

**CALIFORNIA STATE LANDS COMMISSION**  
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*Our 75<sup>th</sup> Year*



1938 - 2013

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December 23, 2013

File Ref: SCH# 2009011010  
FERC# 13123

Oscar Biondi  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Subject: California State Lands Commission Staff's Response to the Petition to Reconsider Filed by Kaiser Eagle Mountain, LLC (Kaiser)**

Dear Mr. Biondi:

The staff of the California State Lands Commission (CSLC) appreciates the extension of time granted by the State Water Resources Control Board (SWRCB) to respond to the petitions for reconsideration filed after the July 15, 2013, Clean Water Act section 401 water quality certification (CWA 401 Certification) for the Eagle Mountain Pumped Storage Project (Project) by the SWRCB's Executive Director. This letter is submitted pursuant to California Code of Regulations, Title 23, section 3867.1 and responds to a petition for reconsideration submitted by Kaiser.

The CSLC's Interest

CSLC staff has submitted numerous comments prior to the CWA 401 Certification and during circulation of both the Draft and Final Environmental Impact Reports (DEIR and FEIR). Comments were submitted June 18, 2008, November 10, 2010, July 27, 2012, and May 7, 2013. CSLC staff submitted these comments as a trustee agency under the California Environmental Quality Act (CEQA) because of the CSLC's duty as the trustee of school lands to monitor projects that could directly or indirectly impact these lands.

The Project as proposed would flood a 466.6-acre 100 percent Reserved Mineral Interest (RMI) school lands parcel owned by the State and managed by the CSLC. This RMI, which is located within Section 36, T3S, R14E, SBBM, Riverside County, has in the past been mined for iron ore and is estimated to currently retain 23.5 million tons of iron ore.<sup>1</sup> Royalty proceeds from the extraction of iron ore on school lands exclusively

<sup>1</sup> Federal Energy Regulatory Commission, Final Environmental Impact Statement, Eagle Mountain Pumped Storage Hydroelectric Project (No. 13123-002), § 3.3.1.1, pg. 50 (Jan. 30, 2012).

benefit the California State Teachers Retirement System (CalSTRS). It is likely that any and all future mining will be precluded within the RMI if the Project moves forward.

#### CSLC Staff's Response to Kaiser's Petition

In its Petition for Reconsideration (Kaiser's Petition), dated August, 14, 2013, Kaiser (1) asks the SWRCB to reconsider the July 15, 2013, issuance, by the SWRCB's Executive Director, of the CWA 401 Certification and the certification of the FEIR, and (2) requests a public evidentiary hearing by the SWRCB to be held in Riverside County. As noted in our comments on the DEIR and FEIR, CSLC staff concurs with the contention that the CWA 401 Certification and the FEIR fail to adequately analyze the Project's impacts on the mineral resources at Eagle Mountain and, therefore, that reconsideration of the SWRCB certifications is warranted.<sup>2</sup> The CSLC has a fiduciary duty to manage State school lands for the benefit of CalSTRS. The Project, as proposed, would (1) preclude the mining of the State's RMI interest during the life of the Project, (2) result in the loss of mineral resources that could be of value to the residents of the State, and (3) adversely affect CalSTRS beneficiaries.

To elaborate on CSLC staff's concern, the FEIR states as its basis for finding no significant impact to mineral resources that "there are no confirmed plans to reinstate iron ore mining on the site." (FEIR page 3.1-27). CSLC staff cannot concur that resumption of iron ore mining on the RMI is unlikely. Further, under CEQA, the absence of current plans for extraction itself is not an adequate basis to conclude that the Project will have no potential for significant impacts to mineral resources. The FEIR fails to establish a quantifiable baseline for current statewide or regional iron ore extraction with which to analyze against the potential loss of ore due to the Project. CSLC staff feels that an accurate baseline analysis for mineral resources is particularly important because the extraction of iron ore has been the Project area's primary land use for the last 65 years.

For these reasons, CSLC staff supports the request by Kaiser and other petitioners to reconsider the July 15, 2013 recertification before the SWRCB at a noticed, public hearing in Riverside County.

CSLC staff greatly appreciates the extended opportunity to comment on the petitions for reconsideration. If you have any questions please feel free to contact me at (916) 574-0398 or [joe.fabel@slc.ca.gov](mailto:joe.fabel@slc.ca.gov).

Sincerely



Joe Fabel  
Staff Attorney

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<sup>2</sup> See Kaiser's Petition for Reconsideration, Memorandum of Points and Authorities, pg. 7 (Aug. 14, 2013).

Mr. Biondi  
December 23, 2013  
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