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September 13, 2013

Via Electronic Mail and Hand Delivery

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With Hand Delivery to:
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Re: Casa Diablo IV Geothermal Development Project Final EIR/EIS (CACA 11667); GBAPCD Governing Board Agenda Item No. 6: Continued Board Discussion regarding the Joint FEIR/FEIS for the Casa Diablo IV (CD IV) Geothermal Plant and Well Field.

Dear Sirs and Madams:

This letter is submitted on behalf of Bishop residents Russell Covington, Robert A. Moore, Randy Sipes, and Randal Sipes (“Bishop Residents”), Laborers

International Union of North America, Local Union 783, and its members living in Mono County ("LiUNA") (collectively, "LiUNA" or "Commenters") regarding the Joint Final Environmental Impact Statement ("EIS") / Environmental Impact Report ("EIR") (collectively, "FEIS/FEIR") for the Casa Diablo IV Geothermal Development Project (CACA 11667), DOI Control No. DES 12-21, Publication Index No. BLM/CA-ES-2013-002+1793, State Clearinghouse No. 2011041008, Great Basin Unified Air Pollution Control District ("GBUAPCD" or "Air District") Hearing Board Agenda Item No. 6. The project includes the construction, operation, maintenance and decommissioning of a 33 megawatt (MW) geothermal power generating facility and related infrastructure near Mammoth Lakes in Mono County, California (collectively "Project," "Casa Diablo Project" or "CD-IV Project").

These comments supplement and incorporate by reference Commenters' prior comments on the Casa Diablo Project, including the following:

- February 1, 2013 LiUNA comments and attachments on the Draft EIS/EIR;
- July 14, 2013 LiUNA comments and attachments, addressing preliminary issues regarding the FEIS/FEIR's compliance with the California Environmental Quality Act, Public Resources Code § 21000 et seq. ("CEQA") and the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. ("NEPA");
- August 5, 2013 LiUNA comments and attachments, providing additional analysis under NEPA and analyzes the FEIS's compliance with the National Forest Management Act ("NFMA"), and the Federal Land Policy and Management Act ("FLPMA").

Commenters have further reviewed the FEIS/FEIR for the Project, and have reviewed the Air District's September 16, 2013 Board Report for Item 6 ("Staff Report") As discussed herein, after reviewing these documents together with our expert consultants, it is evident that the FEIS/FEIR and the Air District have failed to resolve significant deficiencies raised in prior comment letters on the Project, and that the Air District will violate CEQA, State Land Use and Planning laws, NEPA, and other laws, if the Board or the Air Pollution Control Officer ("APCO") act to certify the FEIS/FEIR in its present form, or otherwise approve the Project before these deficiencies are resolved.[1]

[1] Commenters plan to supplement these comments with further discussion of issues related to the Project's proposed air permits, including the Air District's proposed Authority to Construct and Permit to Operate, during the comment periods for those permits, which remain open at the time of this writing.

In particular, the Project will have the following adverse impacts that the lead and cooperating agencies have failed to address and adequately mitigate in their responses to comments, and which the Air District has failed to address in its Staff Report and proposed CEQA findings:

- **The Air District Is the Wrong Lead Agency for the Project's CEQA Review**: The Air District had a duty under CEQA to cede lead agency status to the County of Mono ("County") when it learned that the County had permitting authority over the Project. CEQA requires the agency with the principal responsibility for approving a project as a whole, and with general jurisdiction over the Project and its impacts, to assume the role of lead agency for the Project's CEQA review. 14 Cal. Code Regs ("CCR") § 15051. That CEQA lead agency must certify that the entire EIR satisfies CEQA's legal and environmental requirements, not merely the portion of over which it has expertise. The Air District was the wrong lead agency because it has no general jurisdiction over the physical project, and its only role in the Project is admittedly in issuing the Project's Authority to Construct ("ATC") permits related to drilling and facility operational air emissions.

- **The FEIS/FEIR and Proposed ATC Fail to Adopt Feasible and Enforceable Mitigation Measures to Address the Project's Significant Air Quality Impacts:** The EIS/EIR has failed to require the Project to implement Best Available Control Technology ("BACT") to mitigate admittedly significant operational air pollution, in violation of CEQA, NEPA, the State and federal Clean Air Acts, and the Air District's own Rule 209-A. The EIS/EIR and Staff Report admit that the Project will have significant, unmitigated air quality impacts from fugitive emissions of volatile organic compounds ("VOCs"), an ozone precursor, during Project operation. Specifically, the EIS/EIR admits that Project will leak at least 410 pounds/day ("lbs/day") of fugitive n-pentane gas from "leaky" un-sealed valves and other fugitive components, from the facility's purge system, and from operational leaks from the facility's geothermal Ormat energy converters ("OECs"). Nevertheless, the EIS/EIR and the District's proposed ATC for the Project fail to require implementation of feasible leakless technology that is readily available to control these emissions, technology that is both feasible and readily in use at refineries and other facilities within the State. Nor has the District required Ormat to purchase offsets to mitigate these emissions, as provided in Rule 209-A. This violates CEQA's (and NEPA's) requirement that a project implement all feasible mitigations to reduce significant impacts, and CEQA's legislative policy that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available

which would substantially lessen the significant environmental effects of those projects. Pub. Res. Code ("PRC") § 21002; 14 CCR §§ 15126.4; 15364. The Board cannot act to approve the Project, nor adopt a statement of overriding considerations regarding the Project's significant air quality impacts, unless and until this feasible mitigation is adopted.

- **The Project Violates General Plan Requirements**: The Project's significant, unmitigated operational air quality emissions will also result in violations of mandatory provisions of the Mono County General Plan ("General Plan"). General Plan Goal 1, Obj. G, Policy 1 provides that geothermal permit holders "*shall establish* procedures that ensure that neither geothermal exploration nor development will cause violations of state or federal ambient air quality standards or the rules and regulations of the GBUAPCD." GP Conservation and Open Space Element ("COSE"), Goal 1, Obj. G (emph. added). Air District Rule 209-A requires all new stationary sources of emissions that would emit 250 or more lbs/day of any air pollutant or precursor (including VOCs) to implement BACT and other specific mitigation requirements to reduce those emissions. Here, the Project's individual and cumulative fugitive VOC emissions will admittedly exceed the 250 lbs/day BACT threshold. Yet the FEIS/FEIR and proposed ATC fail to require the Project to implement legitimate and feasible BACT measures. This results in a violation of a mandatory General Plan policy, which is also a per se significant impact under CEQA.

- **Failure to Provide Access to Project Documents**: Finally, the District and the federal lead agencies have failed to provide access to documents underlying their findings and conclusions in the Final EIS/EIR that the Project will not have significant, unmitigated impacts to hydrology and air quality, as well as documents underlying the District's emissions calculations contained in the Project's proposed ATC permit. This is a violation of NEPA and CEQA public disclosure requirement, which prohibit reliance on "secret" studies to be relied upon by the lead agencies in certifying an EIS/EIR, as well as a violation of the State Public Records Act and federal Clean Air Act, which require disclosure of air emissions data relied upon by an air district in evaluating permit applications and issuing any ATCs or PTOs for a facility under its jurisdiction.

Expert Comments and Prior Public/Agency Comments

These comments are supported by the expert comments of Phyllis Fox, Ph.D., PE, who concludes that the mitigation measures required by the Final EIS/EIR and subsequent Project approvals, including the proposed ATC, fail to require the use of BACT to reduce the Project's admittedly significant fugitive emissions of volatile organic compounds ("VOCs"), in violation of Air District Rule

209-A; fail to include enforceable air permit conditions to implement the Project's required air quality mitigations; and fail to provide accurate information regarding the nature, extent, and locations of the Project's fugitive VOC emissions. Ms. Fox's comments and curriculum vitae are attached hereto as Exhibit A.

We also attach the September 13, 2013 comments of Heidi M. Bauer, PG[2] as Exhibit B. Ms. Rhymes prepared comments on the Draft EIS/EIR, as well as the FEIS/FEIR. Ms. Bauer has further reviewed the Staff Report for the September 16, 2013 hearing, and concludes that the District and federal lead agencies failed to adequately address her prior comments on the Project's potentially significant impacts on the geothermal aquifer, and submits additional evidence from the U.S. Geologic Survey ("USGS") which further evidence the impacts that geothermal operations have on reducing thermal temperatures in the aquifer.

In addition, LiUNA expressly adopts and incorporates by reference its own prior comments on the Project, as well the prior comments or agencies and members of the public on the Project, including comments submitted by the following individuals or organizations at and following the July 15, 2013 Air District Board hearing on the Project:

- Comments of Mammoth Community Water District ("MCWD") and MCWD additional letter ("Wildermuth letter");
- Comments of California Unions for Reliable Energy ("CURE");
- Comments of U.S.E.P.A.;
- Comments of the Town of Mammoth Lakes.

LiUNA also hereby attaches as Exhibit C and incorporates by reference the administrative record related to the M-! Replacement Project, the geothermal power plant replacement project for the existing Ormat MP-I geothermal plant, one of the three existing geothermal power plants in the Casa Diablo Complex, located adjacent to the CD-IV Project site ("M-1 Project"). The M-1 Project was approved by the County in December 2012, and is currently in litigation by LiUNA for inadequate CEQA review.

The above commenting agencies, organizations, and other members of the public submitted comments on the Project's potentially significant impacts on water quality, air quality, biological resources, recreational / visual resources, and

[2] Heidi M. Bauer was formerly known as Heidi Rhymes, and submitted comments on the CD-IV Project under the name "Heidi Rhymes." References to "Heidi Bauer" and "Heidi Rhymes" are used interchangeably herein to refer to the same individual.

other areas, and requested that the FEIS/FEIR provide further description, analysis, and mitigations in order to ensure that the Project's impacts are mitigated to the fullest extent feasible. The District's Staff Report fails to adequately respond to these comments, fails to admit the need or commit to preparation of a supplemental EIS/EIR to address these impacts, and fails to further describe the Project's components in a meaningful manner to enable selection of all appropriate mitigations.

As a result of these inadequacies, the FEIS/FEIR continues to fail as an informational document, fails to analyze all significant impacts of the Project, fails to identify and impose feasible mitigation measures to reduce the Project's impacts, and fails to properly analyze Project alternatives and cumulative impacts.[3] The FEIS/FEIR lacks the evidence required to support its conclusions, and as a result, the District lacks the evidence required to certify the FEIS/FEIR, or to make findings that it adequately mitigates the Project's numerous significant impacts.

LiUNA therefore requests that the District prepare and circulate a Supplemental Draft Environmental Impact Statement / Report ("SEIR") to address the issues raised in this and other comments, and to require implementation of feasible mitigations and alternatives required by law. Given that the Joint FEIS/FEIR was released before the proposed ATC is final, and while the public comment period on the ATC remains pending, LiUNA also requests that the Board continue its consideration of the FEIS/FEIR until such time as the ATC, which is a required mitigation measure of the Project, has been subjected to public scrutiny.

I. STANDING

Bishop, California residents Russell Covington, Robert A. Moore, Randy Sipes, and Randal Sipes, Jr. live approximately 40 miles from the proposed Project area, and frequently visit the Mammoth Lakes area in Mono County in the direct vicinity of the Project site. Mr. Sipes Sr. and Mr. Sipes Jr. regularly visit the Mammoth Lakes area in close vicinity to the Project site, to fish, hunt, hike, and ski. They are particularly concerned about the effects that the Project's impacts on air pollution, groundwater contamination, and reduction in geothermal reservoir temperatures will have on their ability to use and enjoy the Mammoth area, and on their overall health and welfare of their communities. They are also Local 783 members. Mr. Covington lives on a Paiute reservation in Bishop, and regularly visits the Town of Mammoth Lakes with his family.

[3] We reserve the right to supplement these comments at any later hearings and proceedings related to this Project. *See Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109.

Members of LIUNA Local 783 live, work, and recreate in the immediate vicinity of the proposed Project site. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group, or environmental group. Members of LIUNA Local 783 live and work in areas that will be affected by geothermal and mineral exploration and water source reduction, air pollution, and impacts on plant and wildlife species generated by the Project. In addition, construction workers in particular will suffer many of the most significant impacts from the Project as currently proposed, such as close proximity exposure to construction-related air pollution and operational H2s emissions. Therefore, LiUNA Local 783 and its members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent feasible.

LiUNA Local 783 recognizes that the development of reliable renewable energy sources is critical for California's future. LIUNA supports the development of clean, renewable energy technology, including the use of geothermal power generation where feasible. All geothermal and related mineral extraction extraction projects must be properly analyzed and carefully planned to minimize impacts on the environment. Geothermal projects should avoid impacts to sensitive species and habitats, and should take all feasible steps to ensure that the production of renewable energy is not done at the expense of the State's natural resources, and dependent species. Only by maintaining the highest standards in these and other ways can energy supply development be truly sustainable. Unfortunately, the Project falls short in these and other ways. As a consequence, an SEIS/SEIR is required to properly analyze the Project's unmitigated significant impacts, and to propose feasible mitigation measures to bring the Project in compliance with applicable laws.

II. DISCUSSION[4]

A. The Air District Is the Wrong Lead Agency for the Project's CEQA Review.

The lead agency plays a crucial role under CEQA because it defines the scope of environmental review for a project, and it is responsible for the process by which the EIR is written, approved, and certified. CEQA requires the public agency with the principal responsibility for supervising or approving a project as a whole, and with general jurisdiction over the Project and its impacts, to assume

[4] Commenters adopt and incorporate by reference herein all factual and procedural background discussion identified in their prior Project comment letters, including federal and state legal standards.

the role of lead agency. PRC § 21067; *Planning & Conservation League v. Department of Water Resources* ("*PCL v. DWR*") (2000) 83 Cal .App .4th 892, 906. CEQA expressly disfavors assumption of the lead agency role for private development projects by an air district, which has limited expertise, and limited authority, over those projects. 14 Cal. Code Regs ("CCR") § 15051(b)(1). Here, the Air District improperly usurped the role of CEQA lead agency from the County under the guise of "acting first," when, in fact, it had a duty under CEQA to cede lead agency status to the County once it learned that the County had permitting authority over the Project, which it has failed and refused to do.

1. The County Has General Governmental Powers over the Project and Greater Powers Over Its Operations and Its Impacts than the Air District.

The CEQA Guidelines specify that where, as here, a project is to be carried out by a private party, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project "as a whole." 14 CCR § 15051(b); *Eller Media Co. v. Community Redevelopment Agency* (2003) 108 Cal.App.4th 25, 38. "Greatest responsibility" is further defined as "the agency with ***general governmental powers***, such as a city or ***county*****,** ***rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service*** or public utility to the project." 14 CCR § 15051(b)(1) (emphasis added). The County is the public agency that fits the language of the statute and Guidelines.

Here, it is clear that the Project will be "carried out" by private party Ormat. Ormat proposed the Project and submitted permit applications to BLM, the County and the Air District for relevant Project permits. FEIS/FEIR, pp. ES-1. Ormat obtained the rights of way over which Project pipelines will be located. *Id*. Ormat obtained the recent approvals from BLM and USFS to "construct, operate, maintain, and decommission the Project." BLM ROD, p. 1, 17; USFS ROD, p. 1, 16; *see County Sanitation Dist, No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1633 (construction and operation of project lends towards a lead agency designation, whereas lack of control over these factors leads away from lead agency consideration). Ormat also owns and operates the three other existing geothermal plants in the Casa Diablo Complex – MP-I, MP-II, and PLES I. FEIS/FEIR p. 1-4 to 1-6. It is clear that the Air District is not "carrying out" the Casa Diablo Project or any other geothermal project in the Casa Diablo Complex.

The next step in lead agency selection should have been to designate the agency with "greatest responsibility." The FEIS/FEIR admits that the Air District's only role in the Project is solely in approving and enforcing its air permits, and therefore not a role of general governmental powers. "The GBUAPCD is the lead agency for compliance with CEQA. The GBUAPCD is responsible for reviewing applications and issuing air permits within the basin. *The GBUAPCD's decision*

will be whether to approve, approve with conditions, or deny an air permit for the CD-IV Project." FEIS/FEIR, p. ES-2 (emphasis added). However, that enforcement role is conveyed on the Air District by virtue of federal and state air quality laws, and not by any authority vested in it from its role as CEQA lead agency. In other words, the Air District's permitting and enforcement authority over air quality issues remains the same whether it acted as lead agency or not.

CEQA confers no independent grant of authority to impose mitigation measures on a project. A public agency "may exercise only those express or implied powers provided by law other than this division." PRC § 21004. Here, although the County's permitting authority is limited to approving pipeline user permits over private lands within the County, the County has greater expertise in assessing and mitigating the Project's impacts overall. Counties have a broad array of police powers granted under State laws that can be used to mitigate environmental impacts (Cal. Const. art XI, §7; *see Berman v. Parker* (1954) 348 U.S. 26, 31-32), as well as powers to regulate land use planning granted by state planning and zoning laws and the Subdivision Map Act. See Gov. Code §§ 65100-65763; 65800-65912; 66410-66499.37. By contrast, special districts, like GBUAPCD, have no such police power, and no general land use and planning authority. Rather, the scope of authority granted to special districts like SMWD is limited by their specific statutory grants of authority. *See Cal. Bldg. Indus. Ass'n v. Governing Bd*. (1988) 206 Cal.App.3d 212, 231-32; Cal. Health & Safety Code §§ 40000 et seq.

Air District APCO Schade admitted at the July 15, 2013 Board hearing that it was unusual for the Air District to act as lead agency, and that the District, in fact, had little or no enforcement authority of most of the Project's impacts. He explained:

> Typically Great Basin does not certify environmental impact reports for projects like this. This typically would fall under the county or the town's purview, but in this case when this project started, it looked as though the only non federal agency that would issue any kind of discretionary approval or permit was Great Basin, and so because there wasn't going to be any involvement from any other agency, then we by necessity would end up being the lead agency, so we took that responsibility on, like I said, about three years ago. As the project developed and we came to realize that there actually is -- the pipeline itself will cross the private land which makes it subject to a use permit from Mono County, so Mono County will end up considering this for use permit approval, but Great Basin had started the project before that was really completely understood and kind of gone a ways down the processing path.
> I consulted with staff at Mono County. At that point we probably could have punted this, but because we had started off, I made the decision to go ahead and continue here, so it's a little bit unusual for a single purpose

> regulatory agency like ours to take on approval of a project like this, but that's really why -- that's how we got to where we are today.

GBUAPCD July 15, 2013 Hearing Transcript ("District Transcript"), pp. 6-7, attached hereto as Exhibit D.

This admission is key. There is no question that the Air District lacks jurisdiction to mitigate or enforce violations of impacts caused by the Project's to any resource other than air. For example, the geothermal aquifer from which the Project's wells will extract heat is located beneath County lands and federal public lands, not Air District lands. The same is true for the surface waters that will be impacted by the Project, such as Hot Creek. The Project will be located just 2 miles east of the Town of Mammoth Lakes, in Mono County. FEIS/FEIR, p. 3.3-2. Both the Town and the Mammoth Municipal Water District have raised concerns about potential mixing and contamination of municipal groundwater wells from the Project. Exh. C, District Transcript, pp. 69-70. Both the EIR and LiUNA's expert hydrogeologist Ms. Rhymes conclude that there is a clear connection between groundwater wells and existing geothermal wells from Ormat's other operations. FEIS/FEIR, p. I14-11; H Rhymes July 12, 2013 Comments, p. 3. It is the County, and not the Air District, that is best equipped to analyze sufficiency of the EIS/EIR's mitigations for these impacts, and to monitor their enforcement. This is because the County has jurisdiction to manage operations that are located on, and to protect, the lands and waters under its jurisdiction. *See e.g*. Mono County Code §§ 7.12.010, 7.12.020 (County authority to prohibit and abate pollution of County waters); §§ 7.20.010-190 (County authority to issue and enforce pollution abatement orders and generally abate nuisance); §§ 7.40.010-060 (County authority to regulate underground storage of hazardous waste); §§ 7.40.010-090 (regulation of wells); §§ 7.10.010-070 (regulation of mining operations).

Similarly, the animal and plant species that will be impacted by the Project's construction and operation are geographically located in, on, and near County lands, and are likely to traverse those lands during migratory periods. See Shawn Smallwood January 14, 2013 comments on Draft EIS/EIR, pp. 2-4; see e.g. FEIS/FEIR, p. 3.3-9, 3.3-16, 3.4-3, 3.4-14 (discussing special status species that may be affected by the Project, and other projects, within County, such as sage grouse, mule deer, etc). The County has jurisdiction to address Project impacts to those lands and many of those species, but the Air District does not.

In fact, the Air District has no jurisdiction or enforcement authority over any lands, any underground hydrologic resources, or any plants and wildlife that will be impacted by the Project. The Air District is responsible solely for ensuring the Project's compliance with state and federal air quality standards, and with enforcing regulations related to those standards. While compliance with air

quality standards is a critical component of the Project's mitigations (albeit a deficiently implemented one, as discussed below), air pollution control is necessarily a single component of the Project as a whole. Aside from the Project's projected air pollution, all other potential impacts reviewed in the EIS/EIR (and indeed, commonly reviewed under CEQA), such as hydrology, biology, traffic, cultural resources, etc., will occur either within Mono County or on public lands, and not on Air District "property."

Because the Air District lacks general jurisdiction over the physical project, and its only role in the Project is admittedly narrow, it should have turned the lead agency role over to the County when it learned that the County would be issuing Project permits. The Air District is not capable of fulfilling its role as lead agency to certify that the entire EIR satisfies CEQA's environmental and informational requirements, because it lacks the expertise with which to do so.

2. The Role of Lead Agency Should Not Have Been Delegated to the District, Regardless of Which Agency "Acted First."

"Where more than one public agency ***equally*** meet the criteria in [15051(b)], the agency which will act first on the project in question shall be the lead agency." 14 CCR § 15051(c) (emphasis added). In situations in which two or more agencies applying these criteria have a substantial claim to lead agency status, CEQA permits the agencies to designate by written agreement which of them will serve as the lead agency. 14 CCR § 15051(d). The role of lead agency may not be delegated away where the conceding agency has greater responsibility or authority over the project than the would-be lead agency. *Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation & Park Dist*. (1994) 28 Cal.App.4th 419, 428.

Here, the Air District improperly usurped the role of lead agency from the County, and failed to hand that role back once it learned of the County's permitting authority, under a claim of right from having "acted first." See Exhibit D, District Transcript, p. 65. County Counsel explained that the District's rationale for retaining the role of lead agency after discussing it with the County was because it believed it was the agency that would be "acting first, because obviously you need a certified document prior to acting, so if you have an order of action, someone who is not an agency, an entity that's not an agency of general jurisdiction may need to be a lead agency to certify that document because they are issuing the first approval for the project." *Id*.

The District's reasoning fails here, however. So important is the role of the lead agency that CEQA proscribes delegation of that role, even by a written agreement with another public agency. Where the wrong public agency assumes the role of lead agency, the entire CEQA process is tainted, compelling the

invalidation of the EIR and a fresh start with the appropriate lead agency. *PCL v. DWR*, 83 Cal.App.4th at 907.

In *PCL v. DWR*, the state Department of Water Resources ("DWR") and several local water contractors agreed to revise their long-term contracts governing the supply of water under the State Water Project. The revision concerned an allocation plan in the event of a permanent water shortage. The parties agreed that the Central Coast Water Authority, a joint powers agency among nine member water agencies within Santa Barbara County, would serve as lead agency for the project's EIR. In a challenge filed after the EIR was certified and the project was approved, the court held that DWR had a statutory duty to serve as lead agency on the EIR because it had greatest responsibility over the project and greatest authority over regulating its impacts, and invalidated the EIR. 83 Cal.App.4th at 898, 907.

The same is true here. Once the District learned of the County's permitting authority over the Project pipeline, rather than agreeing with the County that it would carry on as lead agency since it had "already begun," the District should have agreed to shift the lead agency role to the County. The District had no substantial claim to the lead agency role at that point that would have justified its agreement with the County to retain the lead agency role. The District's only explanation of its refusal to hand lead agency designation off to the County was that "[t]here was a discussion and we made the decision to go ahead." Exh. D, District Transcript, p. 66. This explanation makes no attempt to address CEQA's stringent criteria for selection of lead agency, not was there any factual basis for the District to make that decision.

The District has not yet acted to approve any air permits for the Project. Indeed, obtaining an authority to construct permit and permit to operate are *future, deferred* conditions of the Project required by Mitigation Measure PDM AQ-4, and not a necessary first step in "acting" on the Project's underlying approvals. FEIS/FEIR, p. 4.2-6, 2-51 (AQ-4: ORNI 50, LLC "*will apply* for an air permit to construct and operate the wells and power plant.") (emphasis added). The fact that the Project was already undergoing CEQA and NEPA review should not have operated to prevent a switch in lead agency.

Indeed, it is not uncommon for the lead agency designation to change during a project's CEQA review process. For example, this can occur if a project application is submitted to a county and the area containing the project is later annexed to a city or included in a newly incorporated city. A shift of lead agency to that city despite the fact that the project is "mid-stream" in CEQA review is appropriate in such an instance, and does not require the CEQA process to restart. *See Gentry v. Murrieta* (1995) 36 Cal. App. 4th 1359, 1371. That is what should have occurred here.

In summary, CEQA and California case law clearly establish that with an activity like the Casa Diablo Project, the public agency with greater responsibility for approving and supervising the Project, and with general governmental powers, is required to act as the lead agency. That agency here is the County. Moreover, the role of lead agency cannot be delegated to another agency where it is factually improper, even by agreement. *PCL v. DWR*, 83 Cal.App.4th at 906-907. LiUNA urges the District and the County to agree to return the role of lead agency to the County, and correct the ill-conceived decision to allow the District to retain the role of CEQA lead agency.

B. The Project's Air Quality Emissions are Significant and Unmitigated.

The FEIS/FEIR remains woefully inadequate because it fails entirely to require the Project to implement feasible Best Available Control Technology ("BACT") to mitigate the Project's admittedly significant operational air pollution impacts, in violation of CEQA, NEPA, the State and federal Clean Air Acts, and, in particular, the Air District's own Rule 209-A, with which the Project must comply.

An EIR must contain mitigation measures sufficient to minimize the significant adverse environmental impacts identified in the document. (CEQA §§ 21002.1(a), 21100(b)(3).) CEQA Guidelines, § 15002(a)(2) and (3); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs*. (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*").Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (Id. at § 15126.4(a)(1)(B).) A lead agency may not make the required CEQA findings regarding a project unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

In particular, CEQA requires the lead agency to adopt feasible mitigation measures that will substantially lessen or avoid a project's potentially significant environmental impacts (CEQA §§ 21002, 21081(a)) and describe those mitigation measures in the EIR. (CEQA § 21100(b)(3); CEQA Guidelines section 15126.4.) A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (CEQA Guidelines § 15364.) Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. (*Id*. at §15126.4(a)(2).) If the project will have a significant effect, the agency may not approve the project unless it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any

unavoidable significant effects on the environment are “acceptable due to overriding concerns.” PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

1. BACT is Required for the Project.

The EIS/EIR and Staff Report admit that the Project will have significant, unmitigated air quality impacts from fugitive emissions of volatile organic compounds (“VOCs”), an ozone precursor, during Project operation. Specifically, the EIS/EIR admits that Project will leak at least 410 pounds/day (“lbs/day”) of fugitive n-pentane gas from “leaky” un-sealed valves and other fugitive components, from the facility’s purge system, and from operational leaks from the facility’s geothermal Ormat energy converters (“OECs”). FEIS/FEIR, p. 4.2-4.

Air District Rule 209-A requires the use of best available control technology or BACT. This rule defines BACT as the more stringent of:

a. The most effective emissions control technique which has been achieved in practice, for such category or class of source; or
b. Any other emissions control technique found, after public hearing, by the Air Pollution Control Officer or the Air Resources Board to be technologically feasible and cost/effective for such class or category of sources or for a specific source: or
c. The most effective emission limitation which the EPA certifies is contained in the implementation plan of any State approved under the Clean Air Act for such class or category or source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable. Rule 209-A, Sec. F-1.

The procedure to conduct a top-down BACT analysis is described in the NSR Workshop Manual, p. B.6., (incorporated into California law, Health & Saf. Code §42506), and includes five steps. Step 1 is to identify all control technologies. This requires a comprehensive list, including the lowest achievable emissions rate (“LAER”). Step 2 is to eliminate infeasible options. This requires a demonstration of technical infeasibility based on physical, chemical, and engineering principles, that technical difficulties would preclude the successful use of the control option on the emission unit under review. Step 3 requires the agency to rank remaining control technologies by control effectiveness. This raking must incorporate several factors, including control effectiveness, expected emission rate, expected emission reduction, as well as energy, environmental, and economic impacts. Step 4 requires the agency to evaluate the most effective controls and document results. This requires a case-by-case consideration of energy, environmental, and economic impacts, and evaluation of the “next most effective” control option if the top option is not selected as BACT. Finally, Step 5 requires selection of the most effective option not rejected as BACT. Health & Saf. Code §42506; Exh. A, pp. 8-9.

As discussed below, that procedure was not followed in the EIS/EIR, nor in the proposed ATC.

2. The EIS/EIR and Proposed ATC Fail to Impose BACT as Feasible Mitigation for the Project's Admittedly Significant Air Quality Impacts, in Violation of CEQA, Air District Rule 209-A, and the Project's Own Mitigation Plan.

The FEIS/FEIR and the District's proposed ATC for the Project fail to require implementation of feasible leakless technology that is readily available to control these emissions, technology that is both feasible and readily in use at refineries and other facilities within the State, and by failing to require offsets. Nor has the District required Ormat to purchase offsets to mitigate these emissions, as provided in Rule 209-A. This violates CEQA's (and NEPA's) requirement that a project implement all feasible mitigations to reduce significant impacts, and CEQA's legislative policy that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of those projects. Pub. Res. Code ("PRC") § 21002; 14 CCR §§ 15126.4; 15364. The Board cannot act to approve the Project, nor adopt a statement of overriding considerations regarding the Project's significant air quality impacts, unless and until this feasible mitigation is adopted.

a. Failure to Require Leakless Technology.

The Project documents, including the ATC Application and the Engineering Analysis, assert that BACT is satisfied without any supporting analysis. The EIS/EIR and ATC Engineering Analysis admit that the majority of the emissions from this Project, over 99% (100[411-4.2]/411=99%) are fugitive emissions, including at least 410 lbs/day of fugitive n-pentane emissions, and that compliance with BACT was required. FEIS/FEIR, p. 4.2-12; 4.2-6 (Mitigation Measure PDM AQ-3 requiring BACT to minimize n-pentane emissions; Measure PDM AQ-4 requiring ATC and PTO for wells and power plant in compliance with Air District Rules); BLM ROD, p. A2-1 (same); USFS ROD, p. B-5 (same); ATC proposed permit documents, attached hereto as Exhibit D. However, neither the EIS/EIR nor the ATC Engineering Analysis contain any independent analysis nor any analysis or critique of Ormat's purported BACT analysis in the ATC Application, despite asserting that fugitive emissions will be "minimized" by using "leakless" technology "***where feasible***" and performing hand-held monitoring of possible emission escape points. *Id*.; EA, p. 1.

Dr. Fox concludes that leakless technology would satisfy BACT if required in practice, and that leakless technology is fully feasible for all fugitive components involved in this Project, based on the level of detail disclosed in the

record. Exh. A, p. 10. However, neither the EIS/EIR nor the proposed ATC require any leakless technology at all, but rather only "where feasible." Thus, the EIS/EIR and ATC fail to require that the Project implement the very mitigation measures mandated by both the District and the federal lead agencies, BLM and USFS, in the Project's environmental documents. The requirement for leakless technology must be expanded to explicitly list the Project components that would be leakless, the ones that would be allowed to leak, and the criteria used to classify them. Further, any infeasibility determination should be certified by a licensed California mechanical engineer and submitted to the GBUAPCD for approval.

The Project's Leak Detection and Repair ("LDAR") program also fails to comply with BACT. LDAR programs control leaks by measuring the concentration of volatile organic compounds (VOCs) at the face of each component. If the measured concentration exceeds a specified leak rate, the component must be repaired in a specified period of time. Here, the CD-4 LDAR program requires monthly monitoring of the VOC concentration from fugitive components using EPA Method 21. If the measured concentration exceeds 10,000 ppmv, the leak must be repaired "as soon as practical." If no leaks greater than 10,000 ppmv are detected for two years, Ormat may petition the District to change the monitoring frequency to quarterly. ATC, Condition 2. Dr. Fox concluded that this fails to satisfy BACT "as it is not the most effective LDAR program that has been achieved in practice or the most effective LDAR program contained in implementation plans approved under the Clean Air Act for California." Exh. A, pp. 10-12.

Two air districts in California have equipment leak regulations that are far more stringent than the LDAR requirements in the proposed ATC for CD-4. The Bay Area Air Quality Management District ("BAAQMD") Rule 8-18, sets the floor for the leak detection threshold at 100 ppm for all fugitive components except pumps and compressors, which have a leak detection threshold of 500 ppm. All detected leaks must be minimized within 24 hours and repaired within 7 days. Leaks are monitored quarterly using EPA Method 21. Further, the BAAQMD has published BACT guidelines for fugitive components. For connectors, achieved in practice BACT is a leak rate of 100 ppm, achieved using graphitic gaskets. For process valves, achieved in practice BACT is a leak rate of 100 ppm, achieved using bellows valves, diaphragm valves, quarter-turn valves, live-loaded valves, or other low-emission valves. For pumps, technologically feasible and cost effective BACT is a leak rate of 100 ppm. The 100-ppm leak rate can be achieved for pumps using double mechanical seals with barrier fluid; magnetically coupled pumps; canned pumps; magnetic fluid sealing technology; or gas seal systems vented to a thermal oxidizer or other approved control device (such as the proposed VRUs). The achieved in practice BACT leak rate for pumps is 500 ppm, achieved using double mechanical seals with barrier fluid. In each case, the leak rate is expressed as methane, measured by EPA Method

21 and to satisfy BACT, the subject leak rate must be accompanied by an approved quarterly inspection and maintenance program. By failing to consider these technologies that have been achieved in practice, the District failed to conduct a top-down BACT analysis.

Thus, BACT for equipment leaks at CD-4 should be a leak rate of 100 ppm for all fugitive components, enforced by quarterly monitoring using EPA Method 21 with minimization of the leak within 24 hours and repair within 7 days. As this is a new facility, it should be constructed so that all fugitive components are accessible for monitoring, obviating any need for exemptions based on location. A higher leak rate for pumps, no higher than the 500 ppm specified in BAAQMD Rule 8-18, must be accompanied by an analysis demonstrating that 100 ppm is not technologically feasible or cost effective in the subject applications. The leak rate of 10,000 ppmv is simply not BACT, and is, in fact, 100 times higher than BACT. By failing to require BACT, the Air District has failed to impose all feasible mitigation measures in violation of CEQA.

If the Air District contends that the mitigation is not feasible due to cost, then it must conduct a rigorous anlaysis demonstrating the cost of the superior control technology and determining whether that cost would be financially impossible for the Project to sustain. *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322. No such analysis exists in the record.

Finally, the EIS/EIR and ATC Application fail to describe the Project's fired equipment, as required by Rule 209-A. The Project includes a 800-hp emergency standby diesel generator to supply electrical power for plant auxiliaries when the plant is off line and a 400-bhp emergency standby diesel firewater pump. ATC Ap., p. 3. However, the EIS/EIR and ATC Application fail to further describe these engines or include a BACT analysis for them. Rule 209-A, Section F.3, requires that all air-contaminant-emitting equipment at the same property that is owned, operated, or under shared entitlement to use by the same person must be aggregated under the same stationary source for purposes of complying with this rule. Thus, the EIS/EIR and ATC Application fail to satisfy fundamental informational disclosure requirements under BACT.

Dr. Fox concluded that a responsive top-down BACT analysis is "completely missing from the Project record." Exh. A, p. 8. Rather, the EIS/EIR and ATC Application merely assert what "BACT" is, without performing the requisite Top-Down analysis, and without identifying any specific BACT measures, as required by Health & Saf. Code §42506. As a result, BACT has not been required for the CD-IV Project to mitigate its significant air quality impacts. The FEIS/FEIR must be revised to include these critical and feasible mitigations.

b. Failure to Require Offsets.

Rule 209-A requires mitigation for net emission increases after the application of BACT if the Air Pollution Control Officer determines that the net emission increase "would cause a new violation of any national ambient air quality standard, or would make any existing violation of any such standard worse, at the point of maximum ground level impact." Rule 209-A, Sec. D.2.a(2).

Here, the District failed to make any showing with regard to the federal 8-hr NAAQS for ozone of 0.075 ppm. Dr. Fox concluded that this is a serious omission as the study area is classified as non-attainment for the State 1-hour and 8-hour ozone ambient air quality standards. FEIR, Table 3.2-2. The California ozone standards are 0.09 ppm 1-hour and 0.070 ppm 8-hour. The CA 8-hr ozone standard is more stringent than the federal 8-hour standard of 0.075 ppm. The Project record acknowledges that exceedances of the California standards have occurred in Mammoth Lakes. EA, p. 5. While the Project area is currently unclassified for the federal 8-hr ozone standard, data compiled in the FEIR suggests that VOC emission increases from the Project could cause a new violation or contribute to an existing violation. FEIR, Table 3.2-3. The EA dismisses potential ozone impacts arguing that project emissions (0.2 ton/day) are a small fraction of total VOC emissions in Mono County (20.91 ton/day), which is dominated by natural sources. EA, p. 5.

Dr. Fox analyzed the FEIS/FEIR and proposed ATC, and concluded that the Air District used the wrong test and as a result, failed to require necessary offsets. According to Dr. Fox, Rule 209-A requires offsets if the emissions, here amounting to at least 75 ton/yr of VOC, and likely significantly more, up to 467 ton/yr (Ex. 1), would "cause a new violation of any national ambient air quality standard, or would make any existing violations of any such standard worse, at the point of maximum ground level impact. Rule 409-A, Sec. D.2.a(2). This determination requires ozone modeling, which is absent from the record. Thus, the GBUAPCD has no basis for excusing Ormat from offsetting its VOC emissions." Exh. A, pp. 7-8.

Absent this information, the Air District has no evidence to support its conclusions that the Project's mitigation measures will reduce significant air quality impacts to the fullest extent feasible. Moreover, the FEIS/FEIR lacks sufficient detail to determine which required mitigation measures will be adopted for the Project's air emissions, how the effectiveness of the mitigation measures will be evaluated, and what additional steps to take if the mitigation measures are found to be unfeasible or inadequate. The Air District must revise the FEIS/FEIR and proposed ATC to incorporate all feasible BACT measures required by law to mitigate the Project's admittedly significant air quality impacts.

3. The EIS/EIR and Proposed ATC Fail to Disclose the Project's Actual VOC Emissions.

A reviewing Court must determine whether the County prejudicially abused its discretion either by: (1) failing to proceed in the manner required by law, or (2) reaching a decision that is not supported by substantial evidence. PRC § 21168.5. Under CEQA, "'substantial evidence' means 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.'" 14 CCR §15384(a). "A prejudicial abuse of discretion occurs 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.'" *Id*. However, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" (*Berkeley Jets*, *supra,* 91 Cal.App.4th at p. 1355, quoting, *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 391 409, fn. 12 (1988).) As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at p. 1355:

> A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist*. (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

The Project's admitted operational VOC emissions arise from three sources: (1) fugitive components (224 lb/day); (2) purge system, normal process (4.23 lb/day); and (3) OEC operational losses (183 lb/day). See Table 1 below. These emissions are underestimated and unsupported in the EIS/EIR and subsequent ATC Application.

Table 1.

Emissions Data for Casa Diablo 4

Typical 36MW Air Cooled Ormat Binary Power Plant update 5/1/12
Emission calc
Ref. EPA453/R-95-017 Protocol for Equipment Leak Emission

#	Equipment	Qty.	Rate [Kg/Hr/Source]	Day [Kg]	Year [Kg]	Day [Lb]	Year [Lb]	Notes
1	Valves' Gland - Gas phase	12	0.0268	7.72	2,817	17.02	6,211	
2	Valves' Gland - Liquid phase	10	0.0109	2.62	955	5.77	2,105	
3	Pump seals	10	0.114	27.36	9,986	60.32	22,016	
4	Turbine seals	4	0.636	61.06	22,285	134.61	49,131	
5	Flanges, Connetors, Screwed	440	0.00025	2.64	964	5.82	2,124	
6	Purge System (Normal Process)	16	0.005	1.92	701	4.23	1,545	
	Total Generating units		0.793	103.31	37,708	228	83,132	
7	OEC Operational losses (fill, drain, tube leaks)	2	1.73	83.04	30,310	183	66,821	Based on Ormat O&M expriance
	Total		**2.52**	**186.35**	**68017.90**	**411**	**149,954**	

First, fugitive emissions were substantially underestimated. The ATC's emissions Protocol document contains emission factors for equipment leaks of VOCs in four industries, none of which include a binary power plant: (1) synthetic organic chemical manufacturing industry (SOCMI); (2) petroleum refining; (3) marketing terminals; and (4) oil and gas production (O&G) operations. The Protocol also fails to provide emission factors for small, volatile single compounds such a n-pentane. The ATC used average refinery emission factors for VOCs to estimate n-pentane emissions from a geothermal plant but provided no support for these nonrepresentative choices.

Dr. Fox calculated the fugitive emissions for all combinations of factors to determine the impact of Ormat's assumptions on emissions, and estimated actual emissions to be up to 3,201 lb/day of fugitive VOCs, almost 8 times higher than the EIS/EIR's unsubstantiated emission calculation of 410-411 lbs/day. Exh. A, p. 3.

Second, the FEIS/FEIR and proposed ATC entirely omit pressure relief valves ("PRV") from their emissions calculations. See FEIR, p. 2-44. Dr. Fox calculated these PRV emissions to range between 85 lb/day and 895 lb/day, depending upon the specific type of emission factor selected. Exh. A, p. 4. By failing entirely to include these equipment components in its air quality analysis and VOC calculations, the FEIS/FEIR omitted a major source of fugitive leaks from its calculations. Thus, the District failed to disclose critical information to the public about the Project's potentially significant impacts, and at the same time significantly underestimated those impacts by underestimating daily emissions. As both the CEQA lead agency, and the permitting agency for the facility's ATC and PTO, failure to accurately disclose information about air quality impacts is inexcusable.

Finally, purge system emission are unsupported and underestimated, and numerous emissions sources were excluded entirely from the Project record and

the Project's emissions calculations, including equipment such as storage tanks, generators, firewater pumps, wells, the adjacent Ormat Casa Diablo Complex facilities (MP-I/M-1, MP-II, and PLES-I), and emissions from n-pentane deliveries. See e.g. EA, p.1; ATC Ap., p. 3; FEIS/FEIR, p. 2-44,2-45. Absent this information, there is no evidence in the Project record to support the EIS/EIR's conclusions that Project emissions will comply with Rule 209-A, implement BACT, or otherwise reduce these significant impacts to the greatest extent feasible.

The EIS/EIR admits that, as approved, Project operation will result in long-term exceedances of the air quality ozone standards, primarily due to fugitive n-pentane emissions at the power plant, which would result in a significant and unavoidable impact. It further asserts that "[s]ince the CD-IV Project would include best available technology to limit fugitive n-pentane emissions, there is no additional feasible mitigation that could substantially reduce long-term emissions." See EIS/EIR, p. ES-8. Dr. Fox concluded that this assertion is incorrect because the Project, as approved, simply does not require BACT. Rather, Dr. Fox states that there are additional feasible mitigation measures that could substantially reduce long-term emissions, which are required by law but have not been imposed in either the EIS/EIR or the proposed ATC. Exh. A, pp. 10-12.

The FEIS/FEIR must be revised to include all relevant emissions information, and recirculated for public review.

4. Proposed Project Conditions to Reduce Significant Air Quality Impacts Are Unenforceable.

In addition to being feasible, mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. 14 CCR §15126.4(a)(2); *Woodward Park Homeowners Assn. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 730. Here, the EIS/EIR and Proposed ATC include unenforceable mitigations for two reasons. First, failure to require BACT will result in immediate violation of Mitigation Measures PDM AQ-3 and AQ-4-4, and second, the EIS/EIR and ATC Application fail to include enforceable conditions that provide oversight agencies, or the public, with the ability to ensure that required Project mitigation measures are implemented.

a. Measure PDM AQ-3 and AQ-4 Are Rendered Unenforceable by the District's Failure to Require Feasible BACT Measures, in Violation of Rule 209-A.

Measure PDM AQ-3 requires the Project to implement BACT, and AQ-4 requires the Project to generally comply with Rule 209-A and any other

applicable Air District rules and regulations in order to obtain the requisite ATC and PTO for the Project. The measures provide:

> **AQ-3**: ORNI 50, LLC will utilize best available equipment and design to minimize emissions of n-pentane.
> **AQ-4**: ORNI 50, LLC will apply for an air permit to construct and operate the wells and power plant. The Project will conform to GBUAPCD requirements for controlling emissions. FEIS.FEIR, p. 4.2-6.

As discussed above, the District has heretofore failed to require the Project to implement feasible BACT measures to comply with Rule 209-A. Unless significant revisions are made to the proposed ATC, the Project will not be implementing BACT as required. This renders Measures AQ-3 and AQ-4 unenforceable on their face, and thus not legally adequate mitigation measures because, once approved, Project will be immediately violating its own mitigation measure. 14 CCR §§ 15126.4(a)(2).

This is a per se significant impact. *See Katzeff v Dep't of Forestry & Fire Protection* (2010) 181 Cal.App.4th 601, 614 (violation of a mitigation measure is a significant impact); *Lincoln Place Tenants Ass'n v City of Los Angeles* (2005) 130 Cal. App. 4th 1491. Mitigation measures must be enforceable. *Woodward Park Homeowners Assn. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 730. Measures AQ-3 and AQ-4 will be immediately breached, rendering the measure unenforceable and in violation of CEQA. The Proposed ATC must be revised to incorporate all feasible BACT measures required by law, in order to ensure that the Project complies with its own mitigation and monitoring program.

b. The EIS/EIR and ATC Application Fail to Include Enforceable Oversight Conditions.

The EIS/EIR and ATC Application fail to include enforceable conditions that provide oversight agencies, or the public, with the ability to ensure that required Project mitigation measures are implemented. Dr. Fox concludes that this omission renders the ATC application inadequate mitigation, and fails to present an adequate basis for issuing a Permit to Operate for the Project. Exh. A, pp. 13-14. Because the ATC is a required mitigation measure, it must be enforceable for the FEIS/FEIR to be certified.

For example, the EIS/EIR and proposed ATC fails to include a complete equipment inventory to support the EIS/EIR's emissions estimate of 410 lbs/day of fugitive n-pentane. The emissions of n-pentane were calculated assuming a certain collection of equipment, including 12 gas-phase gland valves, 10 liquid-phase gland valves, 10 pump seals, 4 turbine seals, 440 flanges and connectors, and 16 purge systems. Table 1. However, the "equipment description for permit" in the draft ATC identifies only generic "pumps" without specifying the number.

This is insufficient information to assure that the Project will be constructed in the way proposed. Rather, notwithstanding the ATC, the Project could be constructed with a different number of fugitive components and hence, emit different amounts of n-pentane. This would never be discovered because the ATC does not require any monitoring of n-pentane emissions from any component. Exh. A, pp. 13-14. This fails to meet the informational requirements of applicable state and federal laws.

Furthermore, the ATC fails to include appropriate averaging times, compliance verification procedures, and recordkeeping procedures to ensure compliance with the Project's permitted n-pentane emissions of 411 lb/day. See Exhibit A, pp. 13-14; see e.g. Sur Contra la Contaminacion v. EPA, 202 F.3d 443, 446 (1st Cir. 2000) (daily emission limits require daily monitoring). N-pentane is also not specified in the Project's LDAR monitoring protocol.

Finally, the ATC limits the amount of hydrogen sulfide that may be emitted to comply with GBUAPCD Rule 424, but it does not require any monitoring or recordkeeping for hydrogen sulfide, and is silent on how compliance with these limits would be demonstrated. Without any monitoring, this limit is unenforceable.

Dr. Fox concluded that these deficiencies render proposed ATC unenforceable as a practical matter because "it excludes all of the methods that would be used to determine compliance, deferring their identification to a future Emission Management Plan that would be submitted to the District within 90 days of signing the ATC and not be subject to public review." Exh. A; ATC, Condition 11. This is insufficient to comply with NEPA, CEQA, or Clean Air Act requirements, and fails to fulfill the EIS/EIR's duty to mitigate all significant Project impacts to the greatest extent feasible.

5. The Project's Significant, Unmitigated Air Emissions Render the Project Inconsistent With the Mono County General Plan.

State law requires each county to adopt a long-term general plan governing development in all unincorporated areas. (Gov. Code §65300; *Napa Citizens for Honest Gov't,* 91 Cal. App. 4th at 352) General plan consistency is "the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law." (*deBottari v. Norco City Council* (1985) 171 Cal. App. 3d 1204, 1213) A project may not conflict with a general plan policy that is "fundamental, mandatory, and clear," regardless of whether it is consistent with other policies. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782-83; *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors ("FUTURE")* (1998) 62 Cal.App.4th 1332, 1338at 1341-42. Consistency is found when "[t]he various land uses authorized by the ordinance are compatible with the objectives,

policies, general land uses, and programs specified in the [general] plan." (*Id*. at (a)(2))

The Project conflicts with a critical and mandatory air quality element of the County's General Plan, which the FEIS/FEIR has failed to analyze and mitigate. Although the Air District initially believed that no portion of the Project would be located on County lands, once it became clear that the County had permitting authority over the Project, and that a portion of the Project pipelines would be located on County lands, the Air District had a duty to analyze the Project's consistency with applicable County general plan policies. It failed to do that with regard to air quality.

General Plan Goal 1, Obj. G, Policy 1 ("Objective G") provides that geothermal permit holders "*shall establish* procedures that ensure that neither geothermal exploration nor development will cause violations of state or federal ambient air quality standards or the rules and regulations of the GBUAPCD." Exhibit E, GP Conservation and Open Space Element ("COSE"), Goal 1, Obj. G (emph. Added).

In this case, Air District Rule 209-A requires all new stationary sources of emissions that would emit 250 or more lbs/day of any air pollutant or precursor (including VOCs) to implement BACT and other specific mitigation requirements to reduce those emissions. Because the Project's individual and cumulative fugitive VOC emissions will admittedly exceed the 250 lbs/day BACT threshold, Rule 209-A and its BACT requirements unquestionably apply to the Project. However, as discussed above, both the FEIS/FEIR and proposed ATC fail to require the Project to implement reasonable and feasible BACT measures, or to offset VOC emissions, as required under Rule 209-A. This results in a direct violation of Objective G, a mandatory General Plan policy, thereby rendering the Project inconsistent with the County's General Plan.

The Project cannot be approved until this inconsistency is remedied by full compliance with Rule 209-A. In this instance, it is the Air District that has the enforcement and permitting authority to remedy this violation.

a. Inconsistency With the County's General Plan Air Quality Policies is a CEQA Significant Impact.

In addition to being a violation of state Land Use and Planning law, the Project's inconsistency with Objective G is also a separate, significant impact under CEQA that the Air District has failed to mitigate. A project's inconsistencies with local plans and policies must also be discussed in the EIR and constitute significant impacts under CEQA. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4. 14 CCR § 15125(d).

The FEIS/FEIR's Air Quality section contains no discussion whatsoever of the Project's consistency, or inconsistency, with Objective G., or any other general plan element. FEIS/FEIR, p. 4.2-1-4.2-22. Once it became clear that a portion of the Project would be located on County lands, the Air District had a duty to analyze the Project's consistency with applicable General Plan elements, such as Objective G. It failed to do so. As a result, the Air District failed to disclose a significant impact of the Project to the public, and failed to proceed in a manner required by law by failing to require compliance with this mandatory General Plan provision. *See Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903, 911-913, 936 (inconsistency with a plan intended to protect the environment is a significant impact that must be analyzed in EIR).

C. The District Has Failed to Provide Access to Documents Legally Required to be Disclosed to the Public.

CEQA section 21092(b)(1) and CEQA Guidelines Section 15087(c)(5) require that "all documents referenced in the environmental impact report" be available for review and "readily accessible" to the public during public comment periods. PRC § 21092(b)(1); 14 CCR § 15087(c)(5). Similarly, the California Public Records Act. Government Code section 6250, et seq. ("PRA") requires disclosure to the public of all emissions calculations and data relied upon by a permitting agency in evaluating applications for air permits. Gov. Code §6254.7. The District failed to comply with these requirements by failing to disclose to the public critical data relied upon by the District and the NEPA lead agencies to conclude that the Project's impacts on hydrological resources would be less than significant, and to conclude that the Project's air quality emissions would be adequately mitigated.

First, the FEIS/FEIR relies upon a "proprietary" numerical model developed by Ormat to simulate geothermal production and reservoir response to conclude that that temperature declines in the geothermal reservoir do not necessarily correlate to declines in surface thermal features. FEIS/FEIR, p. 4.7-3. To date, this study has not been provided for public review, despite numerous public comments requesting access to this data and noting its absence from the Project record. H. Rhymes July 12, 2013 FEIS/FEIR comments, p. 5; Exh D., p. 55. This violates CEQA's public disclosure requirements, which prohibit a lead agency from relying on "secret studies."

More recently, the District has failed to disclose air emissions data which it contends to rely upon in considering Ormat's ATC application. Because the ATC is both an air permit required under state and federal air quality laws, and a required mitigation measure of the Project, the studies and data underlying its issuance similarly cannot be held in secret.

LiUNA obtained copies of Ormat's ATC Application from the District in August 2013. The application's emissions data calculations were completely redacted in the original application documents, in violation of PRA §6254.7(a) and (e). LiUNA sent a PRA request to the District on August 21, 2013 requesting the unredacted data. The District responded by providing partially unredacted calculations, but its "8/3/2013 2nd Redacted Version" of Ormat's OEC (Ormat Energy Converter) Heat and Mass Balance Diagram" ("OEC Diagram") remained redacted. The OEC Diagram identifies the machinery, equipment, and components within the OEC that will give rise to Project VOC emissions, and therefore its specifications must be disclosed to the public. LiUNA sent a follow up request for disclosure of this data. See Exhibit G. To date, the District has failed and refused to make it available to the public.

The FEIS/FEIR cannot lawfully be certified absent full disclosure of all studies and emissions data that form the basis of the District's findings regarding the Project's significant impacts. The District should disclose these documents to the public, and recirculate the FEIS/FEIR once they are made available for public review.

III. CONCLUSION

LiUNA Local Union No. 783 believes the FEIS/EIR is wholly inadequate and requires significant revision, recirculation and review. Moreover, LiUNA believes that the Project as proposed would result in too many unmitigated adverse impacts on the environment to be justified. These considerations weigh against approval of the Project as proposed, and necessitate revision and recirculation of the FEIS/FEIR to properly analyze all impacts of the Project. Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project.

Sincerely,

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