

**Hingtgen, Robert J**

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**To:** Gungle, Ashley  
**Subject:** RE: May 15 Wind Ord POD 10007- more information

**From:** Donna Tisdale [mailto:tisdale.donna@gmail.com]  
**Sent:** Monday, May 13, 2013 9:27 PM  
**To:** Cox, Greg; Jacob, Dianne; Roberts, Dave; Ron-Roberts; Horn, Bill  
**Cc:** Wilson, Adam; Kohatsu, Sachiko; Gutierrez, Gabriel; Sprecco, Edward; De La Rosa, Michael A; Schneider, Matthew; Gretler, Darren M; Jones, Megan; Wardlaw, Mark; Wooten, Wilma  
**Subject:** May 15 Wind Ord POD 10007- more information

**ADDITIONAL INFORMATION FOR THE MAY 15TH BOARD HEARING / RECORD ON WIND ORDINANCE & PLAN AMENDMENT POD 10-007:**

Please find my attached May 15th comment document and 4 additional documents related to the CPUC suspension of unauthorized bulk water sales from Live Oak Springs Water Company which negate will-serve letters counted on by Tule Wind and all 4 Boulevard Soitec Solar projects that will benefit from the proposed Project; suspension of unauthorized bulk water sales to SDG&E's ECO Substation contractor; and notice of fines for unauthorized 2011 bulk water sales. More documents are available. Contact Peter Neubauer at DEH and Albert Schiff at CPUC Division of Water Audits if you have questions.

WIND TURBINE NOISE AND SOUND PRESSURE WAVES AND IMPACTS ARE UNIQUE, COMPLEX, AND POTENTIALLY HARMFUL TO NEIGHBORS WITHIN A RADIUS OF AT LEAST 3-MILES BASED ON MY OWN COMMUNITY'S FIRST HAND EXPERIENCE WITH KUMEYAAY WIND TURBINES AND OTHER IMPACTED COMMUNITIES AND FAMILIES THAT I WORK WITH.

PLEASE SAY NO TO ANY NOISE WAIVERS, EXEMPTIONS, IMMUNITIES, OR OTHER SPECIAL PRIVILEGES NOT GRANTED TO OTHERS. WE DESERVE EQUAL PROTECTION REGARDLESS OF OUR GEOGRAPIC LOCATION IN A TARGETED WIND AND SOLAR RESOURCE AREA.

AS STATED PREVIOUSLY, IN MY OPINION BASED ON FIRST HAND KNOWLEDGE, RESEARCH AND DIRECT WORK WITH A VARIETY OF EXPERTS, INDUSTRY CLAIMS ARE BASED ON MISINFORMATION THAT MEETS THE DEFINITIONS OF FRAUD, DECEIT, CONSTRUCTIVE FRAUD, AND FALSE ADVERTISEMENT. I DO NOT SAY THIS LIGHTLY.

PROPONENTS DECRY OUR RIGHT TO CHALLENGE DANGEROUS PROJECT DECISIONS IN COURT, YET THEY HAVE THEIR ATTORNEYS FRONT AND CENTER THREATENING TO SUE FROM DAY ONE.

Regards,

Donna Tisdale



DATE: May 13, 2013

TO: Chairman Cox, Vice-Chair Jacob, and Members of the San Diego County Board of Supervisors via: [greg.cox@sdcounty.ca.gov](mailto:greg.cox@sdcounty.ca.gov) , [dianne.jacob@sdcounty.ca.gov](mailto:dianne.jacob@sdcounty.ca.gov) , [Dave.Roberts@sdcounty.ca.gov](mailto:Dave.Roberts@sdcounty.ca.gov) , [ron-roberts@sdcounty.ca.gov](mailto:ron-roberts@sdcounty.ca.gov) , [bill.horn@sdcounty.ca.gov](mailto:bill.horn@sdcounty.ca.gov) cc: [adam.wilson@sdcounty.ca.gov](mailto:adam.wilson@sdcounty.ca.gov) , [sachiko.kohatsu@sdcounty.ca.gov](mailto:sachiko.kohatsu@sdcounty.ca.gov) , [gabriel.gutierrez@sdcounty.ca.gov](mailto:gabriel.gutierrez@sdcounty.ca.gov) , [edward.sprecco@sdcounty.ca.gov](mailto:edward.sprecco@sdcounty.ca.gov) , [Michael.DeLaRosa@sdcounty.ca.gov](mailto:Michael.DeLaRosa@sdcounty.ca.gov) , [Matthew.Schneider@sdcounty.ca.gov](mailto:Matthew.Schneider@sdcounty.ca.gov) , [darren.gretler@sdcounty.ca.gov](mailto:darren.gretler@sdcounty.ca.gov) , [megan.jones@sdcounty.ca.gov](mailto:megan.jones@sdcounty.ca.gov) , [Mark.Wardlaw@sdcounty.ca.gov](mailto:Mark.Wardlaw@sdcounty.ca.gov) , [wilma.wooten@sdcounty.ca.gov](mailto:wilma.wooten@sdcounty.ca.gov)

FROM: Donna Tisdale, Chair Boulevard Planning Group; President Backcountry Against Dumps (BAD); Secretary The Protect Our Communities Foundation (POC); long-term Boulevard resident property owner: [tisdale.donna@gmail.com](mailto:tisdale.donna@gmail.com); 619-766-4170; PO Box 1275, Boulevard, CA 91905: Any errors or omissions are unintentional:

**RE: ADDITIONAL INFORMATION FOR MAY 15<sup>TH</sup> BOARD HEARING RECORD: WIND ORDINANCE & PLAN AMENDMENT POD 10007: INVALID TURBINE NOISE MODEL USED; TURBINES DECLARED NUISANCE; UNAUTHORIZED AND SUSPENDED LIVE OAK SPRINGS BULK WATER SALES THAT NEGATE PROJECT AVAILABILITY LETTERS FOR TULE WIND, SOITEC SOLAR, AND OTHER INDUSTRIAL SCALE PROJECTS THAT BENEFIT FROM BOULEVARD PLAN AMENDMENTS; MISREPRESENTATIONS; AND MORE**

San Diego County can and should meet renewable energy targets and mandates with far less expensive and damaging high-fire risk alternatives that don't require additional expensive new fire-sparking transmission lines and massive collector substations (with approximately 12% guaranteed rate of return for SDG&E)--starting with the Limited Small Wind Turbine Alternative identified in the FEIR as the CEQA required Environmentally Superior Alternative. ***The 21-24 potentially significant and unavoidable and geographically concentrated adverse impacts of the Project, that are not covered in the General Plan Update or Certified EIR approved in August 2011, are avoidable with Board denial.***

**Industrial conversion of Boulevard not covered in General Plan Update or Certified EIR:** Where in the General Plan Update (GPU) or certified EIR (adopted 8-3-12) do those documents disclose, discuss, analyze, or even attempt to mitigate the vastly underestimated significant and cumulative adverse impacts and increased risks / threats to public health and safety and at-risk resources represented by the plans of vested commercial industrial and other powerful interests to unnecessarily sacrifice the ruggedly beautiful Boulevard Planning Area, surrounding neighborhoods, and our recreation and conserved lands as part of the 'largest renewable energy center in the USA'? Those over-the-top plans were publicly stated in writing and verbally at the May 8th Board hearing by registered lobbyist Jim Whalen of Whalen & Associates and front man for East County Renewables Coalition. These 'mega-region' plans have long been known by the Boulevard Planning Group, County staff and other decision makers—including when the GPU & Community Plans were approved and EIR certified in August 2011.

**New Information & information not fully disclosed or discussed by staff or applicants during the County's public review and hearing process that I am aware of:**

**Turbines declared "Nuisance":**

1. ***May 9, 2013: Falmouth Massachusetts: Turbines declared a nuisance:*** The zoning board of appeals declared two town-owned wind turbines a nuisance in a 4-1 vote, overturning Building Commissioner's determination that noise from the turbines did not constitute a nuisance: <http://www.capecodonline.com/apps/pbcs.dll/article?AID=/20130510/NEWS/305100335>

2. **Feb 2013: Nevada Supreme Court declares wind turbine a nuisance:** “The court quoted the law that a nuisance ‘is anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property’”: <http://www.lasvegassun.com/news/2013/feb/14/nevada-supreme-court-declares-wind-turbine-nuisanc/>
3. **HHS’s cherry-picked and carefully worded Public Health Statement denying epidemiological evidence of adverse health impacts is UNSIGNED, and does not address readily available evidence of direct or INDIRECT health impacts** related to chronic exposures to unsafe levels of noise, low-frequency noise, infrasound, electromagnetic fields and increased ground currents – all of which meet the definition of NUISANCE and Environmental Pollutants. Nor does the erroneous HHS statement address evidence previously submitted by the Boulevard Planning Group, Dr Sarah Laurie, Samuel Milham MD MPH, Carmen Krogh, Rick James and other experts.
4. **Business Dictionary definition of Nuisance:** Activity, conduct, or situation (such as loud noise, offensive odor, obstruction of traffic) that causes annoyance, inconvenience, or interference with the use or enjoyment of land or building (private nuisance), or with the comfort, health, or safety of the public (public nuisance). Private nuisance is a tort (liable for fine) and public nuisance is a crime (liable for imprisonment or greater punishment): <http://www.businessdictionary.com/definition/nuisance.html>
5. **Business Dictionary Definition of Environmental Pollutants:** In general, substance or energy introduced into the environment that has undesired effects, or adversely affects the usefulness of a resource. A pollutant may cause long- or short-term damage by changing the growth rate of plant or animal species, or by interfering with human amenities, comfort, health, or property values. Pollutants may be classified by various criteria: (1) By the origin: whether they are natural or man-made (synthetic). (2) By the effect: on an organ, specie, or an entire ecosystem. (3) By the properties: mobility, persistence, toxicity. (4) By the controllability: ease or difficulty of removal: <http://www.businessdictionary.com/definition/pollutant.html>

**Proposed Noise Waiver Area and Iberdrola proposed Tule Wind Exemptions represent an unconscionable and unlawful threat to public health and safety, violation of individual and property rights and life-time investments for unwilling neighbors; foreseeable nuisance, harm, damages, loss of property values, amenity, impacts to adjacent designated recreation, wildlife and land conservation areas, wilderness areas, wilderness study areas, areas of critical environmental concern, and more:**

1. **May 8-15 Board Errata #2:** Iberdrola’s self-serving proposed Tule Wind Noise exemptions do not address 3 MW turbines that are recognized by non-conflicted acoustic experts as generating even more harmful levels of low-frequency noise and infrasound:
2. 3 MW turbine impacts not analyzed, addressed, or mitigated in the Wind Ordinance, Tule Wind MUP or the CPUC’s CEQA review—even though those approvals allow 3 MW turbines.
3. **Iberdrola deferred a 3 MW noise report until they determined the final design** based on what type of wind turbines would be used. See Tule Wind’s CPUC Data Response #11: <http://www.cpuc.ca.gov/environment/info/dudek/ecosub/DR/TuleDataRequestResponse11.pdf>
4. **Has the County received Iberdrola’s ‘final design noise report’ for Tule Wind?**
5. **Staff reported less than 25 homes would be impacted by Tule Wind turbines, exemptions, and /or the proposed north of I-8 Noise Waiver area.**

6. However, Tule Wind's Draft Applicant's Environmental Document at 3.2.1 Noise states that 43 residential structures will be located within 1 mile of Tule Wind turbines with the McCallister home within 1,525 feet and campgrounds less than 900 feet from turbine locations:  
[http://www.cpuc.ca.gov/environment/info/dudek/ecosub/TuleAED/3-12\\_Noise.pdf](http://www.cpuc.ca.gov/environment/info/dudek/ecosub/TuleAED/3-12_Noise.pdf)
7. The McCallister house, the 40 plus year home to Bob & Kaye, both in their 80's, is 1525 feet from Tule Wind turbine R-2 (which appears to be turbine R-12, not R-2, in this project map:  
<http://tulewindccmp.com/Figure2-ProjectLocation.pdf>
8. At County hearings, I believe that Tule Wind representatives repeatedly misrepresented that no homes were within a mile or so of their turbines.
9. There is no evidence presented that the number of impacted homes and families includes existing Campo and Manzanita tribal homes, including several new homes built in the last few years that are already impacted by Kumeyaay Wind turbines.
10. CEQA requires review and analysis of these direct and indirect and cumulative significant project specific and off-site adverse impacts, for the whole of the project and cumulative impact projects, must be addressed for all sensitive receptors—including those in the project zone of influence on lands under federal and/or state authority.

**Water – Project Availability Forms issued by Live Oak Springs Water Company for unauthorized bulk water sales to Tule Wind, Soitec Solar, and sales to SDG&E's ECO Substation contractor are currently invalid due to CPUC Division of Water Audits Investigation Proceedings & DEH enforcement issues:**

1. On March 26, 2013, the CPUC Division of Water Audits (DWA) suspended all Live Oak Springs Water Company's bulk water sales because they were never authorized by the CPUC: See Attachment
1. The CPUC DWA issued a March 21, 2013 Notice of Violation to Live Oak Springs Water Company for unauthorized bulk water sales to SDG&E's ECO Substation contractor.
2. Tule Wind provided Project Facility Availability Form (will serve) from Live Oak Springs Water Company, signed on 8-12-10. **Project approvals, including County approvals, were based on water resources that included unauthorized and suspended sales of Live Oak Springs Water.**
3. Soitec Solar recently provided a Project Facility Availability Form from Live Oak Springs Water Company signed in December 2012. **Soitec Solar's current MUP PEIR also relies on unauthorized and suspended sales of Live Oak Springs Water resources.**
4. **Jim Whalen, consultant to Tule Wind, Soitec Solar and Hamann Companies and Dudek's Trey Driscoll who is apparently working with Whalen for Soitec, Tule Wind, and Hamann Companies on a source capacity study that includes Live Oak Springs Water Company, were both made fully aware of the CPUC DWA's suspension of water sales and recommended receivership for Live Oak Springs Water, at Boulevard Planning Group meetings.**
2. A separate March 28, 2013 Notice of Violation was issued to Live Oak Springs Water Company with \$67,000 in fines for previous unauthorized 2011 bulk water sales to Straub Construction, contractors for the Army Corps of Engineers new \$29 million Boulevard Border Patrol Station construction project.
3. San Diego County Department of Environmental Health has a well-documented history of long-standing serious non-compliance, maintenance, operation, permit, and unauthorized bulk water sales issues. Public Record Act response documents are available upon request.

4. A wind turbine transformer ruptured spilling 400 gallons of oil. Clean up included removal and off-site disposal of 45 tons of oil contaminated soil. It has happened before and the same could happen in Boulevard where we are totally reliant on at-risk groundwater.  
<http://warsawscountrycourier.tumblr.com/post/16532405368/transformer-ruptures-at-wethersfield-wind-turbine>
5. Dr. Victor M. Ponce's in-depth report, dated April 30, 2013, recommends that large-scale energy project developers be required to import water to avoid cumulatively significant adverse impacts: "Cumulative Impacts on Water Resources of Large-scale Energy Projects in Boulevard and Surrounding Communities, San Diego County, CA": <http://apo.sdsu.edu/boulevardenergy.html>

**Turbine Noise complaints being investigated & re-evaluated:**

1. The Vermont Department of Public Service is collecting and investigating noise complaints caused by the three large wind projects in Vermont. DPS Commissioner Chris Recchia said Thursday that the amount and nature of the complaints warrant the investigation to see if the noise is creating a public nuisance for residents who live near the Georgia, Lowell and Sheffield wind projects. "I want to get to the bottom of this," Recchia said. "It's not what was expected." He may take the evidence to the state utility regulators on the Public Service Board and ask them to re-evaluate their noise standards, under which wind projects are now operating. This is the first time that DPS as the state's consumer watchdog is dealing with a potential public nuisance issue:  
<http://orleanscountyrecord.com/main.asp?SectionID=14&SubSectionID=113&ArticleID=39323&TM=27122.53>
2. Documentation was provided in previous comments alerting the County that the Southern Australia EPA is currently conducting low-frequency noise and infrasound studies to determine why homes in the Waterloo area have been abandoned around 3 MW turbines, why chickens are laying yolkless eggs, and more.

**Insurance impacts & Boulevard risk search results = earthquakes, flood, high winds, and wildfire:**

3. Insurance industry wary of covering farms with turbines after Collingwood court ruling:  
<http://ontario-wind-resistance.org/2013/05/03/insurance-industry-wary-of-covering-farms-with-turbines-after-collingwood-court-ruling/>
4. The Insurance Institute for Business & Home Safety's Research Center in Chester County, S.C (DisasterSafety.org) research group produced report on MEGA Fires :  
[http://www.disastersafety.org/wp-content/uploads/wildfire\\_megafires\\_full.pdf](http://www.disastersafety.org/wp-content/uploads/wildfire_megafires_full.pdf)
1. The CEO Boulevard's 91905 Zip Code Risk Search Results from the DisasterSafety.org website lists earthquake, flood, high winds, wildfires as the major local issues of concern that should be

of concern to the County and proponents: <http://www.disastersafety.org/zip-code-risk-search-results/?q=91905&search=Search>

2. Jan 2013: 4.34 minute video clip of Retired Cal Fire Battalion chief, Mark Ostrander, warns of wind turbine fire hazards at community meeting held in Boulevard:  
[https://www.youtube.com/watch?feature=player\\_detailpage&v=uaVsemfn\\_Hs](https://www.youtube.com/watch?feature=player_detailpage&v=uaVsemfn_Hs)

### **Tax-payer money lost in the wind:**

1. **"How Taxpayer Money Gets Lost in the Wind": "According to the GAO, in FY 2011, nine separate federal agencies implemented 82 wind-related initiatives, at a cost of \$4 billion to taxpayers.** More than three quarters of the initiatives (68) supported strikingly similar wind issues, including deployment of wind facilities on land and offshore. To make matters worse, GAO discovered seven initiatives that were combined with other initiatives to provide duplicative financial support. GAO also unearthed three initiatives that did not fund any wind projects in FY 2011, but could have been combined to supply redundant benefits. This labyrinth of overlapping programs has spawned a system in which a single wind project could have siphoned public funds from numerous federal and state programs. These include a Section 1603 grant, accelerated depreciation, a DOE loan guarantee, state tax incentives, and indirect subsidies from a state Renewable Portfolio Standard. Adding to the waste, GAO reports that states often design their initiatives to skirt double-dipping laws".  
[http://www.usnews.com/opinion/blogs/on-energy/2013/04/02/gao-report-unearths-duplicative-wind-initiatives\\_print.html](http://www.usnews.com/opinion/blogs/on-energy/2013/04/02/gao-report-unearths-duplicative-wind-initiatives_print.html)
2. Full GAO report: [http://science.house.gov/sites/republicans.science.house.gov/files/documents/GAO-13-136%2C%20Wind%20Energy%20-%20Additional%20Actions%20Could%20Help%20Ensure%20Effective%20Use%20of%20Federal%20Financial%20Support\\_0.pdf](http://science.house.gov/sites/republicans.science.house.gov/files/documents/GAO-13-136%2C%20Wind%20Energy%20-%20Additional%20Actions%20Could%20Help%20Ensure%20Effective%20Use%20of%20Federal%20Financial%20Support_0.pdf)

### **Proponent Misrepresentations:**

1. Despite proponents claims—wind turbine noise is unique and should be restricted, monitored and enforced accordingly. Documentation has been previously provided.
2. **Tule Wind and the wind industry in general rely on the inadequate CADNA/A noise model software that was not designed to address unique and complex wind turbine noise**— Heinrich A. Metzen of DataKustik GmbH[3], maker of CADNA/A reportedly confirmed this fact in an e-mail where he stated: "long range propagation including atmospheric refraction is not part of the standards used for (normal, "standard") noise calculations. It is known that atmospheric refraction may cause sound to be refracted downwards again and contributing strongly to the level at long distances. The atmosphere in the standards existing is just homogeneous above height." <http://www.windaction.org/fags/33327?theme=print>
3. No other community is facing the level and extent of public health and safety threats that our disproportionately impacted Boulevard community is being forced to deal with.
4. Both John Gibson of Hamann Companies (and numerous linked non-profit charities) and Greg Lansing of Lansing Companies misrepresented the need to convert Boulevard into an energy export generation and transmission zone – both men and their wealthy companies are fully aware of, and have taken lucrative advantage of, distributed renewable energy and green

building options, incentives, and Power Purchase Agreements for their commercial properties located in the already built environment—most in conjunction with SDG&E.

5. Individual and property rights do not stop with proponents unjustified and wild claims of ‘economic terrorism’ and demands for *unequal rights and immunities*, both of which are denied by the US and California Constitutions.
6. Those same individual and property rights also extend to those whose lives, families, properties, and life-time investments will be most adversely impacted by Board actions on this and related decisions that will reach far into San Diego County’s future and livability of the predominantly low-income Boulevard Community Planning Area and surrounding lands.
7. During the General Plan Update and prior to buying approximately 10,000 acres of rugged and scenic Boulevard ranch land and open space, Both Hamann Companies and Lansing Companies came to the Boulevard Planning Group where they were made fully aware of backcountry development limitations related to finite groundwater resources, high-fire risk, and lack of adequate infrastructure overall.
8. Both Hamann Companies and Lansing Companies purposely took a risk when they chose to purchase those properties to pursue Master-Planned communities knowing development options were limited. When the housing market tanked they eagerly turned to industrial energy and transmission projects that are subject to the same backcountry limitations. And they both continue to belittle, berate, and spend big bucks to counter community efforts at self-defense.
9. Opinionated references made by John Gibson and Greg Lansing about Boulevard ‘blight’ should be directed at other absentee landowners who don’t live here and don’t really care about the conditions of their properties including those in the midst of our village/ commercial area.
10. For the record, there was *no known opposition* from the Boulevard Planning Group, or others, to the construction of the Kumeyaay Wind turbines, the Golden Acorn Casino, or the La Posta Casino. There *were objections to the location of the new Boulevard Border Patrol Station* and its proximity to existing residences and wells.

It is understood that staff and HHS is given direction from the Board and other decision makers. However, the Board has independent fiduciary duties, priority mandates, and responsibilities to protect public health and safety equally – regardless of geographic location including Boulevard’s targeted wind and solar resource areas. **Please, please take your duties and priorities to heart and do not grant any noise waivers or exemptions. Do not turn our community and neighborhoods into a noisy and depressing industrial energy sacrifice zone and major fire trap! We deserve much better!**



COUNTY OF SAN DIEGO  
DEPT. OF PLANNING & LAND USE  
5201 RUFFIN ROAD, SUITE B  
SAN DIEGO, CA 92123-1666

(858) 565-5981 • (888) 267-8770

# PROJECT FACILITY AVAILABILITY FORM

WATER

**W**

Please type or use pen

Pacific Wind Development LLC, Subsid of Iberdrola Renewables 503-796-6955  
 Owner's Name Phone  
 1125 NW Couch Street, Suite 700  
 Owner's Mailing Address Street  
 Portland OR 97209  
 City State Zip

ORG \_\_\_\_\_  
 ACCT \_\_\_\_\_  
 ACT \_\_\_\_\_  
 TASK \_\_\_\_\_  
 DATE \_\_\_\_\_ AMT \$ \_\_\_\_\_

DISTRICT CASHIER'S USE ONLY

## SECTION 1. PROJECT DESCRIPTION

TO BE COMPLETED BY APPLICANT

- A.  Major Subdivision (TM)  Specific Plan or Specific Plan Amendment  
 Minor Subdivision (TPM)  Certificate of Compliance: \_\_\_\_\_  
 Boundary Adjustment  
 Rezone (Reclassification) from \_\_\_\_\_ to \_\_\_\_\_ zone.  
 Major Use Permit (MUP), purpose: Major Impact Service & Utilities  
 Time Extension... Case No. \_\_\_\_\_  
 Expired Map... Case No. \_\_\_\_\_  
 Other \_\_\_\_\_

Assessor's Parcel Number(s)  
(Add extra if necessary)


- B.  Residential ..... Total number of dwelling units \_\_\_\_\_  
 Commercial ..... Gross floor area \_\_\_\_\_  
 Industrial ..... Gross floor area \_\_\_\_\_  
 Other ..... Gross floor area Wind Turbine Systems

Thomas Bros. Page \_\_\_\_\_ Grid \_\_\_\_\_

Multiple Properties  
 Project address \_\_\_\_\_ Street \_\_\_\_\_  
 Mountain Empire/Boulevard Subregion 91905  
 Community Planning Area/Subregion \_\_\_\_\_ Zip \_\_\_\_\_

- C.  Total Project acreage 2.295 Total number of lots 20  
 D. Is the project proposing the use of groundwater?  Yes  No  
 Is the project proposing the use of reclaimed water?  Yes  No

Owner/Applicant agrees to pay all necessary construction costs, dedicate all district required easements to extend service to the project and COMPLETE ALL CONDITIONS REQUIRED BY THE DISTRICT.

Applicant's Signature: \_\_\_\_\_ Date: 08/02/2010  
 Address: 1125 NW Couch Street, Suite 700, Portland Oregon 97209 Phone: 503-796-6955

(On completion of above, present to the district that provides water protection to complete Section 2 below.)

## SECTION 2: FACILITY AVAILABILITY

TO BE COMPLETED BY DISTRICT

District Name: LIVE OAK SPRINGS WATER Co. Service area: BOULEVARD Cr.

- A.  Project is in the district.  
 Project is not in the district but is within its Sphere of Influence boundary, owner must apply for annexation.  
 Project is not in the district and is not within its Sphere of Influence boundary.  
 The project is not located entirely within the district and a potential boundary issue exists with the \_\_\_\_\_ District.  
 B.  Facilities to serve the project  ARE  ARE NOT reasonably expected to be available <sup>NOW</sup> within the next 5 years based on the capital facility plans of the district. Explain in space below or on attached \_\_\_\_\_ (Number of sheets)  
 Project will not be served for the following reason(s): \_\_\_\_\_  
 C.  District conditions are attached. Number of sheets attached: \_\_\_\_\_  
 District has specific water reclamation conditions which are attached. Number of sheets attached: \_\_\_\_\_  
 District will submit conditions at a later date.  
 D.  How far will the pipeline(s) have to be extended to serve the project? NONE - (PICK UP WITH TRUCKS)

This Project Facility Availability Form is valid until final discretionary action is taken pursuant to the application for the proposed project or until it is withdrawn, unless a shorter expiration date is otherwise noted.

Authorized signature: [Signature] Print name: NABAR NAJOR  
 Print title: MANAGER Phone: 619-599-8666 Date: 8-12-2010

NOTE: THIS DOCUMENT IS NOT A COMMITMENT OF SERVICE OR FACILITIES BY THE DISTRICT  
 On completion of Section 2 by the district, applicant is to submit this form with application to:  
 Zoning Counter, Department of Planning and Land Use, 5201 Ruffin Road, San Diego, CA 92123



DPLU-399W (02/07)





**COUNTY OF SAN DIEGO**  
**DEPARTMENT OF PLANNING AND LAND USE: Zoning**  
**PROJECT FACILITY AVAILABILITY FORM, Water**

*Please type or use pen*

<b>Soitec Solar Developmet LLC.</b> Owner's Name 619-733-2649 Phone 16550 Via Esprillo Owner's Mailing Address Street San Diego CA 92127 City State Zip	ORG _____ ACCT _____ ACT _____ TASK _____ DATE _____ AMT \$ _____ DISTRICT CASHIER'S USE ONLY
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W

**SECTION 1. PROJECT DESCRIPTION** **TO BE COMPLETED BY APPLICANT**

A. <input type="checkbox"/> Major Subdivision (TM) <input type="checkbox"/> Specific Plan or Specific Plan Amendment <input type="checkbox"/> Minor Subdivision (TPM) <input type="checkbox"/> Certificate of Compliance: <input type="checkbox"/> Boundary Adjustment <input type="checkbox"/> Rezone (Reclassification) from _____ to _____ zone. <input checked="" type="checkbox"/> Major Use Permit (MUP), purpose: <u>Solar Farms</u> <input type="checkbox"/> Time Extension... Case No. _____ <input type="checkbox"/> Expired Map... Case No. _____ <input type="checkbox"/> Other _____  B. <input type="checkbox"/> Residential . . . . . Total number of dwelling units _____ <input type="checkbox"/> Commercial . . . . . Gross floor area _____ <input type="checkbox"/> Industrial . . . . . Gross floor area _____ <input checked="" type="checkbox"/> Other . . . . . Gross floor area <u>None</u>  C. <input checked="" type="checkbox"/> Total Project acreage <u>765</u> Total number of lots <u>NA</u>  D. Is the project proposing the use of groundwater? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Is the project proposing the use of reclaimed water? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Assessor's Parcel Number(s) (Add extra if necessary) <table border="1" style="width:100%; height: 100px;"> <tr><td>See Attached</td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> </table> Thomas Bros. Page _____ Grid _____ McCain Valley Road Project address Street Boulevard Community Planning Area/Subregion Zip	See Attached							
See Attached									

Owner/Applicant agrees to pay all necessary construction costs, dedicate all district required easements to extend service to the project and COMPLETE ALL CONDITIONS REQUIRED BY THE DISTRICT.

Applicant's Signature: [Signature] Soitec Development LLC. Date: 12-3-12  
 Address: 16550 Via Esprillo San Diego, CA 92127 Phone: 619-733-2649

*(On completion of above, present to the district that provides water protection to complete Section 2 below.)*

**SECTION 2: FACILITY AVAILABILITY** **TO BE COMPLETED BY DISTRICT**

District Name: LIVE OAK SPRINGS WATER CO. Service area \_\_\_\_\_

A.  Project is in the district.  
 Project is not in the district but is within its Sphere of Influence boundary, owner must apply for annexation.  
 Project is not in the district and is not within its Sphere of Influence boundary.  
 The project is not located entirely within the district and a potential boundary issue exists with the \_\_\_\_\_ District.

B.  Facilities to serve the project  ARE  ARE NOT reasonably expected to be available within the next 5 years based on the capital facility plans of the district. Explain in space below or on attached \_\_\_\_\_ (Number of sheets)  
 Project will not be served for the following reason(s): \_\_\_\_\_

C.  District conditions are attached. Number of sheets attached: \_\_\_\_\_  
 District has specific water reclamation conditions which are attached. Number of sheets attached: \_\_\_\_\_  
 District will submit conditions at a later date.

D.  How far will the pipeline(s) have to be extended to serve the project? \_\_\_\_\_

This Project Facility Availability Form is valid until final discretionary action is taken pursuant to the application for the proposed project or until it is withdrawn, unless a shorter expiration date is otherwise noted.

Authorized signature: [Signature] Print name NAZAR NAJIB  
 Print title MANAGER Phone 619-889-8666 Date 12-4-2012

**NOTE: THIS DOCUMENT IS NOT A COMMITMENT OF SERVICE OR FACILITIES BY THE DISTRICT**  
 On completion of Section 2 by the district, applicant is to submit this form with application to:  
 Zoning Counter, Department of Planning and Land Use, 5201 Ruffin Road, San Diego, CA 92123



DPLU-399W (12/09)

SDC PDS RCVD 04-16-13

REZ12-005  
P12-010

**ATTACHMENT A:  
Soltec Water District Request  
APN Numbers**

**Rugged Solar: (Does Not Include Tule Gen-tie)**

6110910700, 6120301900, 6120300100, 6110900400, 6110910300, 6110900200, 6110600400,  
6110910900, 6111100100, 6111000100, 6111000200, 6110700300

**Tierra del Sol I & II (Does not Include Gen-Tie)**

6580903100, 6580905500, 6581200300, 6580905400, 6581200200

**LanWest and LanEast:**

6120911300, 6120301800, 6130302800, 6130303500

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

February 27, 2013

SENT VIA E-MAIL

Mark McPherson  
Chief, Land and Water Quality Division  
County of San Diego Department of Environmental Health  
5500 Overland Avenue, Suite 101  
San Diego, CA 92123

**Subject: County Enforcement of Health and Safety Code and Regulatory Requirements Applicable to Live Oak Springs Water Company and other Small Water Systems**

Dear Mr. McPherson:

As per the request of Rod Lorang, of the Office of County Counsel for the County of San Diego, I am writing you to clarify the Commission's position about County enforcement of California Health and Safety Code requirements for public water systems against Live Oak Springs Water Company. Our assessment of county enforcement actions is discussed below.

The County of San Diego has been delegated authority to regulate certain aspects of the operations of small water systems by the California Department of Public Health (CDPH). Under the holding of *Hartwell v. Superior Ct.*, 27 Cal. 4<sup>th</sup>. 256 (2002), the Commission also bears a responsibility to ensure that the water being provided by Commission-regulated utilities meets applicable state and federal water quality standards. At the request of the County, this letter confirms that the County may take regulatory or enforcement action related to health and safety concerns and adequacy of supply against a small water system within your regulatory jurisdiction. When County regulatory or enforcement action is unlikely to require a significant system improvement project by the operator, you need not confer with or obtain approval from the Commission before acting. However, if the County believes extensive capital improvements could be needed to comply with a regulatory directive or enforcement order, you should coordinate with the Division of Water and Audits within the Commission concerning the potential need for these types of capital improvements. The 1996 Memorandum of Understanding between the State Department of Health Services and the Public Utilities Commission, "On Maintaining Safe and Reliable Water Supplies for Regulated Water Companies in California" is a good guide to how you should coordinate with the Commission in such circumstances.

53552783

Mark McPherson  
February 26, 2013  
Page 2

I understand that you have determined that the potable water portion of the Live Oak Springs Water Company (whose water quality you monitor and oversee) is currently operating without a health permit, is overdue in providing required water quality testing data, and may have not made necessary infrastructure corrections and repairs. I concur that administering these permits and this testing regime are matters that are primarily within County (and CDPH) jurisdiction.

I further understand that the Live Oak Springs Water Company has failed to comply with your order (pursuant to Health and Safety Code § 116530) to have a source capacity assessment completed that takes into account bulk water sales from Live Oak Springs Water Company's water supply wells, and from nearby wells that could affect the public water system. Both of our agencies are concerned about source capacity issues for the utilities under our jurisdiction.

The Commission's General Order 103-A, at Part II, § 2B(3), requires that PUC-regulated water systems "...shall have the capacity to meet the source capacity requirements in the Waterworks Standards, CCR Title 22, Section 64554, or its successor." These are the same standards that the County enforces for small water systems. Given this situation, we agree that you have independent authority to order a source capacity study for Live Oak Springs Water Company, without prior coordination with the Commission's Division of Water and Audits and without prior approval by the Commission.

I would appreciate receiving a copy of any source capacity assessment study plan that is submitted by Live Oak Springs Water Company, and a copy of the completed source capacity assessment. The completed assessment may contain information on matters that are of interest to and within the jurisdiction of the Division of Water and Audits.

Sincerely,



Frank Lindh  
General Counsel  
California Public Utilities Commission

cc: Nazar Najor  
Live Oak Springs Water Company

53552783



March 21, 2013

Nazar Najor  
Live Oak Springs  
37820 Old Highway 80  
P.O. Box 1241  
Boulevard, CA 91905

### Notice of Violation

This notice is sent under authority granted to the California Public Utilities Commission's Division of Water and Audits (DWA) in Resolution (Res.) W-4799 dated October 30, 2009 which is attached. Res. W-4799 authorizes the DWA Staff to issue a Citation to any water or sewer utility for violations listed in Appendix A of the resolution.

DWA has evidence that Live Oak Springs Water Company has been selling trucked water to Beta Engineering for use at San Diego Gas & Electric Company's East County Substation Project. Such activity would put Live Oak Springs in violation of a current Suspension imposed by DWA on Live Oak Springs' Advice Letter (AL) 28-W. AL 28-W is a request to allow truck water sales and set fees in Live Oak Springs' tariff schedule.

Res. W-4799 allows 30 days for Live Oak Springs to respond to this Notice. All trucked water sales are subject to fines described in Res. W-4799 as long as that activity continues without permission of the CPUC. The DWA contact person for this matter is Albert Schiff, at 415-703-2144, email: [aas@cpuc.ca.gov](mailto:aas@cpuc.ca.gov)

A handwritten signature in black ink that reads "Albert Schiff".

Albert Schiff  
Department of Water and Audits  
California Public Utilities Commission

Attachment

Date of Issuance 10/30/2009

WATER/RSK/JB5/jrb

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Division of Water and Audits

Water and Sewer Advisory Branch

Resolution No. W-4799

October 29, 2009

**R E S O L U T I O N**

**(RES. W-4799), DELEGATION OF AUTHORITY TO STAFF TO ISSUE CITATIONS TO WATER AND SEWER UTILITIES TO ENFORCE COMPLIANCE WITH THE COMMISSION'S ORDERS AND THE PUBLIC UTILITIES CODE; PROCEDURES FOR APPEAL OF CITATIONS**

**SUMMARY**

This resolution delegates authority to Staff, as designated by the Executive Director ("Staff"), for enforcing compliance by water and sewer utilities with the Commission's orders and the Public Utilities Code. Delegating authority to Staff will allow the Commission to promptly respond to threats and protect the public interest from violations of the Commission's Orders and the Public Utilities Code. This program is designed to utilize resources efficiently and enhance overall regulation in California. The Staff will issue citations only after written notice of non-compliance or violation has been given to the water or sewer utility and the water or sewer utility has failed to correct the non-compliance or violation in a timely manner. The Staff is delegated authority to draft and issue citations for specific violations and levy penalties up to amounts set forth in Appendix A.

**BACKGROUND**

Section 701 of the Public Utilities Code authorizes the Commission to "supervise and regulate every public utility in the State ... and do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." More specifically, Section 702 of the Public Utilities Code mandates

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

In turn, under Section 2101 of the Public Utilities Code, the Commission is directed “to see that the provisions of the constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed ....” Pursuant to this authority, and under this direction, the Commission has adopted, and at various times amended General Orders 103-A (*Rules Governing Water Service Including Minimum Standards for Operation, Maintenance, Design and Construction*) and 96-B (which includes rules for filing utility tariffs and informational reports).

California law, including Public Utilities Code Section 7, authorizes the Commission to delegate certain powers to its staff, including the investigation of facts preliminary to agency action, and the issuance of citations for particular kinds of violations up to specified amounts, subject to appeal to the Commission. Over the last several years the Commission has delegated citation authority over many kinds of regulated entities including household good movers, charter party carriers, passenger stage corporations, propane gas distribution system operators, power plant operators, telecommunication providers, and energy service providers. This resolution is consistent with these other approved citation programs.

#### **CITATIONS**

Before issuing a citation, Staff<sup>1</sup> will issue a written Notice to the water or sewer utility stating the specific violation along with the proposed fine, and information about how to contact Staff. This Notice will provide an opportunity for the utility to cure the violation and also to informally contest to Staff both the determination of a violation and the proposed penalty amount. For violations that do not endanger the public’s health or safety the Notice will provide at least 30 days for the water or sewer utility to either achieve compliance or informally contest Staff’s alleged violation or proposed fine amount. For violations that could endanger the public’s health or safety, the Staff Notice will provide 3 days to comply, or such shorter time as is appropriate under the particular circumstances. For either kind of violation, a utility may request an extension of time to achieve compliance, based on a showing of good cause. Staff should grant such extensions as are reasonable. This resolution authorizes the Staff to issue a citation to any water or sewer utility for violations listed in Appendix A if the utility does not come into compliance by the time stated in the Notice, or any extension thereof. Appendix A contains penalty schedules for specified violations. The penalties are denominated in a dollar amount per “event” and represent the maximum amount that

<sup>1</sup> The term “Staff” refers to the portion of the Commission’s staff designated by the Executive Director to carry out the particular function involved.

can be imposed by a Staff citation. The penalties imposed are the responsibility of shareholders or owner(s) of the water or sewer utility. The fines imposed cannot be charged to customers. Each issuance of a Notice may trigger a separate "event". Thus, additional penalties may be imposed where a utility fails to cure a continuing violation, but in order for there to be an additional penalty, there must be a separate Notice (with a separate compliance date).

Payment of a citation does not prevent the Commission from taking other remedial measures, including, but not limited to, (i) issuing an order instituting investigation in the event the underlying violation is unresolved or (ii) requiring the payment of monies to third parties.

Authorizing Staff to issue citations for the violations listed in Appendix A has been identified as necessary to fulfill the Commission's regulatory mandate to ensure that water and sewer utilities provide safe and reliable service at a reasonable rate. Maximum fines are established for each of the listed violations appropriate to the potential harm to the public interest, as well as to ensure compliance with the Commission's orders and the Public Utilities Code. A water or sewer utility that has been issued a citation may accept the fine imposed or contest it through a process of appeal. The following procedures govern the issuance and appeal of these citations.

1. *Contents.* The citation served upon the water or sewer utility (Respondent) by the Staff will include:

- (a) A specification of each alleged violation, including citation to the statute, rule, or order allegedly violated;
  - (1) while the citation need not include all supporting evidence, Staff will make the evidence available for timely inspection upon request by the Respondent;
- (b) A statement of the facts upon which each alleged violation is based;
- (c) The amount of the fine.
- (d) A statement that the Respondent may pay the amount of the fine set forth in the citation, agree with Staff on conditions for payment, or appeal the citation, and that the Respondent will forfeit the right to appeal the citation by failing to do one of these things within 30 days;
- (e) An explanation of how to file an appeal, including the Respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, and to request an interpreter; and
- (f) The form for Notice of Appeal and the form for requesting an interpreter.

2. *Service of Citation.* Service of the citation shall be effected either personally on the owner or an officer of the Respondent or by first-class mail. Citations served by first class mail may be sent to the Respondent's business address, or the address for the service of process of the Respondent filed with the Secretary of State of California.

3. *Response.*

(a) Within 30 days after the date of service of the citation, Respondent shall remit payment of the full amount of the fine with notice to Staff, agree with Staff on conditions for payment, or serve a Notice of Appeal upon Staff. Before the expiration of this deadline, Staff, an Administrative Law Judge ("ALJ"), or the Commission may extend the time for response upon a showing of good cause.

(b) Unless otherwise specified, a requirement to notify Staff or serve Staff means to send a written communication by the U.S. Mail or an express mail service to the address specified in the citation. These written communications are not filed with the Commission's Docket Office. In addition to, or instead of, communications by mail service, Staff may allow electronic submissions.

4. *Payment of fine; default.*

(a) Payment of fines shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the Public Utilities Commission for the credit of the State General Fund.

(b) If Respondent pays the full amount of the fine within the time allowed, the citation shall become final. Failure to pay the full amount of the fine or to file a Notice of Appeal will place Respondent in default, the citation shall become final, and the Respondent will have forfeited its right to appeal the citation. A late payment is subject to a penalty of 10 percent.

5. *Appeal.*

(a) An appeal shall be brought by serving a Notice of Appeal upon Staff, and the Respondent shall indicate the grounds for the appeal in the notice.

(b) Upon receipt of a timely Notice of Appeal, Staff shall promptly provide a copy of the Notice of Appeal to the Chief Administrative Law Judge. The Chief Administrative Law Judge shall promptly designate an ALJ to hear the appeal.

- (c) The assigned ALJ shall set the matter for hearing promptly. The Respondent and Staff will be notified at least ten days in advance of the time, date and place for the hearing. The ALJ may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- (d) Any appeal of a citation shall be heard in the Commission's courtroom in San Francisco or Los Angeles.
- (e) Upon a good faith showing of language difficulty, the Respondent will be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned ALJ not less than three business days prior to the date of the hearing.
- (f) The Respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's usual procedures.
- (g) The Respondent may be represented at the hearing by an attorney or other representative, but such representation shall be at the Respondent's sole expense.
- (h) At the hearing, Staff will bear the burden of proof in establishing a violation. Staff will also bear the burden of producing evidence and, therefore, shall open and close. The ALJ may, in his or her discretion, alter the order of presentation. Rule 13.6 (Evidence) of the Commission's Rules of Practice and Procedure is applicable.
- (i) Ordinarily, the appeal will be submitted at the close of the hearing. Upon a showing of good cause, the ALJ may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.
- (j) Within 60 days after the appeal is submitted, the ALJ will issue a draft resolution resolving the appeal. The draft resolution will be placed on the first available agenda, consistent with the Commission's applicable rules. Parties may file comments on the draft resolution pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure.
- (k) A resolution approved by the Commission is subject to rehearing pursuant to Public Utilities Code Section 1731 and to judicial review pursuant to Public Utilities Code Section 1756.
- (l) During the period described in the next sentence, none of the following may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or ALJ: the Respondent, the

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Staff that issued or is enforcing the citation, or any agent or other person on behalf of the Respondent or such Staff. This prohibition applies from the date that Staff receives a Notice of Appeal to and including the date when the period to apply for rehearing of the Commission resolution on the appeal has expired and no application for rehearing has been filed, or if an application for rehearing is filed, the date when the Commission serves the decision finally resolving the application for rehearing. Inquiries strictly limited to procedural matters are permitted.

#### **NOTICE AND COMMENT**

A prior draft of this resolution, that did not include a schedule of violations and fines, was mailed to all water and sewer service utilities and other interested parties in accordance with Section 311 of the Public Utilities Code. Comments were allowed under Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments were filed on January 12, 2009 by the California Water Association (CWA). CWA raised concerns over the discretion given Staff in determining what constitutes a violation and then assessing a fine. To address CWA's concerns over the Commission's delegation of authority to Staff, a revised draft resolution was prepared which included a specification of particular violations and associated fines in Appendix A.

The revised draft resolution was mailed to all water and sewer service utilities and other interested parties on April 21, 2009. Comments were served pursuant to Rule 14.5 of the Commission's Rules of Practice and Procedure. Timely comments were received from CWA and the Division of Ratepayer Advocates (DRA) on May 11, 2009. Late-filed comments were received from Garrapata Water Co. Inc. on May 20, 2009 that generally support the comments filed by CWA and DRA. We will accept these late-filed comments.

CWA's comments raise four concerns: (1) the range of violations is inappropriately broad; (2) the penalties are excessive for many of the specified violations; (3) the time limits for curing violations are unduly rigid; and (4) the delegation to Staff is imprecise. With respect to this last concern, CWA requests that references to Staff be replaced by references to "the Director" with this term being defined as referring to the Director of the Division of Water and Audits or its successor.

We decline to adopt this request. We have, however, clarified that the term "Staff" refers to the portion of the Commission's staff designated by the Executive Director for carrying out the particular function involved. The Commission needs the flexibility to designate the Staff most appropriate for carrying out the various functions involved in this citation program.

DRA raises a concern as to why some violations, e.g., certain provisions of General Order 103-A, are not specifically listed in Appendix A. DRA is also concerned about

the rigidity of the fine schedule in Appendix A. DRA states that the compliance period is inappropriate for certain violations, e.g., Rule 1 violations, and that the cure period is unrealistic for other types of violations, e.g., bringing a non-compliant system into compliance. Lastly, DRA requests that the resolution clearly state that penalties imposed are a shareholder (owner) and not a ratepayer responsibility.

We have made several changes to the schedule of violations and penalties in response to comments. Generally, the table of violations and penalties is more specific in areas where our experience has shown that violations are more frequent. Other violations will be handled under the more general provisions of Appendix A, or using an enforcement mechanism other than the citation forfeiture procedure. The absence of a specific violation from the schedule does not mean that a violation is unimportant. It only means that such violations are less frequent or that other enforcement mechanisms are likely to be more suitable.

The most significant change we have made concerns the penalty schedules which have been modified to reduce their “rigidity” and thereby avoid excessive penalties. The penalty amounts shown in Appendix A now represent the maximum fine for a specified violation under the citation program.

The schedule of violations has been amended in a number of areas, including adding a violation for all provisions of General Order 103-A not otherwise specifically listed in Appendix A. We have also eliminated as a violation under the citation program noncompliance with general rate case filing requirements by Class A utilities. This matter is addressed as part of a formal proceeding, and thus not appropriate for resolving under the citation program. Similarly, we have amended the Rule 1 violation to indicate that it is subject to a citation only for violations outside the course of a formal proceeding.

To address a specific concern over the rigidity of the time limits for curing violations, we have clarified the resolution to indicate that the shorter three day compliance period is only for those violations that “could endanger the public’s health or safety.” Generally, we disagree with the concern expressed by both CWA and DRA that the notice period is unduly rigid in the time allowed to come into compliance. The citation program provides that a utility can request an extension of time and that Staff can grant a reasonable extension based on a showing of good cause.

In response to DRA’s concern that certain violations (e.g., Rule 1 violations) are not subject to cure, the 30-day Notice period has been broadened to include an opportunity during this time for a Respondent to informally contest to Staff, both the determination of a violation and the proposed penalty amount, prior to a citation being issued. In this way the 30-day Notice period serves as both an opportunity to cure, where applicable, and informally contest the violation or proposed penalty amount prior to a citation being issued.

In response to DRA's comments on the responsibility for penalties, we have amended the resolution and added a finding to clarify that penalties imposed as part of the citation program are a shareholder (owner) and not a ratepayer responsibility.

We also disagree with CWA's contention that the range of violations listed in Appendix A is "inappropriately broad." CWA's comparison of the Commission's citation program here, covering industries in which we have broad regulatory authority, with our citation program for Load Serving Entities, where our regulatory oversight is limited, is misplaced. The scope of the violations listed in Appendix A is consistent with the scope of our regulatory responsibilities for the water and sewer utility industries.

Finally, both CWA and DRA recommend workshops to discuss the citation program. We do not take CWA and DRA up on their request for workshops. At this time we do not see the benefit of workshops. If, after some experience with the operation of the citation program, specific operational issues arise that would benefit from workshops, we will consider the need for workshops in that context.

#### **FINDINGS**

1. Public Utilities Code Section 701 authorizes the Commission to supervise and regulate every public utility in the State.
2. Public Utilities Code Section 702 mandates every public utility to obey and comply with every Commission order, decision, direction, or rule.
3. Public Utilities Code Section 2101 directs the Commission to see that the provisions of the State constitution and statutes dealing with public utilities are enforced and obeyed.
4. California law including Public Utilities Code Section 7 authorizes the Commission to delegate certain powers to its Staff, including the investigation of acts preliminary to agency action, and the issuance of citations for particular kinds of violations up to specified amounts.
5. The proposed citation program for water and sewer utilities described above is needed to ensure effective and efficient enforcement of Commission decisions and orders.
6. The proposed citation program for water and sewer utilities is similar to citation programs adopted by the Commission for other industries.
7. The water and sewer utility citation program as described above and in the Specified Violations and Maximum Penalty Schedules, Appendix A, is reasonable, will facilitate achieving compliance with Commission decisions and orders in protecting the public interest, and will help to deter future violations.
8. In response to comments, the schedule of violations and penalties has been modified, including that the penalty amounts in Appendix A now represent the maximum fine for a specified violation under the citation program.

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9. The scope of violations contained in Appendix A is consistent with the scope of the Commission's broad regulatory responsibilities for the water and sewer utility industries.
10. The Commission needs the flexibility to designate the Staff most appropriate for carrying out the various functions involved in this citation program.
11. Water and sewer utilities will be provided prior written notice to cure or informally contest a violation and proposed penalty amount before a citation is issued.
12. The three day compliance period is only for those violations that could endanger the public's health or safety.
13. Water and sewer utilities may request an extension of time to achieve compliance based on a showing of good cause.
14. The water and sewer utility citation program includes the ability to appeal Staff's issuance of citations and penalties.
15. Payment of a citation does not preclude the Commission from taking other remedial measures.
16. Penalty payments are the responsibility of shareholders or owner(s) of the water or sewer utility and are not to be charged to customers.
17. The value of workshops to discuss the citation program may exist after some experience with the operation of the citation program.

Resolution No. W-4799 October 29, 2009

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**IT IS ORDERED:**

1. The citation program described in the section above entitled "Citations" and in the Specified Violations and Maximum Penalty Schedules, attached as Appendix A, is hereby adopted to govern the issuance and appeal of citations for violation of statutes, orders or rules relating to water and sewer utilities.

2. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on October 29, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON  
Paul Clanon  
Executive Director

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

**APPENDIX A**

**Page 1**

**SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULES**

SPECIFIED VIOLATIONS	PENALTY SCHEDULE Class A Utilities  UP TO	PENALTY SCHEDULE Class B, C, D, and Sewer Utilities UP TO
Charging fees not authorized by the Commission	<b>\$1,000 per event</b>	<b>\$500 per event</b>
Charging rates higher than authorized	<b>\$1,000 per event</b>	<b>\$500 per event</b>
Not charging developers for special facilities in violation of Tariff Rule 15	<b>\$20,000 per event</b>	<b>\$1,000 per event</b>
Not refunding excess deposits to developers or individual customers in violation of Tariff Rule 15	<b>\$1,000 per event</b>	<b>\$500 per event</b>
Installing new facilities that do not meet the standards or fire flow requirements of G.O. 103-A	<b>\$20,000 per event</b>	<b>\$1,000 per event</b>
Not refunding deposit after 12 months when the customer has met the payment requirements for service pursuant to Tariff Rule 5.C and 7.E	<b>\$500 per event</b>	<b>\$250 per event</b>
Not responding to water outages as specified in Tariff Rule 14 and G.O. 103-A	<b>\$1,000 per event</b>	<b>\$500 per event</b>

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Page 2

**SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULES**

SPECIFIED VIOLATIONS	PENALTY SCHEDULE Class A Utilities  UP TO	PENALTY SCHEDULE Class B, C, D, and Sewer Utilities  UP TO
Not following safety standards when doing repairs as specified in G.O. 103-A	\$1,000 per event	\$500 per event
Not restoring the work area specified in G.O. 103-A after performing repairs	\$1,000 per event	\$500 per event
Shutting off a customer's water for non-payment of bill without the notice required by Tariff Rule 11.B.1.i	\$1,000 per event	\$500 per event
Not complying with Commission Ordering Paragraphs not otherwise specified herein	\$10,000 per event	\$1,000 per event
Misrepresenting information outside the course of a formal proceeding in violation of Rule 1	\$20,000 per event	\$2,000 per event
Failing to remedy defects or failing to file a required report on time or at all, in violation of Rule 6.2 of G.O. 96-B	\$1,000 per event	\$500 per event

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Page 3

SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULES

SPECIFIED VIOLATIONS	PENALTY SCHEDULE Class A Utilities  UP TO	PENALTY SCHEDULE Class B, C, D, and Sewer Utilities  UP TO
Failing to submit a timely or satisfactory revision to a tariff effective pending disposition after notice by the Division of Water and Audits, in violation of Rule 7.5.3 of G.O. 96-B	<b>\$1,000 per event</b>	<b>\$500 per event</b>
Not keeping records of customer complaints in accordance with Section VII.7.E of G.O. 103-A	<b>\$1,000 per event</b>	<b>\$500 per event</b>
Not complying with Water Quality Standards in accordance with Section II.2.A of G.O. 103-A	<b>\$1,000 per event</b>	<b>\$500 per event</b>
Not complying with water pressure requirements of Section VII.6.A of G.O. 103-A	<b>\$1,000 per event</b>	<b>\$500 per event</b>
Not complying with water supply requirements of Section II.2.B.3 of G.O. 103-A	<b>\$2,000 per event</b>	<b>\$1,000 per event</b>
Non-compliance with provisions of G.O. 103-A not otherwise specified herein	<b>\$1,000 per event</b>	<b>\$500 per event</b>
Not filing Annual Reports	<b>\$1,000 per event</b>	<b>\$500 per event</b>

**APPENDIX A**  
**Page 4**

**SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULES**

<b>SPECIFIED VIOLATIONS</b>	<b>PENALTY SCHEDULE Class A Utilities  UP TO</b>	<b>PENALTY SCHEDULE Class B, C, D, and Sewer Utilities  UP TO</b>
Misusing or misappropriating the Safe Drinking Water Bond Act and Safe Drinking Water State Revolving Fund surcharge funds collected from customers	\$20,000 per event	\$2,000 per event
Not complying with the Commission's filing requirements for general rate cases as specified in Standard Practice U-46-W	These matters are handled by the assigned ALJ for Class A utility rate cases	\$1,000 per event

(End of Appendix A)

