

ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER
1947-2010

CHRISTOPHER T. ELLISON
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
GREGGORY L. WHEATLAND
CHRISTOPHER M. SANDERS
LYNN M. HAUG
PETER J. KIEL

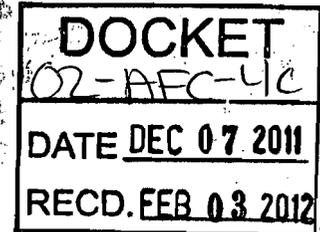
ATTORNEYS AT LAW
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE: (916) 447-2166
FACSIMILE: (916) 447-3512
<http://www.eslawfirm.com>

BRIAN S. BIERING
JEDEDIAH J. GIBSON
CHASE B. KAPPEL
SHANE E. C. McCOIN
SAMANTHA G. POTTENGER

OF COUNSEL:
ELIZABETH P. EWENS
CHERYL L. KING
MARGARET G. LEAVITT
RONALD LIEBERT

December 7, 2011

Chris Marxen
Compliance Office Manager
Siting, Transmission, and Environmental Protection Division
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814



Re: Walnut Energy Center (02-AFC-4C): Pending Amendment Request

Dear Mr. Marxen:

I am in receipt of your letter of November 23, 2011. The letter informs me "that the California Energy Commission (the "Commission") is in receipt of information that the Walnut Energy Center ("WEC") is currently out of compliance with Condition of Certification **SOIL&WATER-5**, based on the facility's use of groundwater over the past 4 years." As requested in your letter, I contacted you on November 29, 2011 to schedule a meeting. You replied by email on December 6, 2011 stating that you can meet with us "at any time to discuss the NOV" and what you are "planning to do with that in the future." You said that you "are not ready, however, to discuss the amendment." You did not propose a time or date to meet. Please let us know when is a convenient time to meet with you.

In anticipation of our meeting, it is important that we are clear as to how the Commission is in receipt of information regarding compliance with Condition of Certification **SOILS&WATER-5** of the Commission's February 18, 2004 Decision approving the WEC. As you are aware, the District and the Staff discovered a calculation error in August of 2010, resulting in water use calculations being off by one decimal place. (By way of example, a calculated figure of 4.8 acre feet per year was, when corrected, 48 acre feet per year.) This calculation error had been carried forward in each of the Staff-reviewed Annual Compliance Reports since the project began using recycled water in 2007.

Once the calculation error was discovered, the District reacted affirmatively to cure the calculation error, including, but not limited to, filing a Petition for an Amendment. Specifically, on January 21, 2010 -- more than 10 months ago -- the Walnut Energy Center Authority filed a petition with the Commission requesting a Change in Condition of Certification **SOILS&WATER-5** to remove the 51 acre feet per year limit on the use of poor quality groundwater from the upper aquifer supplied by WEC's approved onsite wells. The Petition

expressly stated that the proposed Amendment will not result in any physical alteration to the WEC project, and that the District will continue to maximize the use of recycled water provided by the City's wastewater treatment plant. The "information" that has come to your attention is information that we have provided in relation to the Petition for Modification to address the WEC's use of poor quality groundwater.

The letter notes the Commission's responsibility to provide adequate monitoring of all conditions required to mitigate potential impacts. In this context, it is vital that the Commission review the entire record in this matter, including the Commission's findings with respect to the impacts of groundwater use by this project.

Specifically, on August 28, 2006, the CEC approved the Alternative Water Supply Plan ("AWSP") for the WEC as required by SOILS&WATER-6. The AWSP analyzed the impacts of the most extreme hypothetical groundwater usage modeling scenario: pumping 1,800 acre feet per year of poor quality groundwater for 50 years. The AWSP concluded that local and regional water supplies would not be adversely affected by the hypothetical use of this poor quality groundwater as a permanent supply source for WEC. To be clear, actual pumping has been nowhere near the 1,800 acre feet per year modeled in the AWSP. In fact, the total groundwater pumping since the WEC project began using recycled water and relied on poor quality groundwater as a back-up water supply in August of 2007 is less than 365 acre feet over that four year period.

If, as the approved AWSP demonstrates, a hypothetical pumping of 1,800 acre feet per year over fifty years would have no significant effect, then there can be no question that pumping at current levels (less than 400 acre feet over a four year period) has no significant impacts. The record is quite clear in this respect: the AWSP approved by the Commission more than five years ago in August of 2006 demonstrates that the pumping to date would have no significant effect on the environment.

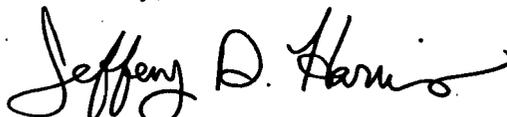
Whether you agree or disagree with this prior Commission determination, the Amendment Petition that frames these issues should be placed before the Commission in a timely manner so that the Commission can act on the pending request. Despite repeated requests over the past 10 months to process the pending Petition in a timely manner, your office has failed to issue a Staff Assessment or to schedule this matter for consideration by the full Commission. Had the Petition been processed and approved in a timely manner, the potential violation now alleged would not be at issue.

The letter raises the specter of potential complaints and penalties. I most respectfully submit that rather than devoting time to new enforcement actions, the Commission should first devote its efforts to placing the District's Petition before the Commission for a decision. We believe that it would be a substantial abuse of discretion for the Commission to refuse to entertain a Petition filed 10 months ago while simultaneously considering the initiation of prosecution of a complaint for the very matters that are the subject of the Petition.

Chris Marxen
December 7, 2011
Page 3

In the interest of justice and fairness, we request (1) that you place the Petition on the Commission's next regularly scheduled business meeting for approval, and (2) that you withdraw your "notice of violation", pending Commission action on the Petition.

Sincerely,



Jeffery D. Harris