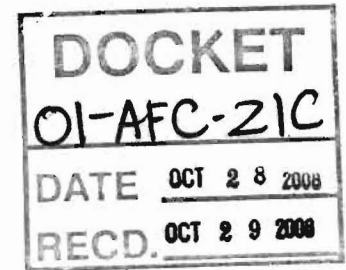


CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



October 28, 2008



Mr. Peter H. Weiner, Attorney at Law
Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, CA 94105-3441

**RE: TESLA POWER PROJECT, 01-AFC-21C - RESPONSE TO INFORMATION
PROVIDED ON PIPELINE SEGMENT INSTALLATION**

Dear Mr. Weiner:

We have reviewed your letter dated October 15, 2008. In your letter you provided responses to our questions regarding the installation of the pipeline segment near the Mountain House project and the timing of the notification to the Energy Commission. You also provided a copy of the Final Environmental Impact Report for the Mountain House Master Plan and Specific Plan I, under which you state that the pipeline segment was installed. It appears the information satisfactorily responds to our questions, the lack of timely notice to the California Energy Commission was not intentional, and the pipeline installation did not result in any adverse environmental impacts.

The requirement to notify the Energy Commission in a timely fashion regarding the satisfaction of the terms of the Conditions of Certification is a significant matter. Misunderstandings can, and do, occur, but they are easily avoided by calling the Compliance Project Manager (CPM) and requesting clarification. We are confident the installation of the pipeline segment at issue could have been reviewed and approved by Energy Commission staff in the required timeframe.

Please let me know if you have any questions. Thank you in advance for your assistance and cooperation. If you have any questions, you may call me at (916) 654-3855 or CPM Steve Munro at (916) 654-3936.

Sincerely,

KEVIN W. BELL
Senior Staff Counsel

cc: Scott Galati, GalatiBlek

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October 15, 2008

70940.00004

Mr. Jack Caswell
California Energy Commission
1516 Ninth Street
Sacramento, CA 96814-5512

Dear Mr. Caswell:

Thank you very much for your letter of September 23, 2008, posing questions regarding the installation of a pipeline segment and the Tesla Power Project. We provide answers to each of your questions below. We have also attached the documents upon which these answers are based. Each question is addressed in the order in which it was raised in your letter.

What series of events occurred leading to installation of the pipeline segment?

1. Certification of the Tesla Power Project

At a public hearing on June 16, 2004, the California Energy Commission (Commission) approved the Application for Certification of Midway Power, LLC (Midway) for the Tesla Power Project (TPP). Midway is owned indirectly by FPL Energy, LLC (FPLE). The TPP, as certified, would be a 1,120-megawatt natural gas power plant located in eastern Alameda County near the border of San Joaquin County and the City of Tracy. The approved project design calls for an 11-mile (approximately 58,080 feet) pipeline from the City of Tracy's wastewater treatment facility, which will carry treated wastewater to be used for cooling. This 11-mile pipeline would traverse portions of both San Joaquin and Alameda Counties.

Almost immediately after certification, the TPP was put on hold because of a lack of purchasers for its power.¹

2. Expansion of the Mountain House Community Service District

Essentially contemporaneous with the planning and certification of the TPP, but unknown to both Midway/FPLE and the Commission, was the planning for the expansion of the Mountain House Community Service District (MHCS D). In February

¹ It is listed as on hold on the Commission's web page, available at http://www.energy.ca.gov/sitingcases/all_projects.html (last accessed Oct. 13, 2008).

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1993 the San Joaquin Board of Supervisors certified the Supplemental Environmental Impact Report for the *Mountain House General Plan 2010 Amendment to the San Joaquin County General Plan 2010*.² It is the policy of San Joaquin County to require that a proposed new community submit a comprehensive Master Plan for the project as well as a Public Financing Plan, followed by one or more Specific Plans.³ Consistent with that policy, in 1994 the Final Environmental Impact Report for the Mountain House Master Plan (Master EIR) was completed.⁴

The 1994 Master EIR anticipates an ultimate build out of nearly 4,800 acres and a population of over 43,500 in an area that was previously rural and sparsely populated. The purpose of the Master EIR is to direct the overall development of the MHCSD, and so later plans for specific projects within the MHCSD were to be tiered to this Master EIR. Completion of the development of the MHCSD was anticipated to be accomplished in three such phases. This process would require a number of permits, which are listed in Table 3.10 at page 3-37 of the Master EIR. The Mountain House Parkway/Grant Line Road intersection is included in the area covered by the Master EIR.

The Master EIR is comprehensive. It is hundreds of pages long and covers, among other potential impacts, biological, hydrological, public health, cultural and noise. For example:

- A Habitat Management Plan addresses the loss of foraging habitat for raptors, including Swainson's hawk, northern harrier, black-shouldered kite, and tricolored blackbird, and the conversion of agricultural lands to nonagricultural uses.⁵
- The Master EIR anticipated the need to widen Grant Line Road, but mitigated some of the projected air quality impacts of doing so by incorporating into the project design programs aimed at reducing the dependency of future residents on cars.⁶
- Archeological, ethnographic and historical overviews and intensive archeological reconnaissance were performed at the project site.⁷ Mitigation Measure M4.5-1 requires that archaeological surveys be conducted as part of specific plans if they were not completed prior to preparation of the Master EIR. In several locations where the possibility of buried sites exists, monitoring by an archaeologist during

² See Attachment 1: *Mountain House Final Environmental Impact Report* (Master EIR), p. 1-2.

³ See id.

⁴ See id.

⁵ Master EIR, p. 3-24.

⁶ Master EIR, p. 3-25 to 3-30.

⁷ Master EIR, p. 4.5-1.

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construction activity is required.⁸ Even where an archaeologist monitor is not already required, all construction work must cease and an archaeologist must be called to the site if buried prehistoric cultural resources are found during construction.

In June of 2005, the MHCSD certified the EIR for the third phase of the Mountain House build out: *College Park at Mountain House Specific Plan III Final Environmental Impact Report* (College Park EIR).⁹ The College Park EIR examined closely the third phase of build out for the MHCSD, and is tiered to the Master EIR. At this more specific level, additional approvals were required, including amending the San Joaquin County General Plan 2010 and acquiring Authority to Construct permissions from the San Joaquin Valley Unified Air Pollution Control District. In November 2005 the Specific Plan for the development of phase III, College Park, of the development of MHCSD was completed.¹⁰ None of these documents mentioned the TPP or the 11-mile pipeline, nor was Midway/FPLE ever provided notice of these developments.

The College Park EIR included a number of measures required to have been taken prior to ground disturbance in addition to those already required under the Master EIR. These obligations include:

- If cultural resources not previously identified are discovered within a California Department of Transportation (Caltrans) right of way, then all construction within 35 feet of the find must cease and a staff archeologist will evaluate the finds.¹¹
- A Storm Water Pollution Prevention Plan must be completed and implemented, and compliance with all Phase I and Phase II NPDES permit conditions is required.¹² If consultation with the Regional Water Quality Control Board reveals an obligation to obtain a Section 401 water quality certificate or implement spill prevention and contingency measures, *inter alia*, then those obligations shall be met.¹³
- The College Park EIR includes extensive measures to address impacts to biological resources, and reference to numerous other agencies and resources,

⁸ Master EIR, p. 4.5-4.

⁹ Attachment 2.

¹⁰ Attachment 3, Mountain House Specific Plan III; see also, Attachment 4, Mountain House Specific Plan III Initial Study.

¹¹ College Park EIR, Mitigation Measure 4.6-2.

¹² Id., Impact 4.7-1, as well as reference to compliance obligations imposed by the Master EIR.

¹³ Id., Mitigation Measure 4.8-1.

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including to the U.S. Fish and Wildlife Service's *Standardized Recommendations for Protection of the San Joaquin Kit Fox Before or During Ground Disturbance*. This section establishes den buffers and setbacks from nests of the California Horned Lark and the Tricolored Blackbird. Development activities authorized by Specific Plan III are required to seek coverage under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.¹⁴

- The widening of Grant Line Road necessitated the removal of 188 mature trees. Mitigation of this impact is replacement at a 3:1 ratio.¹⁵

The impacts and mitigation measures discussed above represent only a few of those included in the College Park EIR. In order to fully appreciate the scope of oversight and mitigation measures required, one would need to look also a number of other documents and rules, including the Fish and Wildlife Service's document referenced above, the Mountain House Master EIR, and the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.

3. Midway First Contact with Mountain House

Responding to a PG&E RFO in 2005, Midway/FPLE sought information pertaining to local approvals necessary to install the pipeline. On September 28, 2005, prior to the completion of the Specific Plan III for College Park at Mountain House, Duane McCloud (Technical Manager) and Dave Schmiege (Director of Construction), on behalf of Midway/FPLE, along with Ben Wright of CH2M Hill (retained by Midway/FPLE) met with representatives of San Joaquin County (Tom Gawl, Mike Callahan, and one other person) and the City of Tracy (Nick Pihney, Steve Bayley). At this meeting Mr. Callahan told McCloud and Schmiege that MHCSD had a large construction project in progress in the vicinity and that they should meet with MHCSD.

On December 20, 2005, after considerable effort to schedule a meeting, McCloud, Schmiege, and Scott Busa (an FPLE Project Development Director) were able to meet with representatives of MHCSD and confirm its development plans. MHCSD representatives at the meeting were General Manager Paul Sensibaugh, and Nader Shareghi, the Director of Public Works. It was at this December meeting that Midway/FPLE first heard from MHCSD (Sensibaugh) that road construction would affect the pipeline route at the intersection of Grant Line Road and Mountain House Parkway, and that the intersection work was scheduled for completion by the summer of 2007. Sensibaugh told Midway/FPLE that a five year moratorium would follow completion of these road improvements, and that MHCSD was opposed to placing the pipeline in the shoulder of Grant Line Road. As a result, Midway/FPLE was told it either

¹⁴ Id., Mitigation Measures Section 4.10.

¹⁵ Id., Mitigation Measure 4.14-1.

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had to install the pipeline segment at the same time as the intersection construction or wait for at least five years.

4. 2006-2007 Road Construction and Pipeline Segment Installation

Effective November 6, 2006 PCCP Mountain House, LLC, the owners of the third phase of development of the MHCSD, College Park, entered into a contract with Teichert Construction, Inc. (Teichert) for the development of Phase III of Mountain House, College Park.¹⁶ Project Management Applications, Inc. (PMA) would serve as the owners' construction manager. Teichert, the contractor performing the work, agreed to "give all notices and comply with all laws, ordinances, rules, regulations, codes, and lawful orders of any public authority bearing on the performance of the Work, including those relating to safety, environmental protection, hazardous substances, and equal employment opportunities; . . . perform all work so that all approvals and all inspections of governmental agencies having jurisdiction over the Work can be obtained without unreasonable delay or additional expense. . ." Specifically incorporated in the contract were, among other provisions, a Storm Water Pollution Prevention Plan, and the Mountain House Standard Specifications and Design.

Road construction proceeded, and in 2006 at least some historic walnut trees along Grant Line Road were removed by MHCSD and/or its contractors (in accordance with the conditions as defined in the College Park EIR, pages 4.6-20 and 21), as the road was widened.

McCloud and Schmiede moved to preserve Midway's option to proceed with the TPP as designed (with the 11-mile pipeline delivering reclaimed water from Tracy) at some future date, entering into an Encroachment Agreement in August, 2006 for the then-future installation of the pipeline segment beneath the intersection.¹⁷ One term of the encroachment agreement was that installation and maintenance must be achieved in compliance with all valid laws and ordinances. McCloud and Schmiede coordinated with the developers of College Park at Mountain House, ultimately reaching an agreement wherein only that portion of the 11-mile pipeline that would be inaccessible for five years—the 215 feet beneath the existing but expanding intersection of Mountain House Parkway and Grant Line Road—would be constructed during the planned road construction.¹⁸

¹⁶ See Attachment 5, Agreement Between Owner and Contractor.

¹⁷ See Attachment 6, Encroachment Agreement.

¹⁸ The agreement does look forward to the need to later address additional road segments under similar terms, but the parties did not commit to that work in this agreement. Although 215 feet were planned, only 190 feet were actually placed.

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On April 20, 2007, a pre-construction meeting was held with Ahmad Haya of the MHCSD for the pipeline segment.¹⁹ In attendance were Teichert, PMA, CH2M Hill, MacKay and Soms, TRS, and Wallace-Kuhl & Associates (Wallace-Kuhl). CH2M Hill was hired by Midway/FPLE to design and provide quality assurance inspections. TRS was to represent the MHCSD for inspection duties. Wallace-Kuhl was to provide earthwork and special inspections. MacKay and Soms' role was to provide staking. It was agreed that because there was not time to obtain the formal approval of MHCSD prior to construction, Midway would submit an "At-Risk" letter to MHCSD, assuming any risk that mitigation or corrections might later need to be made.

On April 25, 2007 Midway provided the agreed upon At-Risk letter to Paul Sensibaugh, Nader Shareghi, and Ahmad Haya, including a reference to previous acceptance by MHCSD of "pipe specifications."²⁰

On May 4, 2007, construction of the water pipeline segment commenced.²¹ By June 8, 2007 approximately 190 feet of ductile iron pipe was installed at the intersection of Mountain House Parkway and Grant Line Road.²² This was completed "under the joint team inspection by CH2M Hill and Wallace-Kuhl with oversight from TRS Consultants, Inc." according to a letter sent by TRS Consultants, Inc. engineer, Steve Giadone to MHCSD.²³ The work was "done in accordance with the permit requirements."

5. FPLE Realization of Compliance Issue Caused by Pipeline Segment Installation

On June 13, 2008, as FPLE was working to finalize the documents associated with the sale of the ownership interest in Midway to Pacific Gas and Electric Company, the prior placement of the pipeline segment was "discovered" by FPLE environmental compliance staff. The compliance issue created by installation of the pipeline segment was analyzed by staff, then by attorneys, and was brought to the attention of the Commission on August 5, 2008.

¹⁹ See Notes from the Mountain House – SPIII Pre-Construction Meeting for the FPLE 30" non-potable water line crossing (April 20, 2007), Attachment 7. Note that holding this meeting was consistent with MHCSD Note 4 on the plans that were eventually approved for the pipeline segment, and that are discussed later in this memorandum.

²⁰ See letter from Michael O'Sullivan to Paul Sensibaugh, Nader Shareghi, and Ahmad Haya, Attachment 8.

²¹ See CH2M Hill, Tesla Recycled Water Pipeline Construction Log ("Construction Log"), Attachment 9.

²² See Id., notes for May 10, 2007.

²³ Attachment 10, letter from S. Giadone, TRS Consultants, Inc. to N. Shareghi re: TESLA 30" DIP Water Pipeline (June 25, 2007).

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6. Current Events

On June 19, 2008, MHCS D approved the plans for the pipeline segment as built, including, but not limited to, a number of provisions protecting archeological, paleontological, and habitat resources.

As College Park at Mountain House continues to develop, another approximately 2,000 feet of pipeline will need to be installed if the option to proceed under existing TPP plans is to be maintained. The Developer and FP LE began discussing the next phases of pipeline installation, but no formal, enforceable agreement is in place to date to accomplish the work, pending resolution of compliance issues with the Commission.

A. Condition of Certification COM-4, requires the project owner to prepare and submit to the Compliance Project Manager (CPM) a pre-construction compliance matrix consisting of the subset of conditions that must be completed prior to the start of construction. Please explain the circumstances leading to the lack of a submittal.

The engineering staff at FP LE who negotiated with MHCS D and approved construction of the pipeline segment were operating from the genuine good faith (but mistaken) belief that placement of 215 feet of pipeline segment, many miles from either terminus of an 11 mile pipeline, did not constitute commencement of construction of the TPP. To use current idiom, they viewed it as a pipeline segment to nowhere. As a result, they concluded that the conditions of the Certification were not triggered, including the requirement of Condition COM-4 to prepare and submit a pre-construction compliance matrix.

We have intensively pursued this issue with these staff members. We have also ascertained that no other FP LE personnel were involved, for reasons discussed below. With regard to these staff, we have concluded that there are plausible explanations for their misjudging the requirements of the AFC.²⁴ However, the principal reason appears to

²⁴ Misreading a document is not an excuse. However, in the interest of more fully understanding the thought process, in addition to what is contained in the text, we note that a non-lawyer could conclude, from examining the text of the Commission Decision, that construction did not include construction of an isolated segment of the pipeline. COM-4 requires that “[p]rior to commencing construction a compliance matrix addressing *only* those Conditions that must be fulfilled before the start of construction shall be submitted by the Project Owner to the [Compliance Project Manager].” (Commission Decision, p. 49.) “Construction” is defined by the Commission Decision to be something that occurs “on-site.” (Commission Decision, p. 45.) The Commission Decision distinguishes between the “site” and the “project”. “Site” in the Commission Decision generally refers to the location of the power plant itself and does not include the
(continued...)

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be that (a) they did not have company permission or authority to decide to commence construction of the Project (as they would define it, such permission would entail a “go” decision on the Project as a whole); (b) there was no current prospect to decide to build the plant unless they had an offtaker for the power; and (c) in their minds they were only preserving the option to build the plant at a later time.

B. The Energy Commission requires the appointment of a delegated Chief Building Official (CBO) to review engineering plans and specifications for compliance with the California Building Standards Code (CBSC) and to perform inspections of work in-progress and completed work while readily accessible. Why was a CBO not appointed?

We do not know why a CBO was not appointed, but it may be that no CBO was appointed because, almost immediately after certification, the project put on hold, including on CEC’s webpage. Generally, of course, it is the responsibility of the CEC staff to act as the Chief Building Official for the TPP.²⁵ This authority may be delegated

(...continued)

water pipeline. The very first page of the Commission Decision says that the “TPP site” is “located on a 60-acre portion of a 160-acre parcel in eastern Alameda County near the boarder with San Joaquin County, approximately one-half mile north of the PG&E Tesla Substation. The site can be accessed by Midway Road, which runs along the east side of the parcel.” This description clearly does not include the 11-mile pipeline, which is located in both San Joaquin and Alameda Counties and, if included, would cause the “site” area to be much larger. Figure 1 in the Executive Summary of the Addendum to the Staff Report, which focuses on the reclaimed water supply for the TPP, also shows the “TPP Site” separate from the water pipeline route. The Key Events List distinguishes between “Power Plant Site Activities” and “Water Supply Line Activities.” In addition, many of the Conditions appear to relate to the larger activity of building the project as a whole, which appears to have been what all parties contemplated would occur. See, e.g., Commission Decision, General Condition COM-6, Biological Conditions BIO-1-3, 5, 8, and 10.

However, the formal description of the TPP, contrary to the use of the terms “TPP site” and “site”, does include the water supply pipeline (Commission Decision, p.2). And several Conditions apply unambiguously to the pipeline, e.g. Cultural Conditions CUL-2 and 10. Whatever the confusion regarding terminology, the engineers’ judgment was primarily focused on the fact that the pipeline segment went nowhere and that they were not, in their own minds, commencing construction of the Project.

²⁵ See Commission Decision, p. 58.

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to either an independent third party contractor or the local building official.²⁶ In this case no such delegation occurred. Nor did Midway/FPLE ask for the appointment of a CBO at the time of installing the pipeline segment, because the Midway/FPLE staff did not believe that they were commencing construction within the terms of the AFC, as explained in the last section. CEC has now appointed a CBO: Bureau Veritas.

TRS performed this role on behalf of MHCS D with regard to the intersection improvements, including the subsurface pipeline placement.²⁷ We also discuss third party oversight in Section III of this Memorandum.

C. Condition of Certification COM-15 also requires that a Worker Environmental Awareness Program (WEAP) must be prepared and approved by staff. The WEAP, in addition to addressing environmental requirements for the project, including information regarding the role and responsibilities of the CBO to enforce California Building Standards Code (CBSC) and other relevant building and safety requirements. Please explain the circumstances leading to the lack of a WEAP submittal.

Condition COM-15 requires that the "Project Owner shall develop an environmental awareness orientation and training program, which shall be presented to new employees during project construction. . ."²⁸ The FPLE engineering staff did not believe placement of the 215 foot pipeline segment constituted commencement of construction of the TPP, as discussed above. Nevertheless, the contractor has its own Illness and Injury Prevention Program, pursuant to Cal/OSHA requirements, including training regarding all safety and health hazards on the job. In addition, if excavation were involved, the contractor would need a pre-activity permit from Cal/OSHA. We have not at this time been able to obtain a copy of the contractor's Environmental Health and Safety program, but can do so if the Commission so desires.

II. Please discuss the circumstances resulting in delayed notification of the CPM until more than one year after the pipeline segment installation.

FPLE officials have previously explained that the dormant status of this project resulted in responsibility falling through the cracks. Under normal circumstances, a permit/certification compliance review would be a part of the implementation of any portion of a project. The project would have three skill sets involved at all times: environmental/permitting compliance, legal, and engineering. Circumstances were not normal. First, the project was placed on hold as soon as it was certified, resulting in very

²⁶ Id.

²⁷ See Notes, Attachment 7; Letter from Steve Giodone, TRS Consultants, Inc. to Nader Shareghi, MHCS D, *Tesla 30" DIP Water Pipeline*, June 25, 2007, Attachment 10.

²⁸ Commission Decision, p. 58.

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little direct staff involvement or awareness of the project across FPLE. Second, there has been little continuity in the personnel assigned to legal and regulatory compliance, such that those supervising the certification process are no longer even with FPLE. As a result, when the engineering personnel asked for limited assistance in reviewing a document, e.g. the Encroachment Agreement, no one familiar with the Project and its Certification Conditions was there to answer the question. Instead, staff busy on other ongoing projects would answer the narrow question asked of them without inquiring into the project as a whole. As FPLE has indicated to Commission staff, this incident has led to a reorganization and identification of persons responsible for compliance in all projects, regardless of status. This circumstance will not happen again.

Given the absence of internal FPLE oversight, the two engineers responsible originally for doing due diligence as part of the 2005 PG&E RFO became the two decisionmakers with regard to the pipeline segment. As discussed in detail above, notification was delayed because the engineers making the limited decision to install the isolated 215 foot pipeline segment did not consider this activity to be the commencement of construction of the TPP.

What ultimately caused the realization that there might be a compliance issue, and hence a need to contact the CEC, was the revitalization of the dormant TPP. As described in the timeline above, it was not until 2008, when FPLE began negotiating with PG&E regarding a possible sale of Midway to PG&E, that significant numbers of staff members were assigned to the TPP. Once environmental compliance personnel spotted the issue, internal legal staff did a preliminary analysis. Given the potential magnitude of the issue and the length and complexity of the Certification, outside counsel were then tasked with a thorough review. As soon as that review was completed, the August 5, 2008 letter was sent to the Commission identifying this issue.

III. Did a governmental or independent firm complete a review and inspection of the pipeline segment plans, specifications, and construction? If so, please provide the name and contact information.

TRS Consultants, Inc. was on-site on behalf of MHCS D to coordinate and ensure compliance with all conditions imposed by the MHCS D.²⁹ MHCS D imposed on Midway/FPLE and CH2M Hill conditions similar to those found in the Commission Decision, such as requirements to conform to the latest MHCS D standard specifications and details, to recycle construction materials, to comply with any requirements of the San Joaquin Unified Air Pollution Control District, and to comply with laws regarding

²⁹ See Attachment 7, Apr. 20, 2007 pre-construction notes; Attachment 10, Giadone letter, June 25, 2007.

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endangered species and the San Joaquin County Multi-species Habitat Conservation and Open Space Plan.³⁰

MHCSD approved the pipeline segment construction/installation plans after the fact, signified by its June 19, 2008 approval.³¹

Wallace-Kuhl & Associates provided earthwork and special inspections.³²

IV. Please provide all environmental documents relevant to the pipeline segment installation, and identify which specific provisions covered the installation.

Construction of the 215 feet of pipeline was completed during MHCSD's third phase of development and therefore was covered by the planning and mitigation for that large project. The pipeline segment was installed beneath, and completely enclosed within, the footprint of the Mountain House Parkway/Grant Line Road intersection by Teichert, the contractor for PCCP Mountain House, LLC.³³ While slightly different in approach and specific requirements, the mitigation measures required as part of the development of the MHCSD are together as substantively protective as those of the Commission as far as placement of the 215 foot pipeline segment is concerned. The environmental requirements cover habitat and species protection, protection of air quality, cultural conditions, stormwater pollution prevention, and mitigation of tree removal. These documents that applied to the road expansion and were applied by contract to the pipeline segment installation were discussed in Section I.3, above. They include the following:

- The Master EIR, Attachment 1;
- The College Park EIR, Attachment 2;
- The Mountain House Specific Plan III, Attachment 3;
- Mountain House Specific Plan III Initial Study, Attachment 4;

³⁰ See Attachment 11, FPL Energy Tesla Recycled Water Pipeline (Pipeline Plans), approved June 19, 2008, sheet 2 of 9; At-Risk Letter, Attachment 8.

³¹ See Attachment 11, Pipeline Plans.

³² See Attachment 7, Apr. 20, 2007 pre-construction notes Attachment 10, Giadone letter, June 25, 2007.

³³ PCCP Mountain House, LLC is the developer of College Park at Mountain House.

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- A Storm Water Pollution Prevention Plan;
- The U.S. Fish and Wildlife Service's *Standardized Recommendations for Protection of the San Joaquin Kit Fox Before or During Ground Disturbance*;
- The San Joaquin County Multi-Species Habitat Conservation and Open Space Plan;³⁴ and
- FPL Energy Tesla Recycled Water Pipeline, approved June 19, 2008, sheet 2 of 9, Attachment 8.

As already discussed above, TRS Consultants, Inc. performed on-site inspections and monitoring on behalf of the MHCS D to ensure compliance with relevant provisions of the above documents.

In short, there were multiple levels of redundancy addressing realized and potential cultural, community, and environmental impacts of the placement of the pipeline segment. In some cases, obligations for proceeding with the road development under the MHCS D's authority were identical to those required by the Commission for Tesla Power Project-associated pipeline development. Because of the quite different nature of the Mountain House development phased development and the TPP, many of the Commission's requirements were different in scope and tone from those of the MHCS D, but the end result was equally comprehensive.

V. Conclusion

We hope that these answers to your questions are satisfactory. We hope you will conclude, as we did, upon detailed investigation of the events, that this was an honest mistake by the engineers and a singular staffing breakdown by the company. In addition, we hope that you will agree that the environmental protections were plentiful for the installation of this pipeline segment in an existing intersection, and that the third party assurances of performance were likewise satisfactory. Of course, if you need additional information or have follow-up questions, please feel free to call or email me.

Sincerely,



Peter H. Weiner
of PAUL, HASTINGS, JANOF SKY & WALKER LLP

³⁴ College Park EIR, Mitigation Measures Section 4.10.

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Attachments

1. *Mountain House Final Environmental Impact Report* (Master EIR), Sept. 1994
2. *College Park at Mountain House Specific Plan III Final Environmental Impact Report* (College Park EIR), June, 2005
3. *Mountain House Specific Plan III*, Nov. 22, 2005 (amended Sept. 11, 2007)
4. *Mountain House Specific Plan III Initial Study*, Oct. 13, 2003
5. Agreement between owner and contractor: contract between PCCP Mountain House, LLC, and Teichert Construction, Inc. for the development of Phase III of Mountain House, College Park, Nov. 6, 2006
6. Encroachment Agreement between MHCSO and Midway Power, LLC, Aug. 22, 2006
7. Minutes from the Mountain House – SP III Pre-Construction Meeting for the FPLE 30” non-potable water line crossing, Apr. 20, 2007
8. “At-risk letter” from Michael O’Sullivan to Paul Sensibaugh, Nader Shareghi, and Ahmad Haya re: Authorization fro Construction of Submitted Plans Midway Power Water Line Crossing Mountain House Parkway at Grant Line Road, Apr. 25, 2007
9. CH2M Hill, Tesla Recycled Water Pipeline Construction Log, May 4, 2007 through June 1, 2007
10. Letter from S. Giadone, TRS Consultants, Inc. to N. Shareghi re: TESLA 30” DIP Water Pipeline, June 25, 2007
11. Plans, FPL Energy Tesla Recycled Water Pipeline, approved June 19, 2008