reference as though fully set forth herein and are the comments of HECA Neighbors.

Thank you for the opportunity to offer the comments on the DEIS of the HECA Neighbors. Please let us know if you have any questions regarding the foregoing.

Sincerely,



Gregory W. Sanders
of Nossaman LLP

GWS/cjm