

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO

Case No. EO52018

CALIFORNIA ENERGY COMMISSION,
Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF
RIVERSIDE,
Respondent

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS,
Real Party in Interest

SUPPLEMENT AND ERRATA TO:

**PETITION FOR WRIT OF MANDATE, PROHIBITION, OR
OTHER APPROPRIATE WRIT OR RELIEF TO VACATE
TEMPORARY RESTRAINING ORDER, PROHIBIT HEARING ON
ORDER TO SHOW CAUSE RE CONTEMPT, VACATE ORDER TO
SHOW CAUSE AND INJUNCTION, AND DISMISS CASE**

Exempt from Filing Fees, Gov. Code § 6103

Riverside County Superior Court, No. RIC10005849
Department 4, The Honorable John D. Molloy
4050 Main Street, Riverside, CA 92501
(951) 955-4600

Michael J. Levy, Chief Counsel (SBN 154290)
Dennis L. Beck, Jr., Senior Staff Counsel (SBN 179492)
Reneé Webster-Hawkins, Senior Staff Counsel (SBN 193899)
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street, MS-14
Sacramento, CA 95814
Telephone: (916) 654-3951

Attorneys for Petitioner California Energy Commission

SUPPLEMENT

With this Supplement, the Petitioner California Energy Commission (Commission) desires to apprise the Court of Appeal of new information material to its consideration of the above-referenced petition, in particular the urgency associated with the Commission's request for an immediate stay.

Specifically, yesterday afternoon, October 19, 2010, Karen Douglas, Chairman of the Commission spoke by telephone with representatives of the United States Department of Energy (DOE) about the impending October 21, 2010 deadline to obligate the State Energy Program (SEP) funds awarded to California under the American Recovery and Reinvestment Act (ARRA). Chairman Douglas was advised that while the Department is concerned about the possibility that California might miss the deadline, which was imposed to comply with the Congressional intent of ARRA to create jobs and quickly stimulate the economy, the Department is not currently contemplating an action to de-obligate the money upon the passage of the October 21, 2010 deadline. The statements from DOE were oral, and not in any way binding on the federal agency.

When Chairman Douglas inquired as to when or under what circumstances the Department might exercise that authority, she was unable to obtain a commitment or firm answer. She requested a written statement. If and when the Commission receives such a statement, we will file it with the Court.

From the Commission's perspective, this new information relaxes somewhat the urgency with which immediate relief is needed, as the passing of the October 21st deadline will not immediately trigger withdrawal of this award. Nevertheless, the urgency remains for the following reasons:

- It remains unclear at what time or under what circumstances the Department might choose to initiate action to de-obligate the funds, and the passage of the October 21, 2010 deadline perfected the Department's authority to do so;
- The proposed Contract 400-10-003 will implement a comprehensive statewide energy efficiency program designed to support and interface with the Commission's other contractors under the remainder of the \$226 million State Energy Program award. Many of those contractors are expressing deep concern about their ability to meet such aggressive spending targets as required by the April 30, 2012 expenditure deadline, without the prompt implementation of the Energy Upgrade California program;
- The federally mandated April 30, 2012 deadline to spend the moneys awarded under the Recovery Act cannot be modified, and each passing day increases the likelihood that the contractor and subcontractors will not be able to timely perform all of the tasks required under the contract to;
- The purposes of the Recovery Act, to stimulate the economy and generate jobs now, remains, and every day that passes represents another day of frustration of the Congressional and Legislative intent to use these funds expeditiously to help end the oppressive recession. This program will create jobs throughout the state, beginning as soon as two to four months after Contract 400-10-003 is executed;
- The contempt hearing remains set for November 4, 2010, and under no scenario should two State agencies be forced to show cause on the record below, why they should not be held in contempt for performing their statutory obligations.

For the foregoing reasons, the Commission respectfully reiterates its prayer for relief as stated in its Petition filed on October 18, 2010, and that this Honorable Court grant such other relief as is just.

ERRATA

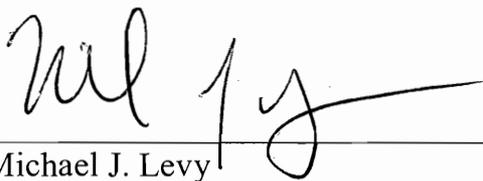
Upon review of the Petition for Writ of Mandate, Prohibition Or Other Appropriate Writ or Relief filed in this Court of Appeal on October 18, 2010, the California Petitioner Energy Commission respectfully requests that paragraph 47 of the verified petition be amended as follows to correct a factual error:

47. On September 9, 2010, the State Attorney General, as counsel for General Services, ~~filed a return, notifying~~ notified Western Riverside that due to the cancellation of PON 401 General Services no longer had the legal authority to hear a protest under Public Contract Code section 10345, and that General Services would take no further action on the protest and considered the Superior Court's May 21, 2010, order moot. (Vol. IV, Tab D 52, p. 1046.) Western Riverside did not respond to this notice. On October 12, 2010, the State Attorney General filed a Return to Supplemental Writ in the Superior Court attesting to the same. (Vol. IV, Tab D52, pp.1027-1047.)

Dated: October 20, 2010

Respectfully submitted,

CALIFORNIA ENERGY COMMISSION
Michael J. Levy, Chief Counsel

By: 
Michael J. Levy

VERIFICATION

Pursuant to California Rules of Court, Rule 8.112, subdivision (a)(5), I, Karen Douglas, declare as follows:

I am the Chairman of the California Energy Commission, Petitioner in this matter. I have served on the Commission since February 2008, and am familiar with the policies and practices implemented by the Commission in distributing funding awards. In particular, I am familiar with the awards in dispute in the underlying litigation. I have read the Petition for Writ of Mandate, Prohibition Or Other Appropriate Writ or Relief, and this Supplement and Errata and know its contents. The facts alleged in this Supplement and Errata are true based on my knowledge and familiarity with this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on October 20, 2010 at Sacramento, California.

By: _____

Karen Douglas

Case Name: California Energy Commission, Petitioner, v. Superior Court of the State of California, County of Riverside, Respondent, Western Riverside Council of Governments, Real Party in Interest

Case No.: EO52018 (Riverside County Superior Court Case No. RIC 1005849)

Court: California Court of Appeal, Fourth Appellate District, Division Two

PROOF OF SERVICE

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. My business address is 1516 9th Street, Sacramento, California 95814. On this date, I served the following documents:

 X **by E-mail** – by electronically mailing, per written agreement between the parties, a true copy thereof to the office(s) of the addressees:

 X **by U. S. Mail** – by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, to the U.S. Post Office at Sacramento, California, addressed as set forth below:

SUPPLEMENT AND ERRATA TO: PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE WRIT OR RELIEF TO VACATE TEMPORARY RESTRAINING ORDER, PROHIBIT HEARING ON ORDER TO SHOW CAUSE RE CONTEMPT, VACATE ORDER TO SHOW CAUSE AND INJUNCTION, AND DISMISS CASE

Christopher D. Whyte
Best, Best & Krieger LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614
Christopher.Whyte@bbklaw.com

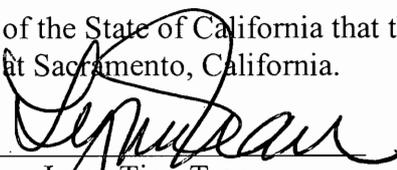
Michael Witmer
Deputy Attorney General
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Michael.Witmer@doj.ca.gov

Steve DeBaun
Best, Best & Krieger LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614
Steve.DeBaun@BBKLAW.COM

Jeffrey Dunn
Best, Best & Krieger LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614
jeffrey.dunn@BBKLAW.COM

Riverside Superior Court
4050 Main Street
Riverside, CA 92501-3702

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 20, 2010, at Sacramento, California.



Lynn Tien-Tran