

DOCKETED

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Center for Biological Diversity Comments

Additional submitted attachment is included below.

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

2014 Revisions: Title 20 Commission
Process and Procedure Regulations

DOCKET NO. 14-OII-01

COMMENTS FROM THE CENTER FOR BIOLOGICAL DIVERSITY
RE: 2014 (& 2015) REVISED DRAFT REGULATIONS, CALIFORNIA CODE OF
REGULATIONS, TITLE 20

January 30, 2015

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The Center for Biological Diversity (the “Center”) submits these comments on the proposed regulatory changes in Docket number 14-OII-01. While the Center appreciates the opportunity to provide input at this early stage of the proposal, unfortunately we have found that the 15 day time periods provided to comment are unreasonably short.

The Center agrees with the comments submitted by CURE in 2014 and for this comment period and incorporates those comments herein by reference (TN203250; TN203365; CURE comments filed 1/30/15).

The Center is particularly concerned with the proposed changes that would devalue public comment in the CEQA process and limit the ability of members of the public and Intervenors to fully and fairly be heard on issues that are not adequately addressed by Staff or the Applicant.

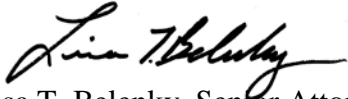
For example, the Center strongly opposes the proposed revision that would excise public comment from the hearing record (§ 1212) which is inconsistent with both the letter and spirit of CEQA. This change, along with many of the other proposed changes, would fundamentally undermine public participation and require the Commission to re-apply to certify its siting process under the CEQA functional equivalency provisions for regulatory programs. See Cal. Public Res. Code § 21080.5.

The Center also opposes the proposed revisions that could force multiple Intervenors to consolidate their participation or limit them to specific topics without due process (§ 1211.7(c)). While at first blush the interests of various Intervenors on certain topics may seem the same or similar to the presiding member, in many instances there will be significant differences between Intervenors’ positions on the same topic area. The Center does not see any need for this requirement which could undermine full participation on key issues by Intervenors and undermine due process. Moreover, multiple Intervenors may be unable to be represented by a single counsel in the hearings due to conflicts of interest and other legal restrictions—if the presiding member forces

Intervenors to consolidate their participation it could significantly impair the ability of various Intervenors or potential Intervenors to be heard. In many hearings over the past few years, the Center has worked to coordinate testimony and cross-examination with other Intervenors on topics where our interests are aligned and have saved significant time at hearings by doing so. We believe that these informal mechanisms are sufficient to ensure that hearings are conducted expeditiously without unnecessary duplication of information presented at hearing.

The Center is also concerned that the parties have often been treated unequally at hearings (as the Center has stated before, including at the workshop regarding the proposed changes on October 27, 2014). In many hearings in which we have participated the applicant and staff have been allowed to present and repeat filed testimony virtually verbatim for hours while, in contrast, Intervenors have been repeatedly pressed to rush their cross-examination and presentations of expert testimony at hearings. The regulations (most likely in § 1212) should be revised to clearly require that all parties be treated equally by the Committee and the hearing officer during the adjudicatory hearings and have the same opportunity to present testimony, undertake cross-examination, and provide rebuttal. The revised regulations should also require (again, most likely in § 1212) that adjudicatory hearings be held during set hours and with set meal breaks; in our experience, many times Intervenors have been asked to rush through their cross-examination, expert testimony presentations, or rebuttal while meal times are delayed or late in the evening when the committee members and others are impatient to take a break. This does not comport with normal adjudicatory process and does not provide due process for Intervenors.

Respectfully submitted,
Date: January 30, 2015


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