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**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



August 25, 2004

**TO: PARTIES OF RECORD IN A.03-08-014**

Decision 04-08-047 is being mailed without the Dissent of Commissioner Loretta M. Lynch. The dissent will be mailed separately.

*/s/* ANGELA K. MINKIN  
Chief Administrative Law Judge

Attachment

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lennar Corporation, LNR Property Corporation, LNR NWHL Holdings, Inc., NWHL Investment LLC, NWHL GP LLC, NWHL Acquisition, L.P., the Newhall Land and Farming Co., and Valencia Water Company (U342-W) for authorization of Lennar Corporation, LNR Property Corporation, LNR NWHL Holdings, Inc., NWHL Investment LLC, NWHL GP LLC to acquire control over Valencia Water Company.

Application 03-08-014  
(Filed August 18, 2003)

**ORDER MODIFYING AND DENYING APPLICATION  
FOR REHEARING OF DECISION 04-01-051**

**I. SUMMARY**

In this decision, we deny the applications for rehearing of Decision (D.) 04-01-051 filed by the Santa Clara Organization for Planning the Environment (SCOPE) and Friends of the Santa Clara River (Santa Clara) jointly with the Los Angeles Chapter of the Sierra Club (Sierra Club) and modify D.04-01-051 to provide clarification.

**II. BACKGROUND**

In D.04-01-051 (Decision) we conditionally approved indirect control of Valencia Water Company (Valencia) from Newhall Land and Farming Company (Newhall) to Lennar Corporation (Lennar) and LNR Property Corporation (LNR).

Application (A.) 03-08-014<sup>1</sup> sought our authorization to transfer ownership and indirect

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<sup>1</sup> Filed by Lennar Corporation, LNR Property Corporation, LNR NWHL Holdings, Inc. NWHL Investment, LLC, NWHL GP LLC, NWHL Acquisition, LP, The Newhall Land and Farming Company,  
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control of Valencia from Newhall to Lennar and LNR. Newhall owns all outstanding capital stock of Valencia. The other entities are corporate and transactional intermediaries.

Valencia is a Commission-regulated Class A water company and is a wholly owned subsidiary of Newhall, a California limited partnership with its principal place of business in Ventura, California. Both Lennar and LNR are Delaware corporations with their headquarters in Miami Beach, Florida. Lennar's President and Chief Executive Officer is also Chairman of LNR's Board of Directors, and controls sufficient stock in both corporations to make all decisions presented to shareholders. Lennar and LNR proposed, by a series of transactions through their jointly owned subsidiary, NWHL Investment, Inc., to each acquire fifty percent ownership and control of a partnership that holds the assets of Newhall. Valencia is one of Newhall's assets.

SCOPE, Santa Clara, and Sierra Club filed protests and requested hearings in this proceeding. The applicants submitted a response contending that the protests did not show a sufficient basis for a hearing. On October 3, 2003, the assigned Commissioner and Administrative Law Judge (ALJ) issued a Joint Ruling finding that an evidentiary hearing was not necessary because there were no disputed issues of material fact. On October 23, 2003, the assigned ALJ issued a ruling modifying the schedule at the request of SCOPE, and seeking comment on a draft set of conditions attached to the ruling. Sierra Club jointly with Santa Clara (hereinafter jointly referred to as "Friends") and SCOPE filed opening briefs according to the modified schedule. In their comments, the parties generally supported the draft conditions, but the applicants sought several changes and protestants requested additional more stringent conditions. All three protestants filed a joint reply brief. The applicants filed opening and reply briefs.

In its application for rehearing of the Decision, timely filed on March 1, 2004, SCOPE alleges that: (1) the Commission violated Public Utilities Code section 854

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and Valencia Water Company.

by failing to hear and consider SCOPE's fact evidence about adverse consequences of the acquisition and by violating the ratepayers' right to a fair hearing; (2) the Commission denied SCOPE's and other protestants' due process rights by -denying formal written requests for an evidentiary hearing, enforcing an abbreviated briefing schedule, and not allowing protestants a meaningful opportunity to comment; (3) the Decision failed to comply with Public Utilities Code section 854(d); (4) the Commission's characterization of the Lennar/LNR's acquisition of control was factually erroneous; and (5) the Decision erred in allowing Valencia to engage in unregulated activities.<sup>2</sup> Friends allege in their application for rehearing of the Decision also timely filed on March 1, 2004 that: (1) the Commission committed legal error by ruling that public and evidentiary hearings were not required; (2) the Commission's failure to rely on Public Utilities code section 854(b) and 854(c) was arbitrary; (3) the Commission denied protestants' due process rights by shortening the briefing schedule and changing the affiliated interest transaction rules; (4) the Commission's Decision contained misleading information about protestants; and (5) the Commission violated Public Utilities Code section 854(d) by failing to consider proposed alternatives to the transfer.<sup>3</sup> All three applicants for rehearing are hereinafter referred to as "protestants."

Lennar, LNR, LNR NWHL Holdings Inc., NWHL Investment LLC, NWHL GP LLC, Newhall, and Valencia (applicants) jointly filed a timely response to the applications for rehearing on March 16, 2004, which has been considered.

### III. DISCUSSION

Public Utilities Code section 854<sup>4</sup> applies to the transfer of ownership and control that is at issue in this application for rehearing. Section 854 requires in relevant

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<sup>2</sup> SCOPE states in its application for rehearing that it joins in the application for rehearing filed by Friends. (SCOPE App. for Rehearing, p. 26.)

<sup>3</sup> Friends states in its application for rehearing that it joins in arguments submitted SCOPE's application for rehearing. (Friends App. for Rehearing, p. 9.)

<sup>4</sup> All citations are to the Public Utilities Code unless otherwise noted.

part, Commission approval before a public utility may sell the whole or any part of its system. Section 852 requires a public utility to secure Commission authority before acquiring any capital stock of any other public utility. Section 854(a) requires Commission authorization before any person or corporation may acquire or merge with any public utility. Section 854(d) requires us to consider reasonable “options” to the applicants’ proposal recommended by other parties, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal. We have long interpreted the above code sections to prohibit acquisitions, mergers, and transfers of control unless we find the proposed transaction to be in the public interest.

## **A. SCOPE’S AND FRIENDS’ PROCEDURAL CHALLENGES TO THE DECISION**

### **1. Lack of Evidentiary Hearings**

Protestants claim that the ruling that public and evidentiary hearings were not required because there were no disputed issues of material fact was erroneous. (SCOPE App. for Rehearing, p. 6; *see also* D.04-01-051, *mimeo*, p. 12.) Friends and SCOPE further contend that there are areas of dispute in this proceeding, principally, that the water supply is over-stated in a manner to favor Newhall Land and that “the spread of ammonium perchlorate pollution has continued westerly and Valencia can no longer deny the loss of production capability . . . .” (Friends App. for Rehearing.)

To support this assertion, Friends points to the fact that D.01-11-048, the Commission decision approving Valencia’s 1999 water management program and advice letters 88 and 90 for permission to expand its service area, was reversed in part by D.03-10-063. (Friends App. for Rehearing, p. 2.) This assertion is incorrect. D.03-10-063 stayed D.01-11-048, in part, insofar as it approved the West Creek EIR pending recertification of the West Creek EIR by the lead agency, Los Angeles County, and resubmission of the West Creek EIR to us, and otherwise denied rehearing of D.03-06-033.

Moreover, protestants have mischaracterized our actions in this proceeding. Parties requesting a hearing are required to demonstrate that disputed issues of material fact exist between the parties. (*See* D.00-03-020, *mimeo*, pp. 6-11.) In the Joint Assigned Commissioner and ALJ's Ruling Retaining Determination that Hearings are not Necessary and Setting Briefing Schedule (Joint Ruling) issued on October 3, 2002, Commission Kennedy and ALJ Bushey observed that "the facts underlying the effects on ratepayers of the proposed transaction do not appear subject to dispute in the record." (Joint Ruling, October 3, 2003, p. 3.) They therefore concluded that, while legal and policy issues could be addressed in written argument, "there are no disputed issues of material fact to resolve in evidentiary hearings." (Joint Ruling, October 3, 2003, p. 3.)<sup>5</sup> The factual matters to which protestants refer, including water supply estimates, the incidence and spread of perchlorate contamination, and the "Floridian" habits of decision-making by LNR and Lennar, are not relevant to our concern in this proceeding about "the effects on ratepayers of the proposed transaction" or to other issues that we considered relevant to the determination of whether the transfer is in the public interest. (*See* Friends App. for Rehearing, p. 2; SCOPE App. for Rehearing, pp. 4, 5, 8-21.) The issues that are relevant to this proceeding include facts regarding the acquiring firms, particularly their history, business lines, and financial resources. These are not issues that protestants raised in their briefs; therefore, there were no disputed issues of material fact, and we did not err in holding that there should not be public hearings.

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<sup>5</sup> The Joint Ruling provides, in full: "Here, the applicants seek Commission authorization pursuant to §§ 851 and 854 to assume indirect control of Valencia. The Commission has previously determined that such approval will only be granted where the proposed transaction is in the public interest. The Commission may use the standards set out in §854(b) and (c) to "inform" its public interest determination. (D.02-12-068, *mimeo*, p. 9.) Here, as set out below, the facts underlying the effects on ratepayers of the proposed transaction do not appear subject to dispute in the record. The basic facts of Valencia's operation and water supply were recently addressed in docket A.02-050-013, Valencia's recent general rate case, and in the Commission's review of Valencia's Water Program, D.01-11-048. The basic facts regarding the acquiring firms – history, business lines, financial resources – are not disputed. Consequently, there are no disputed issues of material fact to resolve in evidentiary hearings. Policy and legal issues can be addressed with written argument." (Joint Ruling, p. 3.)

Protestants cite *California Trucking Assoc. v. Public Utils. Comm.* (1977) 19 Cal. 3d 240, in support of their argument that the Commission erred in determining that hearings were not necessary. (Friends App. for Rehearing, p. 3; SCOPE App. for Rehearing, pp. 3-4.) They allege that “[w]ritten briefs are not a substitute for evidentiary hearings.” (Friends App. for Rehearing, p. 3.) In the underlying Commission proceeding at issue in *California Trucking*, the Commission opened a section 1708 proceeding, but did not permit a party to have a hearing on the matter under consideration in the proceeding. (19 Cal. 3d, p. 242.) The California Supreme Court held that section 1708 requires a hearing at which parties are entitled to be heard and introduce evidence. (*Id.* at 244-245.) Clearly, *California Trucking* is not applicable to this proceeding because this proceeding was brought pursuant to section 854, not section 1708.

For the aforementioned reasons, protestants’ argument that we committed legal error by not holding hearings in this proceeding lacks merit.

## **2. Abbreviated Briefing Schedule**

SCOPE and Friends contend that the Commission erred in enforcing the expedited briefing schedule set by the assigned ALJ. (SCOPE App. for Rehearing, pp. 2, 6; Friends App. for Rehearing, p. 4.) Protestants claim that the shortened briefing schedule allowing only four days for reply briefs did not provide adequate time for public interest groups to gather and present evidence, resulting in deprivation of due process under the California and United States Constitutions. (SCOPE App. for Rehearing, p. 2; Friends App. For Rehearing, pp. 4, 6; *see* Article I, § 7(a) of the California Constitution.) SCOPE further alleges that our decision not to hold evidentiary hearings also constitutes a “denial of the public’s right to petition the government for redress of grievances under Article 1 [sic] Section 3 of the California Constitution. (SCOPE App. for Rehearing, p. 6.)

These arguments lack merit. A.03-08-014 was filed on August 18, 2003. We categorized the proceeding as ratesetting, and determined that hearings were not necessary on September 4, 2003. Sierra Club, Santa Clara, and SCOPE each filed a protest of the application and a request for evidentiary hearings. In the Assigned

Commissioner's and ALJ's Joint Ruling of October 3, 2003, the denial of a hearing was affirmed, and a briefing schedule was set forth for the parties: opening briefs were due no later than October 22, 2003, and reply briefs were due by October 29, 2003. The applicants timely filed their brief on October 21, 2003. However, protestants missed the October 22 deadline and, after that date, protestants requested a modification of the briefing schedule because they claimed that they unexpectedly required additional time to confer with an attorney.<sup>6</sup> We granted protestants' request in the ALJ Ruling Modifying Schedule and Seeking Comment on Proposed Conditions issued on October 23, 2003. Per protestants' request, opening briefs were delayed until October 27, 2003, and reply briefs for all parties were rescheduled to October 31, 2003. SCOPE and Friends filed opening briefs on October 27, 2003. All parties filed replies on October 31, 2003.

Considering these facts, protestants cannot now, in good faith, claim that we committed legal error in allowing only four days for reply briefs. Protestants were served A.03-08-014 on August 18, 2003, putting them on notice of the issues raised in the application. We categorized the proceeding as ratesetting on September 4, 2003 and, at that point, protestants were aware of the scope of the proceeding. On October 3, 2003, the Joint Ruling setting forth the briefing schedule was issued, and parties had nineteen days to file their opening briefs. Reply briefs were due on October 29, 2003, giving all parties seven days to reply. Protestants requested the briefing schedule that we adopted, and they only requested an extended briefing schedule after all parties had filed their reply briefs on October 31, 2003. Protestants claimed that they needed this extension in order to have "additional time to submit proof of any fact that the Commission might require . . . [and to] provide supporting evidence for statements made by protestants in their reply brief." (Sierra Club's, Santa Clara's and SCOPE's Motion to Extend Briefing Schedule, October 31, 2003.) Because we gave parties sufficient time to file their

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<sup>6</sup>The ALJ's Ruling modifying the briefing schedule (dated October 23, 2003) states that only SCOPE requested a modification of the briefing schedule. However, both the Decision and SCOPE's application for rehearing, indicate that the briefing schedule was extended at the request of all of the protestants. (D.04-01-051, *mimeo*, p. 3; SCOPE App. for Rehearing, p. 5.)

opening and reply briefs, we denied protestants' second request for an extension. In sum, protestants requested the briefing schedule that we implemented. For protestants to now argue that we denied them due process by "shortening" the briefing schedule is misleading.

Protestants' argument that we violated their right to petition for grievances under the California Constitution is also unfounded. Article I, section 3 states: "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." (Cal. Const., Art. I, § 3.) We have not interfered with protestants' right to petition government for redress of grievances. We simply did not grant the relief that protestants requested. This does not amount to a violation of protestants' constitutional rights.

For the aforementioned reasons, protestants' arguments lack merit.

### **3. Finding of Fact 3 is Misleading**

Protestants allege that Finding of Fact number three in the Decision incorrectly states that they supported the conditions attached to the Decision. (Friends App. for Rehearing, p. 5.) Protestants claim that although they stated in their briefs and their joint reply briefs that "they supported the conditions proposed by the [ALJ] . . . [t]hose conditions, particularly as they pertain to affiliate transactions[,] were substantially changed in the final decision." (Friends App. for Rehearing, p. 5.) Friends and SCOPE claim that they never supported the affiliated transaction rules as promulgated in the Decision. (Friends App. for Rehearing, p. 5.)

The Decision does not state that protestants approved the final revisions to the conditions attached to the Decision. Rather, the Decision states that protestants supported the conditions proposed by the assigned ALJ.<sup>7</sup> Therefore, we committed no

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<sup>7</sup> Specifically, the Decision provides: "All parties commented on the conditions to be imposed on this transaction. The protestants supported the conditions, and urged more stringent additions. The applicants requested minor changes, and revisions to the unregulated operations rule." (D.04-01-051, *mimeo*, p. 13, Finding of Fact 3.)

legal error because the protestants did support the conditions proposed by the assigned ALJ.

#### **4. Changes to Affiliated Interest Transaction Rules**

Protestants also object to the changes that the Decision made in the affiliated interest transaction rules (“affiliated rules”) that the assigned ALJ had earlier proposed, charging that this change “will most certainly have the effect of privatizing certain aspects of Valencia Water Company now preformed [sic] with PUC regulation and public oversight.” (Friends App. for Rehearing, p. 5; SCOPE App. for Rehearing, p. 21.) Protestants claim that “[t]his change in the proposed conditions was made without notice to the public, without public hearings, without rate payer hearings, and without the opportunity of parties to the action to brief the issue.” (Friends App. for Rehearing, p. 6.) Protestants further allege that “[t]he Commission did not indicate that it would consider such affiliate regulation proposals during the briefing . . . [and] [i]nstead, the Commission adopted, without due process, the affiliate transaction rules proposed by the applicant to benefit the applicant.” (Friends App. for Rehearing, p. 6.)

Again, protestants’ argument lacks merit. The parties were originally requested to comment on the affiliated rules in the Assigned ALJ’s Ruling Modifying Schedule and Seeking Comment on Proposed Conditions of October 23, 2003 (ALJ Ruling Modifying Schedule). In that ruling, the assigned ALJ stated, “[a]ttached to this ruling is a draft set of conditions that the Commission might impose, should it approve the proposed transaction . . . [and] [t]he parties may include any comments on these draft conditions in their reply brief.” (ALJ Ruling Modifying Schedule, p. 2.) Protestants commented on the affiliated rules in their joint brief filed on October 31, 2003. The proposed changes to the affiliated rules were also attached to the draft decision (DD) of ALJ Bushey, which was mailed for comment on November 14, 2003. None of the protestants filed comments or reply comments to the DD. The DD was not voted on until January 22, 2004, and during that time prior to our vote on the Decision, protestants did not raise any further concerns to the changes made in the affiliated rules. Therefore, it is clear that we did not deny due process to protestants since they had ample opportunity to

comment on the changes to the proposed affiliated rules and failed to do so. For these reasons, protestants' argument lacks merit.

**B. PROTESTANTS' STATUTORY CHALLENGES  
TO D.04-01-051**

**1. Section 854(b) and (c)**

Friends and SCOPE contend that the Decision holds that the Commission may, but is not obligated to, rely on section 854(b) and (c) to determine the standard of public interest since the acquisition at issue is of a water company. (Friends App. for Rehearing, pp. 2, 4; SCOPE App. for Rehearing, p. 7.) Protestants argue that because the Commission did not state why it did not rely on section 854(b) and (c), they are led "to the conclusion that this non-reliance on this section was arbitrary and avoided in order to sanctify the ALJ's decision to define issues of disputed fact in a way that would rationalize the denial of public and evidentiary hearings . . . ." <sup>8</sup> (Friends App. for Rehearing, p. 4.)

Protestants' argument fails for two reasons. First, the Decision did explain why it was not using the standards set forth in sections 854(b) and (c) to "inform" its public interest determination. (D.04-01-051, p. 4.) We stated in the Decision that "[d]ue to the nature of the proposed transaction, which is an indirect change of control at the holding company level where the holding company has little, if any, day-to-day involvement with the public utility, the primary focus of our evaluation will be the transaction's effects on ratepayers." (D.04-01-051, *mimeo*, p. 4.)

Second, as Friends admits in its application for rehearing, we are not required to rely on sections 854(b) and (c) to inform our public interest determination. Both of these sections state that "[b]efore authorizing the merger, acquisition, or control

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<sup>8</sup> Friends ties in this argument with another argument discussed in this order: that the conclusion that hearings were not necessary "was erroneously derived by re-defining matters of material dispute to exclude the issues brought to the Commission by the protestants, and arbitrarily choosing *not* to employ the standards for public interest determination found in Sec. 854(b) and (c), and then finding that since there were no matters in dispute, the Commission could rely on D00-03-020 [sic] to deny evidentiary  
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of any electric, gas or telephone utility organized and doing business in this state . . . the commission shall find that the proposal . . .” meets certain public interest determinations. The acquisition at issue is the acquisition of a water company, and therefore, we are not required to apply sections 854(b) and (c). The fact that other Commission decisions have elected to rely on the public interest standards in these sections is irrelevant to the facts before us. There is nothing in the Public Utility Code that requires, or even suggests, that we rely on particular public interest standards in deciding whether to approve an acquisition or a change of control of a water corporation. Furthermore, the fact that we elected not to rely on the public interest standards set forth in section 854(b) and (c), as the Commission is permitted to do, does not signify that our determination was “arbitrary.” For these reasons, protestants failed to demonstrate legal error.

## **2. Public Utilities Code section 854(d)**

Friends and SCOPE contend that we failed to comply with section 854(d), which states: “[w]hen reviewing a merger, acquisition, or control proposal, the commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether the comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal.” (Pub. Util. Code, § 854(d); *see also* Friends App. for Rehearing, p. 6; SCOPE App. for Rehearing, pp. 2, 20.) Unlike sections 854(b) and (c), section 854(d) is not limited to electric, gas, or telephone utilities. Therefore, section 854(d) appears to apply to this proceeding. SCOPE further contends that section 854(d) requires us to afford protestants an evidentiary hearing. (SCOPE App. for Rehearing, p. 4.)

Protestants’ argument lacks merit. The only “alternative” to the transfer of control requested in A.03-08-015 that protestants provided us in this proceeding was to deny the application. (*See* SCOPE Opening Brief of October 27, 2003, p. 4 [stating that “

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hearings.” (Friends App. for Rehearing, p. 2.)

. . . if the PUC does not outright deny the Lennar Application, the PUC should adopt all of Judge Bushey’s proposed conditions . . .”]; protestants’ reply brief of October 31, 2003, p. 4 [stating that “Protestants continue to request that the PUC deny this application. However, should we consider approval, we request that all the conditions proposed by the ALJ be included in the approval . . .”]; *see also* Friends Opening Brief, dated October 27, 2003, p. 9.) The Decision considered this option to the proposed acquisition, as required by section 854(d), and we found that protestants did not provide a compelling reason to deny the application. Protestants also suggested additional conditions for the proposed transfer of control if we decided to approve A.03-08-014. We considered protestants’ additional conditions, and found that they were too stringent, or in one case, constituted “unprecedented intrusions into utility management.” (D.04-01-051, *mimeo*, pp. 2, 8.)

No other reasonable alternative to the proposed transfer of ownership and control were presented to us during this proceeding. Therefore, the “reasonable alternatives” provision in section 854(d) had been satisfied. Nothing more is required of us; we are not required to agree with the proposed alternative; nor are we obliged to hold evidentiary hearings in order to fulfill our obligation to “consider reasonable options to the proposal recommended by other parties . . . .” (Pub. Util. Code, § 854(d).) For these reasons, protestants’ argument lacks merit. However, in order to clarify the Decision, we modify D.04-01-051 to reflect that the Commission considered reasonable alternatives to the proposed application.

### **3. Exemption from section 1061(b)(3) of the CEQA Guidelines**

Friends also argues that we incorrectly concluded that “the requested transfer of control is a ‘project’ that qualifies for an exemption from CEQA pursuant to § 1061(b)(3) of the CEQA guidelines.” (D.04-01-051, *mimeo*, p. 12; Friends App. for Rehearing, pp. 6-7.) Friends further contends that our purpose in finding an exemption from CEQA is that we wished to avoid preparing a Preliminary Environmental Assessment (PEA). (Friends App. for Rehearing, p. 7.) Friends also claims that the

changed affiliated rules constitute a “project” under CEQA because “un-regulated activities could include projects such as a bottled water plant or other operation that would increase pumping.” (Friends App. for Rehearing, p. 8.)

Section 1061(b)(3) of the CEQA Guidelines states that “[t]he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is not possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” (CEQA Guidelines, § 15061(b)(3).)

The Commission was correct in finding that applicants’ request for transfer of control is a “project” that qualifies for an exemption from CEQA pursuant to section 1061(b)(3) of the CEQA Guidelines. The transfer of control at issue in this proceeding will not have a “significant effect on the environment,” and therefore, it is exempt from CEQA. The environmental concerns raised by Friends were not appropriate in this proceeding because they did not relate to the proposed transfer of control of Valencia. As was noted in the Joint Ruling, the “basic facts of Valencia’s operation and water supply were recently addressed in docket A.02-05-013<sup>9</sup> . . . [t]he basic facts regarding the acquiring firms – history, business financial resources – are not disputed” in this proceeding. (Joint Ruling, p. 3.) As discussed above, because the issues raised by Friends are not relevant in this proceeding, the Commission did not commit legal error by not further considering them as part of the transfer application.

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<sup>9</sup> Protestants contend that the environmental issues raised in A.02-05-013 have yet to be resolved due to the Second District Court of Appeal’s invalidation of one of the environmental impact reports (EIRS) which was relied in approving Valencia’s project in D.01-11-048 in *SCOPE v. County of Los Angeles* (2003) 106 Cal. App. 4<sup>th</sup> 715. In D.03-10-063, the Commission stayed D.01-11-048 insofar as it approved the West Creek EIR pending recertification of the West Creek EIR by the lead agency, Los Angeles County and resubmission of the West Creek EIR to the Commission. Any concerns regarding perchlorate contamination, overstatement of water resources, etc., pertaining to the West Creek EIR should be addressed to Los Angeles County during the recertification process at this time. The three other EIRs at issue in D.01-11-048 were not challenged in court and are valid.

Moreover, Friends provided no evidence whatsoever to support its argument that the changed affiliated rules constitute a “project” under CEQA because “un-regulated activities could include projects such as a bottled water plant or other operation that would increase pumping.” This argument constitutes no more than mere speculation.

### **C. OTHER ARGUMENTS RAISED BY SCOPE**

#### **1. SCOPE’s Argument Concerning the Commission’s Characterization of the Acquisition**

SCOPE claims that our characterization of Lennar/LNR’s acquisition of control as routine is factually erroneous. (SCOPE App. for Rehearing, p. 9.) SCOPE bases this argument on comments made by Commissioner Kennedy that appear in the transcript of the Commission’s January 22, 2004 meeting. SCOPE’s spends several pages in its application for rehearing on its argument that Commissioner Kennedy’s characterization of the acquisition at issue in this proceeding as “routine.” (*See* SCOPE App. for Rehearing, pp. 9-15.)

SCOPE’s argument lacks merit. We only speak through our written decisions; the oral comments of a single commissioner may not be considered the position of the Commission. For this reason, SCOPE’s argument fails.

#### **2. SCOPE’s Argument Concerning Unregulated Activities and Contracts With Affiliates**

SCOPE contends that the Decision “appears to permit Valencia to engage in unregulated activities and provides custom-tailored Affiliated Interest Transaction Rules, without an evidentiary hearing on just what those unregulated activities would be, or what services affiliates would be providing to Valencia chargeable as costs to the rate payers.” (SCOPE App. for Rehearing, p. 21.) SCOPE bases its argument on comments made by Commissioner Lynch during the January 22, 2004 Commission meeting. (SCOPE App. for Rehearing, pp. 21-25.)

As previously discussed, we only speak through our written decisions. Therefore, SCOPE's argument lacks merit because it is not based on a Commission decision, but rather on comments made by a single commissioner at a public meeting.

#### **IV. CONCLUSION**

We have carefully considered all of the arguments presented by SCOPE and Friends and are of the opinion that good cause for rehearing has not been shown. However, for the reasons previously discussed, we modify D.04-01-051 to state that the Commission considered reasonable alternatives to the proposed application pursuant to section 854(d).

For the reasons stated above, we modify the Decision and deny rehearing.

Therefore **IT IS ORDERED** that:

1. Rehearing is denied.
2. D.04-01-051 is modified to add the following Finding of Fact and

Conclusion of Law:

##### **Finding of Fact**

12. Protestants presented the Commission with reasonable alternatives to the proposed transfer of control pursuant to section 854(d).

##### **Conclusion of Law**

13. The Commission considered reasonable alternatives to the proposed application pursuant to section 854(d).

3. Application 03-08-014 is closed.

This order is effective today.

Dated August 19, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

/s/ I dissent  
CARL W. WOOD  
Commissioner

/s/ I reserve the right to file a dissent  
LORETTA M. LYNCH  
Commissioner