Decision **DRAFT DECISION OF ALJ PATRICK** **(Mailed 7/21/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Valencia Water Company (U-342-W) Seeking Approval of its Updated Water Management Program as Ordered in Commission Resolution W-4254 dated August 5, 1999.	Application 99-12-025 (Filed December 17, 1999)

OPINION GRANTING MOTION OF VALENCIA WATER COMPANY TO REOPEN PROCEEDING AND TERMINATE STAY OF DECISION 01-11-048

Summary

Today's decision finds that with the recertification of the West Creek Environmental Impact Report (EIR) by the County of Los Angeles (County) the conditions stated in Decision (D.) 03-10-063 have been met; therefore, the stay of D.01-11-048 ordered by the Commission is lifted and Valencia Water Company (Valencia) is authorized to expand its service area to serve the West Creek project. This proceeding is closed.

Procedural Summary

On July 28, 2005, Valencia filed its motion to reopen this proceeding and terminate the stay of D.01-11-048, imposed by D.03-10-063. On August 12, 2005, Sierra Club filed its response in opposition to Valencia's motion. On August 22, 2005, Valencia filed a reply to Sierra Club's response. This matter is submitted for decision based on these pleadings.

Background

On November 29, 2001, in D.01-11-048, the Commission approved Valencia's Water Management Program (WMP), accepted Advice Letters 88 and 90 for filing, and authorized Valencia to extend service to four developments that were addressed by those advice letters. Further Commission decisions denied applications for rehearing and then a petition for modification filed by the Angeles Chapter of Sierra Club[1] (Sierra Club).

On October 16, 2003, in a decision addressing Sierra Club's application for rehearing of the decision denying its petition for modification of D.01-11-048, the Commission noted that a Court of Appeal decision recently had determined that the EIR for the West Creek project (West Creek EIR), one of the EIRs that the Commission had relied on in D.01-11-048, was insufficient for California Environmental Quality Act (CEQA) purposes. While finding no legal error in its decisions and denying Sierra Club's application for rehearing, the Commission acted on its own motion to stay D.01-11-048 insofar as it approved the West Creek EIR. The Commission directed that the stay of D.01-11-048 would remain in effect pending recertification of the West Creek EIR by the lead agency, the County, and resubmission of the West Creek EIR to the Commission. (D.03-10-063, *mimeo*., p. 7, Conclusion of Law 2.)

Recertification of the West Creek EIR

On September 26, 2000, the Los Angeles County Board of Supervisors certified the Final EIR for the West Creek project. Subsequently, various parties

[1] It includes Santa Clarita Organization for Planning the Environment (SCOPE).

challenged the County's certification of the Final EIR and project approval in an action in Santa Barbara County Superior Court (trial court).

On February 27, 2003, the California Court of Appeal directed the trial court to issue a writ of mandate vacating the certification of the West Creek EIR and to retain jurisdiction until the County of Los Angeles, the lead agency, certifies an EIR that complies with CEQA. The Court of Appeal found that the West Creek EIR was inadequate because: (1) it did not calculate or discuss the differences between entitlement and actual supply with respect to the State Water Project (SWP); (2) there were no estimates from SWP as to how much water it could have delivered in wet years and in periods of drought; and (3) it was not sufficient for the EIR to simply contain information submitted by the public and experts, but rather, a detailed analysis of the information was required. (*Santa Clarita Organization for Planning the Environment*, 106 Ca. App. 4th, pp. 716, 721-724.) Thus, the appellate court made it clear that the West Creek EIR was insufficient for CEQA purposes.

Pursuant to the Court of Appeal decision, the trial court issued a writ of mandate ordering the County to void its certification of the West Creek EIR and to revise and recirculate the EIR's analysis related to water supply and demand, in compliance with CEQA and the Court of Appeal's decision. (*Santa Clarita Organization for Planning the Environment* v. *County of Los Angeles*, No. 1043805, Santa Barbara County Superior Ct., Judgment Granting Peremptory Writ of Mandate, filed June 30, 2003, at 3.)

In response to the directions of the Court of Appeal and the trial court, the County prepared the West Creek Additional Analysis, comprised of Volumes I through VIII and a two-volume Supplement (Additional Analysis). The first step was the preparation of Volumes I and II (December 2003), the draft Additional

Analysis. Following a review and public comment period on the West Creek draft Additional Analysis, county staff provided for preparation of written responses for further public review, Volumes III and IV (April 2004) of the Additional Analysis.

On May 12, 2004, the County Regional Planning Commission (Planning Commission) continued the West Creek matter due to discovery on the West Creek project site of the western spadefoot toad, a Species of Concern that had been identified in the original West Creek EIR as having a high potential for being present on the site. At the direction of County staff, a *Western Spadefoot Toad Analysis*, Volume V (June 2004), was prepared as a component of the draft Additional Analysis. This augmented environmental analysis was circulated for review and public comment, responses were then prepared and a public hearing held before the Planning Commission.

The next step was for County staff to direct completion of Volume VI (September 2004) of the Additional Analysis, consisting of all written and oral comments received on the western spadefoot toad analysis, responses to those comments, revised Additional Analysis pages amended in response to comments, and additional documents included as appendices. During its public hearing held September 15, 2004, the Planning Commission recommended that the County Board of Supervisors recertify the West Creek EIR as revised by the Additional Analysis (Revised EIR) as adequate under CEQA, and reinstate the several Project Approvals that had been suspended pending the County's certification of a revised West Creek EIR.

The County Board of Supervisors held a public hearing on January 25, 2005, to accept oral and written comments on the Additional Analysis and the proposed Project Approvals and thereafter called for

preparation of responses to comments on the revised environmental documentation and closed the hearing with respect to the receipt of such comments. In preparation for a further public hearing to consider the revised EIR and the Project Approvals, County staff provided for the preparation of Additional Analysis, Volume VII (March 2005), which includes comments received prior to and during the January 25 hearing, responses to those comments, and other relevant documents.

On March 22, 2005, the Board of Supervisors held a second public hearing regarding the West Creek revised environmental documentation, including the recently completed Volume VII, and the Project Approvals. On that occasion, the Board of Supervisors closed the public hearing on the West Creek project, recertified the West Creek Revised EIR, as revised by the Additional Analysis, and adopted environmental findings, a Statement of Overriding Considerations, and a Mitigation Monitoring Plan. Revised text and tables to the EIR, with revisions indicated by strikeouts and underlining, were compiled in the Additional Analysis, Volume VIII (April 2005).

Meanwhile, also in April 2005, Valencia reported that it had detected and confirmed the presence of perchlorate at levels ranging between 9.8 and 11 micrograms per liter (ug/l) in its Well Q2, exceeding the State Department of Health Services (DHS) "notification level" for perchlorate of 6 ug/l. Valencia promptly advised the County of this event, removed Well Q2 from service, and undertook an expedited effort to permit and install wellhead treatment, with the expectation of returning the well to public utility service before the end of 2005.

As a consequence of this detection of perchlorate in an additional operating well, the County had a supplement (Supplement) to the West Creek Revised EIR prepared. The purpose of the Supplement was to document the

County's determinations regarding the detection of perchlorate in Valencia's Well Q2. The analysis contained in the Supplement ultimately concluded that the detection did not constitute significant new information or otherwise require recirculation of the Revised EIR, and that, even after this detection, there are sufficient water supplies to serve both West Creek and cumulative development. As the Supplement explained, the detection of perchlorate contamination in this well was not unexpected based on prior studies conducted of the existing contaminated wells. The Supplement further explained that Valencia's response plan was already underway; it involved the installation of wellhead treatment expected to be on-line by the end of 2005; and, it would use ion exchange technology, which DHS has identified as "best available technology" for perchlorate removal, and is currently in use, with DHS approval, in various Southern California locations.

Volume I of the Supplement was released for review and comment in May 2005. The review and comment period for the Supplement concluded on July 5, 2005. County staff prepared responses to comments received and compiled Volume II of the Supplement, including written comments and staff responses, in July 2005. The eight volumes of the West Creek Final Additional Analysis (2003-05) plus the two volumes of the Supplement (2005) serve as the CEQA document required to meet the trial court's direction to reevaluate water supply and demand issues associated with the West Creek project.

The Board of Supervisors held a public hearing on the Revised EIR (including the Additional Analysis with the Supplement) on July 26, 2005. After the close of this final public hearing, the Board recertified the Revised EIR and adopted a revised and updated Findings of Fact and Statement of Overriding

Considerations Regarding the West Creek Project, including an unchanged Mitigation Monitoring Plan.

On January 6, 2006, Santa Barbara County Superior Court, the trial court responsible for reviewing the County's actions in the West Creek matter, issued an Order After Hearing, finding that the revised West Creek EIR and the County's review process were legally sufficient. The trial court held:

> This court finds the Revised EIR does comply with CEQA, and includes accurate availability, reliability supply estimates for State Water Project Water in wet, average and dry years based upon estimates from the DWR, contains revised and re-assessed analysis for water supply and demand, makes clear that SWP entitlements are not equivalent to actual deliveries of water. The court finds that adequate detailed response has been prepared for public comments on the revised EIR. Petitioner's Request to expand the injunction will be denied. (*Santa Clarita Organization* v. *County of Los Angeles*. Order After Hearing, page 2 of 14, filed January 6, 2006, Superior Court of California, County of Santa Barbara, Case Number 1043805.)

Response of Sierra Club

In its August 12, 2005 response (Response) opposing Valencia's motion, Sierra Club raises substantive issues that have been fully addressed in prior Commission decisions or in the additional CEQA review recently certified by the lead agency. Sierra Club's assertions are addressed below.

A. There is No Need for the Commission to Duplicate the County's CEQA Review

Sierra Club claims "substantial new information" regarding the perchlorate issue. (Response, at 2.) This alleged new information was exhaustively addressed in the ten volumes of Additional Analysis augmenting the West Creek EIR and was taken into account in the County's reinstatement of

the various permits and approvals for the West Creek project. We find no need for the Commission to duplicate the County's review.

B. The Findings and Conclusions of D.01-11-048 Are Valid

Sierra Club asserts that some of the findings and conclusions of D.01-11-048 related to perchlorate contamination "have now proved to be inaccurate." Specifically, Sierra Club challenges Finding of Fact 32 and Conclusions of Law 5 and 8. (Response, at 2-3.) We find no merit to these challenges.

Finding of Fact 32 in D.01-11-048 is quoted in the Response, at 2, and basically states that it is reasonable to anticipate that the water purveyors will effectively remediate the perchlorate problem in a timely manner so as to preserve their ability to rely on the Saugus Formation as a dry-year supply firming resource. According to Valencia, remediation efforts are on track consistent with the Commission's expectations as evidenced by Finding of Fact 32. Work to clean up perchlorate contamination on the Whittaker-Bermite industrial site was in progress. Valencia is implementing wellhead treatment at its Well Q2 and expected that system to be in place and operating later in 2005. Castaic Lake Water Agency (CLWA) has a containment program in progress and is on schedule for implementing wellhead treatment at two Saugus Formation wells by mid-2006. In short, these developments bear out the accuracy of the Commission's Finding of Fact 32 in D.01-11-048.

Conclusion of Law 5 in D.01-11-048 stated that "[t]he range of supplies the WMP projects as available from the Alluvial Aquifer and the Saugus formation is reasonable." Sierra Club alleges that a Stetson Engineers report disputes the adequacy of prior reports that established the availability of firming supply from

the Saugus Formation. Reviewing the excerpt from the Stetson Engineers report that is attached to the Response shows, however, that the Stetson Engineers report does nothing of the sort. That report refers to a "2001 Slade report" (which was received into evidence in this WMP proceeding) as having estimated that "the Saugus Formation can be operated on a long-term average basis in the range of 7,500 to 15,000 AFY" and then concludes the excerpted section by estimating that, with additional well capacity, pumping from the Saugus Formation could range up to 25,000 acre feet per year (AFY) in dry years, but that water quality impacts of increasing such pumping to substantially above 15,000 AFY have not been extensively studied. (Exhibit 6 to Response.) This conclusion does not dispute the adequacy of the 2001 Slade report.

Finally, Conclusion of Law 8 in D.01-11-048 stated that "[t]he WMP's estimate of recycled water supply is reasonable." Sierra Club alleges this conclusion has proven inaccurate, because the recycled water amount currently used in the West Creek documents is 1,700 acre feet (AF) while the WMP used 17,000 AF. Here Sierra Club is mixing apples and oranges—or, more specifically, existing supply and future planned supply. The West Creek Additional Analysis presents the facts in its Summary of Water Supply and Demand (Volume I of II, December 2003, Section 2.0). Table 2.0-3 includes 1,700 AFY of Recycled Water in a mix of "Existing Water Supply" that more than meets existing plus project demand in a critical dry year. Table 2.0-4 retains that 1,700 AFY of Recycled Water as part of Existing Water Supply and expands that supply to include 17,000 AFY of Recycled Water under the heading of "Future Planned Water Supply Programs" as part of its supply and demand assessment for Year 2020. Thus, rather than contradicting the Commission's Conclusion of Law 8 of D.01-11-048, the West Creek Additional Analysis confirms the accuracy of that

conclusion. In short, we find no basis for Sierra Club's assertions regarding the adequacy of Finding of Fact 32 and Conclusions of Law 5 and 8 of D.01-11-048.

C. Castaic Lake Water Agency's Acquisition of State Water Entitlements Provides No Basis to Deny Valencia's Motion

CLWA supplies SWP water to Valencia and other retailers in the area. Sierra Club makes an issue out of CLWA's alleged failure to abide by the "Monterey Settlement Agreement" in its acquisition of a 41,000 AFY entitlement to SWP supply. (Response, at 3.) While these parties may be pursuing litigation with respect to the revised EIR that CLWA completed and certified with respect to its acquisition of additional SWP supply, we believe the EIR for that supply must be presumed adequate for current planning processes. (See, CEQA Guidelines, 14 Cal. Code Regs., § 15231.) Moreover, in denying a motion for an order to decertify the revised EIR, the trial court held:

> This court finds that the uncertainties involving the 41,000 afy transfer were adequately disclosed in the revised EIR, and substantial evidence supports the County's conclusion that it could be relied upon for planning purposes, notwithstanding the pending DWR environmental review and the fact that it is not among those transfers listed as immune from challenge in the PCL Settlement Agreement. (*Santa Clarita Organization* v. *County of Los Angeles*. Order After Hearing, page 2 of 14, filed January 6, 2006, Superior Court of California, County of Santa Barbara, Case Number 1043805.)

Thus, we reject Sierra Club's argument that CLWA's 41,000 AFY entitlement of SWP supply cannot be used for planning purposes simply because there is pending litigation on CLWA's EIR.

D. The Commission Should Not Defer Implementing D.01-11-048

Until Further Judicial Proceedings Conclude

By letter dated February 6, 2006, SCOPE informed the Commission that it had appealed the trial court's Order After Hearing issued on January 6, 2006, finding that the County's review process was legally sufficient. Therefore, SCOPE urges the Commission to wait for the outcome of the appeal before lifting the stay of D.01-11-048 related to the West Creek project.

Valencia replies that the County, the lead agency for the West Creek project, has treated the revised final EIR as sufficient and has granted grading, construction, and other permits to allow the project to proceed. The developer has commenced grading and the first sales of land within the development are expected to close in July 2006, with homes planned for occupancy by April 2007. Valencia argues that as the Commission considers whether to lift its stay of D.01-11-048, CEQA Guidelines Section 15231 requires the Commission to assume that the County's revised final EIR complies with CEQA, and the conclusive presumption of Section 15231 applies in this case. Therefore Valencia believes that the Commission can and should lift the stay of D.01-11-048 imposed by D.03-10-063 regarding the Commission's approval of the West Creek EIR.

Discussion

The Commission's CEQA role in this matter is that of a Responsible Agency pursuant to Public Resources Code Section 21069 and CEQA Guidelines Section(s) 15096 *et seq*. The Commission CEQA staff of the Energy Division (Staff) independently reviewed the Supplement to the EIR and the Final Additional Analysis and determined that the recertified EIR and its Supplement identify and address all the potential significant impacts – including the water demand for the West Creek project, and the detection of perchlorate in one of

Valencia's Wells. Also, the County approved the EIR with a Statement of Overriding Considerations. Staff concludes that the Supplement to the EIR and the Final Additional Analysis dated July 2005 are legally sufficient for Valencia to be allowed to serve the West Creek project.

We deny SCOPE's request that we wait for the outcome of its (second) appeal of the trial court's order. CEQA Guidelines Sections 15231, 15233 and Pub. Res. Code § 21167.3, when read in conjunction with *City of Redding*[2] and other legal authority *require* responsible agencies, which we are in this case, to move forward on its role in the process regardless of the appeal. Furthermore, there is no court injunction in effect in connection with SCOPE's appeal. The County of Los Angeles, lead agency for the West Creek project, has treated the revised final EIR as sufficient and, notwithstanding the legal challenges of SCOPE and Friends, has granted grading, construction, and other permits to allow the project to proceed. Thus, we find no basis for continuation of the stay on D.01-11-048.

In summary, we find no merit to the claims of Sierra Club related to D.01-11-048. As the record demonstrates, the environmental concerns related to this project have been exhaustively reviewed. We conclude that the time has come for the Commission to allow Valencia to serve the West Creek project within the scope of its approved WMP and to close this six-year-old proceeding.

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[2] *City of Redding* v. *Shasta County Local Agency Formation Comm'n* (1989), 209 Cal.App.3d 1169, 1181.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Opening comments on the draft decision were filed by Valencia and Sierra Club on August 10, 2006. Reply comments were filed by Valencia on August 15, 2006.

Sierra Club repeats the same arguments it made previously, which were addressed in the draft decision. None of Sierra Club's arguments have merit. Rather than summarily dismiss Sierra Club's arguments, we will go over the issues one more time, with the latest update.

The issue at hand is whether to remove a stay from a decision (D.01-11-048) the Commission adopted nearly five years ago, based on the completion of additional CEQA review by the lead agency and that lead agency's reinstatement of approvals for the West Creek project for which the Commission's decision authorized Valencia to provide public utility water service. All substantive issues to which Sierra Club alludes have been fully addressed in prior Commission decisions or in the additional CEQA review recently certified by the lead agency.

A. There Has Been No Significant Change of Circumstances Since Recertification of the West Creek EIR

Sierra Club asserts that further environmental impact review pursuant to the CEQA is required because "circumstances have substantially changed" since the EIR for the West Creek project was recertified by the County of Los Angeles in July 2005. Sierra Club refers to the perchlorate containment program.

Valencia responds, that it is no surprise that "ground monitoring" of the Whittaker-Bermite site has revealed very high levels of perchlorate. That site,

formerly used for the manufacture of rocket fuel, has been identified for many years as the probable source of perchlorate contamination in the Santa Clarita area. Valencia points out that the fact of contamination on the Whittaker-Bermite site is not a significant change of circumstances, and that is discussed in D.01-11-048.

Further, Valencia responds that the detection of perchlorate in a new well operated by Newhall County Water District is not "a further indication of the continued spread of the ammonium perchlorate pollution in a westerly direction. As indicated by the news article Sierra Club attached as Exhibit 1 to its comments, this perchlorate detection was at a "minimal" level ("from undetectable to up to 1.9 parts per billion"), well below the state-recommended "safe drinking water" limit of 6 parts per billion, in a Saugus Aquifer well within 1,000 feet of another Saugus well that has been capped due to perchlorate contamination since 1998. Valencia contends that contrary to Sierra Club's assertions, such a "minimal" detection does not indicate anything about the spread of perchlorate and is not a significant change of circumstances. Accordingly, we reject Sierra Club's argument. The events to which Sierra Club refer do not constitute significant changes in the context of the water supply analysis in the West Creek EIR.

B. Sierra Club Misstates the Facts Regarding CLWA's Containment Program

Sierra Club asserts that the draft decision "is factually incorrect" in its description of the perchlorate containment program that CLWA now has in progress. Valencia responds that contrary to Sierra Club's claim that "CLWA does not have a containment program in progress" and has no funding available

for clean-up or treatment facilities, CLWA's containment program is well under way and ample funding is in escrow.

According to Valencia, CLWA developed an Interim Remedial Action Plan to address groundwater contamination by perchlorate in conformance with Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and that action plan was approved by the California Department of Toxic Substances Control in January 2006. CLWA also completed CEQA review of its remedial action plan in the same time frame, and neither the action plan nor the CEQA review has been subject to any judicial challenge. The final design for treatment facilities is nearly complete; the groundbreaking ceremony is set to occur in August 2006; the construction work is scheduled to be put out for bid in the fall of 2006, with construction to be completed and operation to commence in 2007. Funding to cover all remedial work has been secured by a settlement between Whittaker-Bermite and its insurance carriers, with many millions of dollars currently held in escrow. A settlement of claims by CLWA and other water purveyors is pending, and is expected to result in the assignment of the escrowed funds for implementation of CLWA's Interim Remedial Action Plan.

Valencia states that in short, the draft decision would be correct in stating that CLWA has a perchlorate containment program in progress and is in the process of implementing wellhead treatment at two Saugus Formation wells. With the minor changes of wording suggested in its opening comments, Valencia submits that the draft decision will accurately describe the current status of perchlorate remediation efforts of concern to Valencia and its customers.

In summary, we find no merit in Sierra Club's argument regarding the lack of progress in CLWA's perchlorate containment program. We will make the

wording changes to the draft decision as suggested by Valencia to reflect the status update.

C. Sierra Club's Challenges to Various Elements of the Water Supply Analysis in the West Creek EIR Are Irrelevant to the Commission's Obligation as a Responsible Agency to Presume the EIR Adequate for Current Planning Purposes

Sierra Club repeats its argument that Valencia is improperly relying on several sources of water supply, including CLWA's acquisition of a 41,000 AFY entitlement to State Water Project (SWP) supply, the use of "polluted water" from the Saugus Aquifer, and the projection of recycled water supply in excess of the amount currently available. Sierra Club alleges that, "as a matter of law," Valencia may not rely on these water sources in its water supply planning.

Valencia responds that the problem with Sierra Club's continual renewal of its challenges to Valencia's consideration of particular water supply sources is that the claims are taken out of context. The Water Code provisions on which Sierra Club appears to rely apply to the consideration of water supply for land use projects, not to the long-range water supply projections entailed in a Water Management Program. The particular land use project at issue in the present case is the West Creek project, for which Los Angeles County has certified an EIR in July 2005. Commission staff has reviewed that EIR and that review is reflected in the draft decision.

We note that Sierra Club made similar claims in its response to Valencia's motion, filed last August. At that time, Sierra Club tried to make an issue out of CLWA's alleged failure to abide by the "Monterey Settlement Agreement" in its acquisition of a 41,000 AFY entitlement to SWP supply. The draft decision notes that regardless of litigation with respect to the revised EIR that CLWA completed and certified with respect to its acquisition of additional SWP supply, the EIR for

that supply must be presumed adequate for current planning processes, citing the CEQA Guidelines, 14 Cal. Code Regs., § 15231. On this basis, the draft decision rejects Sierra Club's claim that CLWA's 41,000 entitlement cannot be taken into account for planning purposes simply because litigation is pending on CLWA's EIR. We agree with that conclusion.

D. There Was No Procedural Impropriety in the Commission Employing Its Expert Environmental Review Staff to Review the Recertified West Creek EIR

Sierra Club claims it was "procedurally incorrect" for the Commission to have its Energy Division staff review the supplemental West Creek EIR materials and assess their adequacy in addressing potential impacts. We remind Sierra Club that the issue before the Commission is the adequacy of the CEQA analysis done by Los Angeles County on the recertification of the West Creek EIR. Sierra Club apparently is unaware of the long experience of the Environmental Review Branch of the Energy Division in addressing CEQA compliance issues relating to all classes of public utilities subject to the Commission's jurisdiction.

Review of the recertification of the West Creek EIR was done by the Commission's CEQA staff. The CEQA staff is located in the Energy Division as a purely administrative means of co-locating all of the Commission's CEQA technical experts, who work across all industries regulated by the Commission. The Commission derives a number of benefits from the efficiencies and cross-expertise associated with this institutional arrangement. Indeed, having the same technical staff work on all CEQA compliance issues across industries serves to ensure consistency in the Commission's application of CEQA across those industries. Sierra Club's allegation of improper procedure is without merit.

E. Any Stay of Trial Court Proceedings Has No Bearing on the Commission's Obligation to Presume the West Creek EIR Adequate for Current Planning Purposes

Sierra Club relies on Code of Civil Procedure (CCP) § 916, which addresses trial court proceedings subject to appeal, to assert that the Commission should not apply the recertified West Creek EIR until the Court of Appeal has ruled on the pending appeal of its sufficiency. This claim is without merit. The CEQA Guidelines, not the CCP, govern the Commission's conduct in this context. As discussed in the draft decision, the CEQA Guidelines direct the Commission to presume a certified EIR adequate for current planning processes, even if subject to a pending appeal. (See, CEQA Guidelines, 14 Cal. Code Regs., § 15231.)

In summary, we will adopt the draft decision with a few language changes to reflect the current status of the perchlorate containment program.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Bertram D. Patrick is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission acting on its own motion in D.03-10-063, imposed a stay on D.01-11-048 insofar as it approved the West Creek EIR.

2. The Commission directed that the stay of D.01-11-048 would remain in effect pending recertification of the West Creek EIR by the lead agency, the County, and resubmission of the West Creek EIR to the Commission.

3. On July 26, 2005, the County recertified the Revised EIR for the West Creek project.

4. The County of Los Angeles is the Lead Agency for the proposed project pursuant to CEQA.

5. The Commission is a Responsible Agency for the proposed project pursuant to CEQA.

6. The Board of Supervisors of the County of Los Angeles voted on July 26, 2005, to approve and recertify the West Creek Final Additional Analysis and Supplement, and adopted a revised and updated Findings of Fact and prepared a Statement of Overriding Considerations, including an unchanged Mitigation Monitoring Plan.

7. Staff has independently reviewed the application by Valencia Water Company, including the Environmental Impact Report for the West Creek project, as revised by the West Creek Final Additional Analysis and Supplement.

8. Staff has reviewed the Findings of Fact and Statement of Overriding Considerations adopted by the Board of Supervisors of the County of Los Angeles for the West Creek Project.

9. The Commission has considered the revised West Creek Final Additional Analysis and Supplement prepared by Los Angeles County in its decision making process in accordance with the CEQA Guidelines Section 15096 *et seq*.

Conclusions of Law

1. The West Creek Final Additional Analysis and Supplement developed by the County of Los Angeles is adequate for this Commission's independent decision making purposes pursuant to CEQA Guidelines Section 15096 *et seq.*

2. The Commission has independently considered the County of Los Angeles' West Creek Final Additional Analysis and Supplement in its decision making process in accordance with the CEQA Guidelines Section 15096 *et seq.*

3. With the recertification of the West Creek EIR, the conditions stated in D.03-10-063 have been met; therefore, the stay of D.01-11-048 should be lifted and Valencia authorized to serve the West Creek project.

O R D E R

IT IS ORDERED that:

1. The July 28, 2005 motion of Valencia Water Company (Valencia) to reopen this proceeding and terminate the stay of Decision (D.) 01-11-048, is granted.
2. The stay of D.01-11-048 imposed by D.03-10-063 is lifted and Valencia is authorized to expand its service area to serve the West Creek project consistent with its approved Water Management Plan and the recertified Revised West Creek Environmental Impact Report.
3. Application 99-12-025 is closed.

This order is effective today.

Dated _____, at San Francisco, California.