

California Energy Commission <b>DOCKETED</b> <b>11-AFC-3</b>
TN # 68213 OCT 25 2012

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STATE OF CALIFORNIA  
 State Energy Resources  
 Conservation and Development Commission

In the Matter of:	)	11-AFC-03
	)	
QUAIL BRUSH GENERATION	)	<b>MOTION BY INTERVENOR</b>
PROJECT	)	<b>HOMEFED FANITA RANCHO, LLC</b>
_____	)	<b>TO EXTEND DISCOVERY PERIOD</b>

**MOTION**

Pursuant to California Code of Regulations, title 20, sections 1716(e) and 1716.5, intervenor HomeFed Fanita Rancho, LLC, ("HomeFed") hereby moves for a forty-five day extension of the discovery period. An extension of the discovery period is supported by good cause and is appropriate to allow for the development of a complete record for purposes of evaluating the proposed project under sections 25525 and 25527 of the Warren-Alquist Act. The discovery period extension will necessitate that other dates in the Revised Committee Scheduling Order be extended. A proposed new revised schedule is attached to this motion as Exhibit 1. This motion is based on the full record of proceedings in this matter, the accompanying

Declarations of Valentine S. Hoy ("Hoy Decl.") and John T. Kaup ("Kaup Decl."), the exhibits thereto, and such other matters as may be presented to the Committee.

## INTRODUCTION

Good cause exists for the proposed extension of the discovery period. First, the current scheduling order was based on the applicant's representation that it would submit Supplement #3, containing substantial changes to the design of the project, on or before June 22, 2012. The applicant submitted those revisions more than sixty days late, finally docketing them on August 31, 2012. (Hoy Decl., ¶ 2.) That fact, alone, constitutes good cause to extend the discovery period by forty-five days.

Second, on October 16, 2012, the applicant notified all parties that it would be requesting findings under section 25525 of the Warren-Alquist Act (LORS override factors), which was not the case when the scheduling order was made. (Hoy Decl., ¶ 3.) At the October 16 Status Conference, Raoul Renaud observed:

"Perhaps one thing we can begin to glean from this discussion so far is the importance of the override section of this decision. The override section, if the Committee is not able to make the override findings then the Committee is not able to approve the project. So the parties need to focus in their evidence on ensuring that the Committee has an ample evidentiary record upon which it can base its override decision, yea or nay. But we need to have a very, very thorough, complete record of evidence upon which to base that portion of the decision.

(Hoy Decl., ¶ 3, Exhibit A.) The potential for a LORS override, and the corresponding need for an ample evidentiary record, also provides a sufficient basis, by itself, to extend time for discovery.

Third, the applicant has stated its intention to submit information about project alternatives, information that is highly relevant to the LORS override request, as late as October 31, 2012. (Kaup Decl., ¶ 4.) Intervenors should be afforded a full and fair opportunity to propound discovery after they digest the new information. The analysis of project alternatives is a broad topic that involves every aspect of the project. Discovery on that subject matter cannot, in fairness, be limited in scope.

Fourth, the applicant's continuing lag in responding to the staff's data requests and the applicant's inability to answer questions posed by the staff and the parties regarding technical areas at public workshops held in October supports an extension of the discovery period so that answers to all of the questions can be obtained. (Kaup Decl., ¶¶ 3, 4.) Just this week, staff cited gaps in the applicant's prior discovery responses as the reason for serving data requests on HomeFed. (Hoy Decl., ¶ 5, Exhibit B.)

### **THE SIGNIFICANT PROPOSED PROJECT CHANGES AND DESIGN ALTERNATIVES**

An earlier Committee Order on Intervenors' Motion for Extension of Discovery Period is dated May 14, 2012, prior to HomeFed's Petition to Intervene (June 14, 2012) and the Order Granting its Petition to Intervene (July 5, 2012). The May 14 Order partially granted a request to extend the discovery period, without prejudice to the parties' future ability to request further extensions of time pursuant to Section 1716(e), basing the new dates on when the applicant submitted its Supplement #3 to the AFC. A subsequent Revised Committee Scheduling Order in

June pegged Supplement #3 to be due on June 22, 2012. At the end of August, the applicant finally filed Supplement #3, detailing its changes to the proposed project. The proposed project changes were significant and require time to study and develop evidence. (Hoy Decl., ¶ 2.)

**THE IMPACT OF THE CITY OF SAN DIEGO'S EFFECTIVELY DENYING THE APPLICANT'S ZONING CHANGE REQUEST**

At the October 16 Status Conference, the Committee was particularly interested in the impact of the San Diego City Council's September 24, 2012, denial of the applicant's appeal of the City of San Diego Planning Commission's denial of the applicant's zoning change request by a unanimous vote, which effectively ending the applicant's attempt to change the area land use from open space to industrial use. (Hoy Decl., ¶ 3.) It is undisputed that any approval of the proposed project will be in conflict with the local land use laws, ordinances, regulations and standards ("LORS") and as a consequence also will have significant direct unmitigated environmental impacts. Any Committee approval will require override finding. Section 25525 of the Warren-Alquist Act specifies findings that must be made before approving a project that does not comply with state or local LORS. In addition, CEQA prohibits a public agency from approving a project it finds to have one or more significant effects on the environment unless the Committee makes certain findings pursuant to Pub. Resources Code § 21081. Both sections focus upon whether the proposed project is required for public convenience and necessity and whether there are not more prudent and feasible means of achieving public convenience and necessity. The Committee further was interested in the relevance of Section 25527 of the Warren-Alquist Act.

A key aspect of the LORS analysis will be the consideration of design and siting alternatives. Supplement #3 offered little in the form of alternatives, and HomeFed wishes to

develop evidence regarding feasible alternatives. Also HomeFed notes that at the October 19, 2012 CEC Workshop, counsel for the applicant stated that it will be submitting additional information on alternatives analysis, which it anticipated doing by October 31. (Kaup Decl., ¶ 4.) HomeFed wishes to conduct discovery into the applicant's forthcoming alternatives analysis. The analysis of project alternatives involves all aspects of the project. It is not limited in scope in the way that information about a particular species might be. Discovery concerning project alternatives information cannot be fairly limited in scope.

The request for an additional 45 days of discovery without limitation on scope is not unfair to the applicant. The applicant could have submitted a complete analysis of alternatives long before October 31, 2012, but chose to wait. Even if one accepts the applicant's contrary position, the fact remains that the applicant delayed the decision by the City of San Diego by at least 90-days. During the proceedings before the City of San Diego the applicant obtained a 60-day extension of time to prepare its case, and associated delays further extended the time period. (Hoy Decl., ¶ 6, Exhibits C and D.) Had it not done so, the City probably would have made its decision sooner. HomeFed is requesting only half the number of days that the applicant obtained for itself.

**THE APPLICANT'S CONTINUING LAG IN RESPONDING TO THE STAFF'S DATA REQUESTS AND ITS INABILITY TO RESPOND TO BOTH THE STAFF AND THE PARTIES REGARDING TECHNICAL AREA WORKSHOPS**

HomeFed also notes that the applicant continues to respond to staff's data requests, still has technical information forthcoming, and continues to be unprepared to meaningfully respond to staff, the parties, and the public at recent workshops. At several points during the October 3 Workshop, the applicant and its consultant appeared unprepared to meaningfully respond to CEC staff's inquiries, and stated that additional information was forthcoming. Examples of this

include in the technical areas of (1) biological resources, where the applicant needed to provide more models and data on biological impacts; and (2) air quality, where the applicant had no information on emission reduction credits. (Kaup Decl., ¶ 3.) At the October 19 Workshop, the applicant and its consultants indicated that it will be submitting additional information relevant to fire protection, biological resources, noise and visual impacts. HomeFed is certain to have questions and data requests relating to those subjects. HomeFed will need time after October 31 to conduct discovery on this topic. (Kaup Decl., ¶ 4.)

### **PROJECT ECONOMICS, NEED AND FEASIBILITY**

One additional area of evidence and proposed discovery that HomeFed wishes to develop is project economics and feasibility. For example, on October 17 the applicant docketed a letter from SDG&E purporting to demonstrate a need for the proposed project. (Hoy Decl., ¶ 7.) HomeFed would like to explore the basis for this position, and believes that good cause exists for an extension of the discovery period in order to do so. In light of this new information, HomeFed and its consultants would like to analyze the issues associated with SDG&E's letter. This item takes on heightened importance after the October 16 status hearing. HomeFed will be prepared to submit data requests on these issues in November. (Hoy Decl., ¶ 7.) Furthermore, there may be need for follow-up discovery in this area.

### **CONCLUSION**

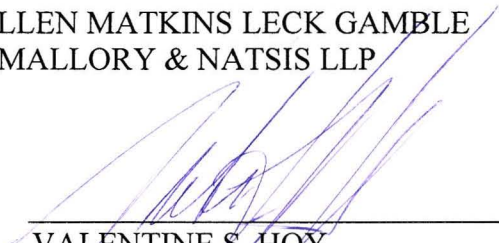
Information that has only recently been provided by the applicant, or that will be provided by the applicant later this month, is likely to be highly relevant to the LORS analysis. The hearing officer noted on October 16 that the Commission expects and will require a complete and thorough record concerning this subject. Additional discovery is likely to be

critical to meeting that requirement. HomeFed respectfully submits that abundant good cause exists for an extension of the discovery period and requests that the Committee grant its motion for an 45-day extension of the discovery period.

Dated: October 25, 2012

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:



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# **EXHIBIT 1**



Activity	Current Date	Proposed Date
Final date for exchange of information (discovery)	October 31, 2012	December 14, 2012
Status Reports due	November 15, 2012	December 28, 2012
Status Conference (if needed)	TBD	TBD
Preliminary Staff Assessment (PSA) filed	December 12, 2012	January 25, 2012
SDAPCD issues Final Determination of Compliance (FDOC)	December 14, 2012	January 28, 2012
Preliminary Staff Assessment workshops(s)	TBD	TBD
Public and Agency comments on PSA due	January 31, 2013	March 15, 2012
Final Staff Assessment filed	February 21, 2013	April 5, 2012
Prehearing Conference	TBD	TBD
Evidentiary Hearings	TBD	TBD
Committee files Presiding Member's Proposed Decision (PMPD)	TBD	TBD
Hearing on PMPD	TBD	TBD
Committee files Errata or Revised PMPD (if necessary)	TBD	TBD
Commission issues Final Decision	TBD	TBD

TBD – to be determined



**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  
QUAIL BRUSH GENERATION PROJECT***

**DOCKET NO. 11-AFC-03  
PROOF OF SERVICE  
(Revised 10/16/2012)**

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DECLARATION OF SERVICE

I, John T. Kaup, declare that on October 25, 2012, I served and filed copies of the attached MOTION BY INTERVENOR HOMEFED FANITA RANCHO, LLC TO EXTEND DISCOVERY PERIOD, dated October 25, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: <http://www.energy.ca.gov/sitingcases/quailbrush/index.html>.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

*(Check all that Apply)*

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses marked **\*"hard copy required"** or where no e-mail address is provided.

**AND**

For filing with the Docket Unit at the Energy Commission:

- by sending an electronic copy to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT  
Attn: Docket No. 11-AFC-03  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.ca.gov](mailto:docket@energy.ca.gov)

**OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:**

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission  
Michael J. Levy, Chief Counsel  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[michael.levy@energy.ca.gov](mailto:michael.levy@energy.ca.gov)

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.

John T. Kaup  
John T. Kaup