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Chairman Robert B. Weisenmiller
Siting Committee Associate Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Commissioner Karen Douglas
Siting Committee Chair
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: California Environmental Quality Act Lead Agency Determination for the Calico Solar Project Amendment (Docket No. 08-AFC-13C)

Dear Chairman Weisenmiller and Commissioner Douglas:

The purpose of this letter is to respond to the July 1, 2011 Committee Ruling on the Calico Solar Project Amendment (Calico Amendment) (Docket No. 08-AFC-13C) as it relates to the designation of the lead agency for purposes of the California Environmental Quality Act (CEQA), Public Resources Code section 21000, et seq. For the reasons set forth below, the Department of Fish and Game (Department) concludes that the California Energy Commission (Commission) is the appropriate lead agency for the Calico Amendment, with the Department serving as both a responsible and trustee agency.

The project originally certified by the Commission consisted of a solar thermal powerplant and appurtenant facilities. Pursuant to the Warren-Alquist Act, Public Resources Code section 25000, et seq., the Commission had exclusive state permitting jurisdiction over the project. (Pub. Resources Code, § 25500.) As an integral and necessary component of its certification process, the Commission properly assumed the duties of CEQA lead agency and completed environmental review in accordance with CEQA and the Commission's certified regulatory program. (Pub. Resources Code, § 25519, subd. (c); see also CEQA Guidelines, § 15051.) Because the Department lacked permitting authority over any component of the original project, its role was limited to serving as a trustee agency. (Pub. Resources Code, § 21070; CEQA Guidelines, § 15386, subd. (a).)

While the initial determination of the appropriate CEQA lead agency for a project must be made pursuant to Section 15051 of the CEQA Guidelines, once the lead agency has been designated and an environmental document has been prepared, whether a responsible agency is required to assume the role of lead agency must be determined pursuant to Section 15052. (CEQA Guidelines, § 15052(a)(1)-(3); see also § 15096, subd. (e)(1)-(4).) As the July 1, 2011 Committee Ruling recognized, the Calico Amendment is not a new project but rather a proposed modification to an existing project previously certified by the Commission. The Commission has already been designated as the CEQA lead agency for this

continuing project, and the Department may not assume that role unless a shift in lead agency designation is required by Section 15052.¹

Because none of the conditions requiring a shift in lead agency designation have occurred, the Commission remains the proper lead agency for the Calico Amendment. Section 15052(a) directs a responsible agency to assume the role of lead agency if: (1) the lead agency did not prepare environmental documents for the project; (2) the lead agency prepared environmental documents but a subsequent EIR is required, the lead agency has granted a final approval for the project, and the statute of limitations for challenging the lead agency's action has expired; or (3) the lead agency prepared inadequate environmental documents without consulting the responsible agency. The first and third conditions are not met because the Commission prepared an EIR-equivalent analysis for the Calico project under the authority of its certified regulatory program and, in so doing, consulted with and received significant input and advice from the Department. Similarly, the second condition is not satisfied here either. While the Commission previously approved the project, the Calico Amendment filed by the project proponent had the effect of reopening the certification process at the Commission. Because the Commission has indicated it will process the amendment and conduct additional environmental review, the Commission has not granted a final approval within the meaning of Section 15052(a)(2).

As the lead agency, the Commission must determine the form of environmental review to be undertaken in connection with the Calico Amendment. (Pub. Resources Code, § 21080.1, subd. (a).) The Department, as a responsible and trustee agency, will assist the Commission in completing this review to ensure both that the natural resources for which the Department serves as the state's trustee are protected and that the Commission's environmental documents, considered collectively, include the information necessary for the Department to fulfill its permitting duties with respect to the amended project. (Pub. Resources Code, § 21080.3, subd. (a).) Once the Commission has completed its environmental review, the Department, in its capacity as a responsible agency, will consider the Commission's environmental documents and fulfill its own responsible agency obligations relative to the amended project pursuant to the provisions of CEQA and the CEQA Guidelines. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (e)-(i).)

¹ Even if this were a new project, the combined effect of Section 25519(c), requiring the Commission to serve as lead agency for all projects requiring certification under the Warren-Alquist Act, and CEQA Guidelines section 15378(a), requiring the lead agency to consider "the whole of an action," would likely be to require the Commission to serve as CEQA lead agency for the entire project. This conclusion is consistent with the Department's own regulations relating to CEQA review of projects requiring incidental take permits under the California Endangered Species Act. (Cal. Code Regs., tit. 14, § 783.3, subds. (a)-(b).)

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For the foregoing reasons, the Department concludes that the Commission is the proper CEQA lead agency for the Calico Amendment and that the Department serves as a responsible and trustee agency. If you have questions relating to the Department's conclusion on this matter, please contact Senior Staff Counsel Steven Ingram at (916) 651-7401 or singram@dfg.ca.gov.

Sincerely,

John McCamman
Director

Cc: Kourtney Vaccaro
Hearing Officer
California Energy Commission
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