



STATE WATER RESOURCES
CONTROL BOARD
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DIV OF WATER RIGHTS
SACRAMENTO

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January 21, 2014

Mr. Oscar Biondi
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 98512-2000

Re: Response to California State Lands Commission Staff's Response to the Petition to Reconsider Filed by Kaiser Eagle Mountain, LLC (Kaiser), submitted to the SWRCB December 23, 2013 [Regarding Final Water Quality Certification, Eagle Mountain Pumped Storage Project (Federal Energy Regulatory Commission Project No. 13123; SCH No. 2009011010)]

Dear Mr. Biondi:

On December 23, 2013 the California State Lands Commission (CSLC) staff submitted a letter supporting Kaiser and other petitioners¹ request to reconsider the SWRCB's July 15, 2013 Water Quality Certification for the Eagle Mountain Pumped Storage Project. This letter is being filed in response to the CSLC's request.

We submitted detailed responses to each of the three petitions on January 3, 2014. As documented based upon information contained in the Board's FEIR, none of the three petitions present any new information or raise issues that were not previously considered during the State Water Board's lengthy environmental review process and subsequent issuance of the Water Quality Certification. The administrative record contains substantial competent evidence to support the factual determinations along with the methodology employed to reach those determinations.

¹ The State Water Board received three Petitions for Reconsideration (Petitions) from the following parties:

1. Gary Cruz, Hildeberto Sanchez, Ralph Figueroa, and Laborers International Union of North America, Local Union 1184 - represented by Michael Lozeau and Richard Drury of Lozeau Drury LLP;
2. Kaiser Eagle Mountain, LLC- represented by Tracy Egoscue and Tarren Lopez of Egoscue Law Group; and
3. National Parks Conservation Association and San Bernardino Valley Audubon Society - represented by Deborah Sivas and Alicia Thesing of the Stanford Law School Environmental Law Clinic.

We have reviewed the CSLC letter, and find the same is true for the issues raised therein. The project's lower reservoir may hinder direct access to some portion of the remaining iron ore resources for the 50-year life of the project, but will in no way result in the loss of those mineral resources as suggested.

The FEIR statement cited by the CSLC staff that "...there are no confirmed plans to reinstate iron ore mining on the site." (FEIR page 3.1-27) is a simple statement of fact. Contrary to CSLC's assertion, that statement does not necessarily imply that resumption of iron ore mining on the Reserved Mineral Interest (RMI) is unlikely, but with no active or proposed iron ore mining for more than three decades, further analysis of the issue is highly speculative and unwarranted under CEQA.

We note that access to the CSLC's RMI was similarly constrained by Kaiser's previously proposed Eagle Mountain Landfill Project that would have operated for up to 100 years, in contrast to the 50-year license applied for the Pumped Storage project. We also note that the CSLC is simply wrong to state that "*the extraction of iron ore has been the Project area's primary land use for the last 65 years.*" Iron ore mining at this site ceased in 1983, and the very limited subsequent mining activity at the site since that time has involved use of the tailings and rock products rather than mining new iron ore.

Finally, we note that the State Water Board addressed significance of this potential future mining issue very well, and we quote from page 3.1-27 of the FEIR regarding significant impacts to mineral resources:

"Would the project result in loss of available mineral resources that would be of value to the region and the residents of the state? No. A portion of CSLC mineral reserves, constituting a small percentage of the available iron ore on the site, would be inaccessible in the east end of the lower (East) pit during the 50-year life of the Project. However, there are no confirmed plans to reinitiate iron ore mining on the site. ...

The proposed Project would use two of the four main mining pits at the Eagle Mountain Mine site: the East Pit and the Central Pit. While the Eagle Mountain Mine has shipped rock, rock products, and stock piled iron ore over the years, large-scale iron ore mining was curtailed as of 1983. The two western-most of the four main pits, the North and South Black Eagle Pits, are outside the proposed Central Project Area and would not be affected by construction and operation of the pumped storage facility, access roads, or transmission line. Mining of rock and aggregate could continue on lands outside of the project boundary. If, in the future, iron ore mining was proposed for the site, that could be initiated on lands outside of the project boundary."

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Therefore, we respectfully request that the State Water Board deny the request from the CSLC for reconsideration as no new material issues have been raised, and the State Water Board's FEIR does adequately address potential effects on mineral resources.

Thank you for this opportunity to respond. We look forward to continuing to work with the Water Board in implementation of the Final WQC. Please do not hesitate to contact me at (310) 450-9090, or our Project Director, Dr. Jeff Harvey at (916) 799-6065, if you have any questions or need additional information.

Sincerely,



Stephen Lowe, President
Eagle Crest Energy Company

List of copied parties attached

As required by the State Water Board, copies of this response are being sent to:

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