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January 4, 2012

MELISSA A. FOSTER
Direct (916) 319-4673
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VIA EMAIL

Mr. Eric Solorio, Siting Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

| | |
|-----------------|--------------------|
| DOCKET | |
| 11-AFC-1 | |
| DATE | <u>JAN 04 2012</u> |
| RECD. | <u>JAN 04 2012</u> |

**Re: Pio Pico Energy Center Project (11-AFC-01)
United States Environmental Protection Agency's Request for Consultation**

Dear Mr. Solorio:

On behalf of Applicant Pio Pico Energy Center, LLC, please find enclosed for docketing the United States Environmental Protection Agency's request to the United States Fish & Wildlife Service for formal consultation under Section 7 of the Federal Endangered Species Act as such relates to the above-referenced project. Should you have any questions regarding this correspondence, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink that reads 'Melissa A. Foster'. The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Melissa A. Foster

MAF:jmw

Enclosures

cc: See Enclosed Proof of Service



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

December 23, 2011

Mr. Eric Porter
U.S. Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

Re: Request for Formal Consultation under Section 7 of Federal Endangered Species Act for Proposed Pio Pico Energy Center

Dear Mr. Porter:

By this letter, the United States Environmental Protection Agency, Region 9 ("Region 9") requests initiation of formal consultation under Section 7 of the federal Endangered Species Act ("ESA") for the proposed Pio Pico Energy Center ("PPEC"), to be located in an unincorporated area of San Diego County, California known as Otay Mesa. Pio Pico Energy Center, LLC has applied to Region 9 for a Prevention of Significant Deterioration ("PSD") permit as required by Part C of the Clean Air Act and regulations at 40 C.F.R. § 52.21. Region 9 is responsible for complying with ESA Section 7 requirements with respect to federal PSD permitting, and must ensure that issuance of the PSD permit for the PPEC is not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species, or result in the destruction or adverse modification of critical habitat of such species.

The applicant and Region 9 have participated in informal consultation with U.S. Fish and Wildlife Service ("FWS") regarding PPEC. This request for formal consultation is made in accordance with our discussion with you on October 26, 2011. FWS indicated that formal consultation would be required because nitrogen deposition from the PPEC may affect three federally listed species: the Otay Tarplant (*Deinandra conjugens*), the Quino Checkerspot Butterfly (*Euphydryas editha quino*), and the Coastal California Gnatcatcher (*Poliioptila californica californica*).

The applicant, acting through its authorized representatives including URS Corp., compiled and submitted a Biological Assessment ("BA") to Region 9 on December 1, 2011. The BA provides information about the project and its effects on listed species and their critical habitat, as well as proposed conservation measures intended to minimize and compensate for project nitrogen deposition effects on the Otay Tarplant, Quino Checkerspot Butterfly, and Coastal California Gnatcatcher and designated critical habitat for these species. We sent you a copy of the BA today via email; a hard copy is available upon request.

While the BA prepared by the applicant concludes that EPA's proposed action is not likely to adversely affect the Federally-listed species at issue or critical habitat, Region 9 cannot determine that that conclusion is appropriate at this time based on the information provided in

the BA. We therefore request the initiation of formal consultation on EPA's proposed PSD permitting action for the PPEC to address potential impacts to the Otay Tarplant, the Quino Checkerspot Butterfly, and the Coastal California Gnatcatcher, and request that we receive a copy of the draft Biological Opinion prepared as part of that consultation for our review.

We look forward to working with you on this matter. If you have any questions, please have your staff contact Roger Kohn of our Air Permits Office at (415) 972-3973; or you may contact me at (415) 972-3974.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gerardo C. Rios".

for Gerardo C. Rios
Chief, Air Permits Office

cc: David Jenkins, Pio Pico Energy Center, LLC (via email)
Lincoln Hulse, URS (via email)
Steve Hill, Sierra Research (via email)
Ann Crisp, California Energy Commission (via email)

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE *PIO PICO ENERGY CENTER, LLC*

Docket No. 11-AFC-1
PROOF OF SERVICE
(Revised 12/16/11)

Pio Pico Energy Center, LLC
**Letter to Eric Solorio dated January 4, 2012 re United States Environmental
Protection Agency's Request for Consultation**

APPLICANT

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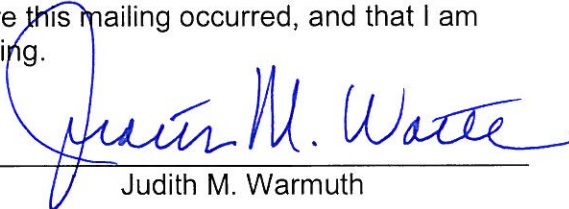
DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on January 4, 2012, I deposited copies of the aforementioned document and, if applicable, a disc containing the aforementioned document in the United States mail at 500 Capitol Mall, Suite 1600, Sacramento, California 95814, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

AND/OR

Transmission via electronic mail, personal delivery and first class U.S. mail were consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



Judith M. Warmuth