



REGION 9

SAN FRANCISCO, CA 94105

November 21, 2024

Warren MacGillivray
Panoche Energy Center, LLC
43883 West Panoche Road
Firebaugh, CA 93622

Re: Notice of 120-day Stay of UIC Permit Conditions - UIC Permit No. R9UIC-CA1-FY17-2R

Dear Mr. MacGillivray,

On June 23, 2023, Panoche Energy Center, LLC (“PEC”) filed a Petition with the U.S. Court of Appeals for the Ninth Circuit requesting review of Underground Injection Control (“UIC”) Class I Permit No. R9UIC-CA1-FY17-2R (the “Permit”). The Petition sought judicial review of the ambient monitoring requirements in Part II.E.2 of the Permit. Concurrent with the Petition, PEC filed a motion for a stay of the contested permit conditions. On July 24, 2023, the Ninth Circuit granted Petitioner’s request for a stay of the challenged permit condition “pending review of this petition.”¹ On June 18, 2024, the Ninth Circuit denied the Petition. The Court issued its formal mandate on October 15, 2024, thereby lifting the stay.

On October 22, 2024, I transmitted a letter to you acknowledging PEC’s inability to access the monitoring well site and the need for timely resolution of an alternative approach to ensure protection of underground sources of drinking water (USDW). On November 15, 2024, PEC transmitted an updated proposal to EPA including additional data collection, enhanced modeling, and reduction in the maximum allowable injection volume, in addition to other conditions PEC was willing to undertake as an alternative to the monitoring requirements in Part II.E.2 of the Permit.

Consequently, while EPA and PEC finalize pending discussions and details that will result in amended permit conditions, pursuant to 5 U.S.C. § 705 and 40 CFR § 124.15(b), EPA hereby grants PEC a 120-day stay of permit conditions in Parts II.E.2, II.E.2.5.a.iv, II.E.5.a.v., and II.E.6.d. The stay is effective immediately; all other provisions of the Permit, including the uncontested conditions, remain fully in effect and enforceable.²

It is EPA’s expectation that both parties will continue to work diligently and cooperatively towards a permit modification which may be subject to public notice per 40 CFR § 144.39 and § 124.10.

¹ On June 29, 2023, in response to a request from PEC, EPA administratively stayed Parts II.E.2, II.E.2.5.a.iv, II.E.5.a.v., and II.E.6.d of the Permit pending judicial review by the Ninth Circuit.

² See Permit Issuer Notice of Stay, dated Nov. 7, 2022 (EAB Dkt. #2) (citing 40 CFR § 124.16(a)(2)(i) and (ii)).

Should you have any questions, please contact Desean Garnett in the Office of Regional Counsel at (415) 972-3046 or garnett.desean@epa.gov.

Sincerely,

/s/ November 21, 2024

Tomas Torres
Director, Water Division