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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

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| In the Matter of: | **DOCKET NO. 09-AFC-6C** |
| Petition To Amend the **BLYTHE SOLAR POWER PROJECT** | **NEXTERA BLYTHE SOLAR ENERGY CENTER LLC'S INITIAL COMMENTS ON THE STAFF ASSESSMENT, PARTS A AND B** |

NextEra Blythe Solar Energy Center, LLC (NextEra Blythe Solar) hereby submits its initial comments on Parts A and B of the Staff Assessment (SA) published on September 27, 2013 and October 11, 2013, respectively. The SA represents Staff's analysis of NextEra Blythe Solar's Petition To Amend (PTA) the Blythe Solar Power Project (BSPP). In preparation for the upcoming Staff Assessment Workshop currently scheduled for November 12, 2013, NextEra Blythe Solar is filing these Initial Comments on the SA ahead of the Workshop so that the parties can be the more productive in proceeding to evidentiary hearing on the PTA.

The vast majority of our comments relate to:

- Staff's use of outdated Conditions of Certification and analyses from the Revised Staff Assessment prepared for the BSPP instead of those adopted by the full Commission in its Final Decision;
- Staff's modifying Conditions of Certification in ways that are completely unrelated to the PTA.

Rather than produce a document that highlighted how the ***Final Decision*** should be modified pursuant to Section 1769 of the Commission Regulations, Staff produced the SA which was an attempt at updating the entire Revised Staff Assessment (RSA) for the originally Approved Project. Section 1769 and the California Environmental Quality Act (CEQA) Guidelines clearly establish that the scope of the review that should have been conducted by Staff should be limited to:

- Change in assumptions, findings, analyses and Conditions of Certification ***caused by*** the changes to the project outlined in the PTA; or
- Changes in laws, ordinances, regulations or standards (LORS) since the time of the Final Decision; or
- Scientific data that was not available at the time of the Final Decision and is relevant to the BSPP.

In many cases, Staff appears to be using what should be a narrowly-focused amendment process (for a smaller, less impactful project) to effect a wholesale update of Conditions of Certification completely unrelated to the project changes described in the PTA, a change in LORS, or new scientific evidence. In some technical areas, most notably Soil & Water Resources, Staff included many findings that were included in its RSA but were subsequently either modified by Staff or by the Commission in the Final Decision. Specifically, the Commission found that the BSPP's water use would not require an entitlement of Colorado River Water as it would be pumping groundwater governed by California Law.

NextEra Blythe Solar believes that Staff's "updating" of the RSA has led to significant confusion in the public as there have been at least two public commenters re-opening the issue of use of the groundwater beneath the site, even though the Modified Project will use ***significantly less water*** than what was authorized by the Final Decision. The following technical areas contained in the SA were based on old Conditions of Certification that were subsequently revised in the Final Decision.

- Air Quality
- Noise and Vibration
- Transmission Line Safety and Nuisance
- Waste Management
- Soil and Water Resources

For these reasons, we have prepared these Comments on the SA incorporating the Conditions of Certification and Findings of the Final Decision where Staff did not use the Final Decision as the basis for its analysis.

After the Workshop on November 12, 2013, we will prepare our PreHearing Statement incorporating the results of the Workshop so that the Committee will have a direct "roadmap" for what changes are necessary to amend the Final Decision to authorize construction and operation of the Modified Project.

## COMPLIANCE

Staff has completely updated this section. The BSPP has already begun construction and could continue with construction of the Approved Project. Staff provides no analysis or justification for why any of the updates of this section are related to the PTA, a change in LORS, or new scientific evidence that was unavailable to Staff at the time of the Final

Decision. Therefore, NextEra Blythe Solar urges the Commission to not amend any definitions or conditions contained in the Compliance section of the Final Decision.

However, if the Committee believes that Staff is authorized to make these wholesale changes, we request modification to the definitions or conditions to specifically authorize the installation of desert tortoise/perimeter fencing prior to desert tortoise and other wildlife clearance activities which must take place ***prior to site mobilization and construction***. These modifications may take the form of specific language in the conditions to allow limited notices to proceed for items such as desert tortoise/perimeter fencing. NextEra Blythe Solar will work with Staff at the upcoming Workshop to resolve this critical issue.

## AIR QUALITY

Staff did not use the Conditions of Certification from the Final Decision as a basis for its proposed modifications contained in the SA. Additionally, Staff "updated" Condition of Certification **AQ-SC5**. Staff has not provided justification that the new requirements contained on Condition of Certification **AQ-SC5** are related to the PTA, change in LORS or new scientific evidence that was not available at the time of the Final Decision and is relevant to the Modified Project. In fact, the amount of construction emissions related to the Modified Project is significantly less than that authorized for the Approved Project. NextEra Blythe Solar requests the Committee reject the more stringent requirements of Condition of Certification **AQ-SC5** as unnecessary since construction emissions for the Modified Project are less than those of the Approved Project.

In addition, we provide the following minor recommended change to Condition of Certification **AQ-SC-6**.

> **AQ-SC6** The project owner, when obtaining dedicated on-road or off-road vehicles for ~~mirror~~ **panel** washing activities and other facility maintenance activities, shall only obtain vehicles that meet California on-road vehicle emission standards or appropriate U.S.EPA/California off-road engine emission standards for the latest model year available when obtained.

Staff correctly identified in the SA, that Conditions of Certification **AQ-SC8** and **AQ-1** through **AQ-60** should be deleted because the Modified Project will not have any stationary emission sources requiring a Determination of Compliance, Authority to Construction or Permit To Operate from the Mojave Air Quality Management District.

All other Air Quality Conditions of Certification of the Final Decision should remain unchanged.

## TRANSMISSION LINE SAFETY AND NUISANCE

The PTA does not change the location or design of the Approved Generation Tie-Line. Staff used the Conditions of Certification from the RSA instead of from the Final Decision. NextEra Blythe Solar believes that no changes to the analysis, Findings or Conditions of Certification relating to transmission line safety and nuisance contained in the Final Decision are required as a result of the PTA.

## WASTE MANAGEMENT

Staff used outdated Conditions of Certification from its RSA rather than the Conditions of Certification in the Final Decision. In addition, Staff made modifications to Condition of Certification **WASTE-1** requiring further evaluation of unexploded ordnance, which is not warranted by the PTA, a change in LORS, or new scientific evidence. In fact the Modified Project will significantly reduce the area and amount of grading across the site.

We do agree with Staff that Condition of Certification **WASTE-8** should be deleted since the condition addressed the use of Heat Transfer Fluid (Therminol) which has been eliminated by the PTA.

Therefore, we request that the Commission leave all Waste Management Conditions of Certification unchanged in the Final Decision, with the exception of the complete deletion of Condition of Certification **WASTE-8**.

## NOISE

Staff did not use the Conditions of Certification from the Final Decision in its SA. In its Petition, NextEra Blythe Solar requested that Conditions of Certification **NOISE-4, NOISE-5** and **NOISE-7** be deleted as all of them pertained to operations of the power block and steam turbine which have been eliminated by the PTA. Staff agreed in the SA.

Therefore, the Commission need only delete these three Conditions of Certification of the Final Decision for the PTA.

## SOIL AND WATER RESOURCES

### *Groundwater Use*

Staff revised the previous RSA prepared for the Approved Project. The RSA contained significant factual and legal errors that were corrected through the sharing of testimony and workshops prior to evidentiary hearing. That substantial work resulted in the Final Decision appropriately finding that the use of groundwater for the Approved Project would not require an allocation or entitlement of Colorado River water. This error by Staff has resulted in a comment letter from the Colorado River Board and the Metropolitan Water District. These are the same comments submitted on the previous project and other projects and which the Commission has soundly rejected.

The Modified Project reduces groundwater use substantially, yet in its PTA NextEra Blythe Solar accepted the Conditions of Certification contained in the Final Decision. For these reasons, we request the Committee ignore the SA's analysis, conditions of certification and conclusions with respect to ground water use. The analysis and findings contained in the Final Decision remain unchanged except for the acknowledgement that water use for the Modified Project has been reduced from 4,100 AF over 69 months to 1,200 AF over 48 months for construction and from 600 AFY to 40 AFY for operations. Therefore, we recommend the following modifications to the Conditions of Certification **SOIL&WATER-4**

> **SOIL&WATER-4** The proposed project's use of groundwater during construction shall not exceed ~~4,100~~ **1,200** af during the ~~69~~ **48** months of construction and an annual average of ~~600~~ **40** afy during operation. Water quality used for project construction and operation will be reported in accordance with Condition of Certification **SOIL&WATER-18** as applicable to ensure compliance with this Condition.

All other Conditions of Certification in the Final Decision pertaining to groundwater use should remain unchanged from the Final Decision except for a modification to the Verification to Condition of Certification **SOIL&WATER-16** which provides a timeline of 30 days "after certification". The SA corrected this reference in a manner that is acceptable to NextEra Blythe Solar. The correction is provided here for the Committee's uses.

> **Verification: At least** ~~Within 30~~ **90** days ~~following certification of the proposed Project~~ **prior to initiation of groundwater pumping for grading activities**, the project owner will submit to the CPM for their review and approval a report detailing the results of the modeling effort.

***Drainage***

Staff and NextEra Blythe Solar agree that Conditions of Certification **SOIL&WATER-13** through **SOIL&WATER-15** and **SOIL&WATER-17** should be deleted because the Modified Project has eliminated the large drainage channels and the community water system. Staff modified Conditions of Certification **SOIL&WATER-11** and **SOIL&WATER-12** in a manner acceptable to NextEra Blythe Solar.

***Proposed Modifications to Condition of Certification SOIL&WATER-19***

In its SA Staff has proposed a new Condition of Certification **SOIL&WATER-19** to address the modified drainage approach as described in the PTA. NextEra Blythe Solar agrees to the concept but offers the following modifications for the Committee's consideration. Specifically,

- Withstand" was modified to "are designed to accommodate." The fencing will actually be designed to swing away or fall over in high flow locations in order to avoid upstream damming, which would actually increase impacts.

- Much of the condition wording was moved to the Verification. The condition calls for CPM approved methodology and assumptions, but then goes on to specifically dictate the methodology and assumptions to be utilized. Moving these details to Verification allows for the CPM to better finalize the exact assumptions, details, and methodologies to be used in the reports and plans once the layout and design is finalized.
- Additional edits were made to the detail section to clarify the intention of the condition, such as specifying pylons instead of panels where appropriate and deletion of mirror references.

**SOIL&WATER-19** The project owner shall reduce impacts caused by large storms by ensuring solar panels, drainage washes that will have solar panels, and perimeter fencing ~~withstand~~ **are designed to accommodate** the 100-year storm event, establishing ongoing maintenance and inspection of storm water controls, and implementing a response plan to clean up damage and address ongoing issues.

The project owner shall ensure that the solar panels, drainage washes that will have solar panels are designed and installed to withstand storm water scour that may occur as a result of a 100-year, 24-hour storm event. The analysis of the storm event and resulting pylon stability shall be provided within a Pylon Insertion Depth and Solar Panel Stability Report to be completed by the project owner. This analysis shall incorporate results from site-specific geotechnical stability testing, as well as hydrologic and hydraulic storm water modeling performed by the project owner. The modeling shall be completed using methodology and assumptions approved by the CPM.

The project owner shall also develop a Storm Water Damage Monitoring and Response Plan to evaluate potential impacts from storm water, including damage to drainage washes, perimeter fencing, and solar panel supports that fail due to storm water flow or otherwise break and scatter mirror **panel** debris or other potential pollutants on to the ground surface.

~~The basis for determination of pylon embedment depths shall employ a step-by-step process as identified below and approved by the CPM:~~

~~A. Determination of peak storm water flow within each sub-watershed from a 100-year event:~~

- Use of *Riverside County Flood Control and Water Conservation District Hydrology Manual (Riverside County Manual)* to specify hydrologic parameters to use in calculations; and
- Flo-2D model (or other approved models) must be developed to calculate storm flows from the mountain watersheds upstream of the project site, and flood flows at the project site, based upon hydrologic parameters from Riverside County.

B. Determination of potential total pylon scour depth:

- Potential channel erosion depths must be determined using the calculated design flows, as determined in A above, combined with Flo-2D to model onsite sediment transport.
- Potential local scour must be determined using the calculated design flows, as determined in A above, combined with the Federal Highway Administration (FHWA) equation for local bridge pier scour from the FHWA 2001 report, "Evaluating Scour at Bridges."

C. The results of the scour depth calculations and pylon stability testing must be used to determine the minimum necessary pylon embedment depth within the active channels. In the inactive portions of the alluvial fans that are not subject to channel erosion and local scour, the minimum pylon embedment depths must be based on the results of the pylon stability testing.

D. The results of the calculated peak storm water flows and channel erosion and pylon scour analysis together with the recommended pylon installation depths shall be submitted to the CPM for review and approval sixty (60) days prior to the start of solar panel installation.

The Storm Water Damage Monitoring and Response Plan shall be submitted to the CPM for review and approval and shall include the following:

- Detailed maps showing the installed location of all solar panels within each project phase;
- Description of the method of removing all soil spoils should any be generated;
- Each solar panel should be identified by a unique ID number marked to show initial ground surface at its base, and the depth of the pylon below ground;

- ~~Minimum Depth Stability Threshold to be maintained of pylons to meet long-term stability for applicable wind, water (flowing and static), and debris loading effects;~~
- ~~Above and below ground construction details of a typical installed solar panel;~~
- ~~BMPs to be employed to minimize the potential impact of broken mirrors to soil resources;~~
- ~~Methods and response time of mirror cleanup and measures that may be used to mitigate further impact to soil resources from broken mirror fragments; and~~
- ~~Monitoring, documenting, and restoring the adjacent offsite downstream property when impacted by sedimentation or broken mirror shards.~~

~~A plan to monitor and inspect periodically, before first seasonal and after every storm event:~~

- ~~Security and Tortoise Exclusion Fence: Inspect for damage and buildup of sediment or debris~~
- ~~Solar panels within drainages or subject to drainage overflow or flooding: Inspect for tilting, mirror damage, depth of scour compared to pylon depth below ground and the Minimum Depth Stability Threshold, collapse, and downstream transport.~~
- ~~Drainage washes: Inspect for substantial migration or changes in depth, and transport of broken glass.~~
- ~~Adjacent offsite downstream property: Inspect for changes in the surface texture and quality from sediment buildup, erosion, or broken glass.~~

~~Short-Term Incident-Based Response:~~

- ~~Security and Tortoise Exclusion Fence: repair damage, and remove built-up sediment and debris.~~
- ~~Solar panels: Remove broken glass, damaged structure, and damaged wiring from the ground, and for pylons no longer meeting the Minimum Depth Stability Threshold, either replace/reinforce or remove the panels to avoid exposure to broken glass.~~
- ~~Drainage washes: no short-term response necessary unless changes indicate risk to facility structures.~~

~~Long-Term Design-Based Response:~~

- ~~Propose operation/BMP modifications to address ongoing issues. Include proposed changes to monitoring and response procedures, frequency, or standards.~~
- ~~Replace/reinforce pylons no longer meeting the Minimum Depth Stability Threshold or remove the mirrors to avoid exposure for broken glass.~~
- ~~Propose design modifications to address ongoing issues. This may include construction of active storm water management diversion channels and/or detention ponds.~~

~~Inspection, short-term incident response, and long-term design based response may include activities both inside and outside of the project boundaries. For activities outside of the project boundaries the owner shall ensure all appropriate environmental review and approval has been completed before field activities begin.~~

**Verification:** At least sixty (60) days prior to installation of the first pylon, the project owner shall submit to the CPM a copy of the Pylon Insertion Depth and Solar Panel Stability Report for review and approval prior to construction.

At least sixty (60) days prior to commercial operation, the project owner shall submit to the CPM a copy of the Storm Water Damage Monitoring and Response Plan for review and approval prior to commercial operation. The project owner shall retain a copy of this plan onsite at all times. The project owner shall prepare an annual summary of the number of solar panels that fail due to damage, cause and extent of the damage, and cleanup and mitigation performed for each damaged solar panels. The annual summary shall also report on the effectiveness of the modified drainage washes against storms, including information on the damage and repair work or associated erosion control elements. The project owner shall submit proposed changes or revisions to the Storm Water Damage Monitoring and Response Plan to the CPM for review and approval.

**The basis for determination of pylon embedment depths shall employ a step-by-step process as identified below and approved by the CPM:**

**A. Determination of peak storm water flow within each sub-watershed from a 100-year event:**

- **Use of *Riverside County Flood Control and Water Conservation District Hydrology Manual (Riverside County Manual)* to specify hydrologic parameters to use in calculations; and**
- **Flo-2D model (or other approved models) must be developed to calculate storm flows from the mountain watersheds upstream of the project site, and flood flows at the project site, based upon hydrologic parameters from Riverside County.**

**B. Determination of potential total pylon scour depth:**

- **Potential channel erosion depths must be determined using the calculated design flows, as determined in A above, combined with Flo-2D to model onsite sediment transport.**
- **Potential local scour must be determined using the calculated design flows, as determined in A above, combined with the Federal Highway Administration (FHWA) equation for local bridge pier scour from the FHWA 2001 report, "Evaluating Scour at Bridges."**

**C. The results of the scour depth calculations and pylon stability testing must be used to determine the minimum necessary pylon embedment depth within the active channels. In the inactive portions of the alluvial fans that are not subject to channel erosion and local scour, the minimum pylon embedment depths must be based on the results of the pylon stability testing.**

**D. The results of the calculated peak storm water flows and channel erosion and pylon scour analysis together with the recommended pylon installation depths shall be submitted to the CPM for review and approval sixty (60) days prior to the start of solar panel installation.**

**The Storm Water Damage Monitoring and Response Plan shall be submitted to the CPM for review and approval and shall include the following:**

- **Detailed maps showing the installed location of all solar panels within each project phase;**
- **Description of the method of removing all soil spoils should any be generated;**

- **Each solar panel should be identified by a unique ID number marked to show initial ground surface at its base, and the depth of the pylon below ground;**
- **Minimum Depth Stability Threshold to be maintained of pylons to meet long-term stability for applicable wind, water (flowing and static), and debris loading effects;**
- **Above and below ground construction details of a typical installed solar panel;**
- **BMPs to be employed to minimize the potential impact of broken mirrors to soil resources;**
- **Methods and response time of mirror cleanup and measures that may be used to mitigate further impact to soil resources from broken mirror fragments; and**
- **Monitoring, documenting, and restoring the adjacent offsite downstream property when impacted by sedimentation or broken mirror shards.**

**A plan to monitor and inspect periodically, before first seasonal and after every storm event:**

- **Security and Tortoise Exclusion Fence: Inspect for damage and buildup of sediment or debris**
- **Solar panels within drainages or subject to drainage overflow or flooding: Inspect for tilting, mirror damage, depth of scour compared to pylon depth below ground and the Minimum Depth Stability Threshold, collapse, and downstream transport.**
- **Drainage washes: Inspect for substantial migration or changes in depth, and transport of broken glass.**
- **Adjacent offsite downstream property: Inspect for changes in the surface texture and quality from sediment buildup, erosion, or broken glass.**

**Short-Term Incident-Based Response:**

- **Security and Tortoise Exclusion Fence: repair damage, and remove built-up sediment and debris.**
- **Solar panels: Remove broken glass, damaged structure, and damaged wiring from the ground, and for pylons no longer meeting the Minimum Depth Stability Threshold, either replace/reinforce or remove the panels to avoid exposure to broken glass.**
- **Drainage washes: no short-term response necessary unless changes indicate risk to facility structures.**

**Long-Term Design-Based Response:**

- **Propose operation/BMP modifications to address ongoing issues. Include proposed changes to monitoring and response procedures, frequency, or standards.**
- **Replace/reinforce pylons no longer meeting the Minimum Depth Stability Threshold or remove the mirrors to avoid exposure for broken glass.**
- **Propose design modifications to address ongoing issues. This may include construction of active storm water management diversion channels and/or detention ponds.**

**Inspection, short-term incident response, and long-term design based response may include activities both inside and outside of the project boundaries. For activities outside of the project boundaries the owner shall ensure all appropriate environmental review and approval has been completed before field activities begin.**

## HAZARDOUS MATERIALS

In its PTA, NextEra Blythe Solar requested modifications to Condition of Certification **HAZ-6** and deletion of Condition of Certification **HAZ-4**. Staff deleted Condition of Certification **HAZ-4** and made the modifications to **HAZ-6** with slightly different wording that is acceptable. Therefore, we request the Committee adopt Staff's deletion of Condition of Certification **HAZ-4** and the modifications to Condition of Certification **HAZ-6** as shown in the SA.

## PUBLIC HEALTH

Staff and NextEra Blythe Solar agree that Condition of Certification **PUBLIC HEALTH-1** which required development and implementation of a Cooling Water Management Plan should be deleted because the Modified Project has eliminated the use of a cooling tower.

## FACILITY DESIGN

NextEra Blythe Solar and Staff agree that all references to the 2007 California Building Code (CBC) should be replaced with reference to the 2010 as outlined in the SA. In addition, NextEra Blythe Solar and Staff agree that the Major Structures and Equipment List contained in Condition of Certification **GEN-2** should be modified as shown in the SA. NextEra Blythe Solar and Staff also agree that Conditions of Certification **GEN-5, MECH-1** and **ELEC-1** should be modified as proposed in the SA. Lastly, NextEra Blythe Solar and Staff agree that Condition of Certification **MECH-2** should be deleted since it applies to equipment that has been eliminated from the Modified Project.

## GEOLOGY AND PALEONTOLOGY

NextEra Blythe Solar agrees with Staff's modification to Condition of Certification **GEO-1** as shown in the SA.

However, NextEra Blythe Solar disagrees with any other modifications proposed by Staff in its SA. NextEra Blythe Solar believes that the potential impact to paleontological resources is greatly reduced by the Modified Project and specifically, Condition of Certification **PAL-9** is unwarranted and unduly burdensome.

## TRANSMISSION SYSTEM ENGINEERING

NextEra Blythe Solar requests that since the Modified Project did not modify the gen-tie line the Commission reject Staff's proposed modifications to any of the Transmission System Engineering related Conditions of Certification adopted in the Final Decision.

## SOCIOECONOMICS

Staff added a new Condition of Certification that requires NextEra Blythe Solar to provide a "No Trespassing" letter to the Riverside County Sheriff. Although unrelated to the PTA, NextEra Blythe Solar agrees to the additional Condition of Certification because it does not impose any additional burden on the Modified Project.

## TRAFFIC AND TRANSPORTATION

### *Condition of Certification TRANS-2*

Staff modified Condition of Certification **TRANS-2** adopted by the Commission in the Final Decision by adding a new requirement to the Traffic Control Plan (TCP). Specifically, Staff added the requirement that the Traffic Control Plan be required to ensure that intersections and the I-10 always operate at Level of Service (LOS) C or better when no such requirement existed in the original condition. The construction traffic for the Modified Project has actually decreased over the Approved Project. This LOS C standard is replacing a vehicle-based performance standard.

NextEra Blythe Solar disagrees with replacement of the vehicle based performance standard with Staff's new LOS C performance standard (LOS Standard) for the following reasons. While the project-related vehicle trips are a part of the LOS Standard, project-related trips are not the only component. Even if BSPP adds zero vehicle trips, the LOS may fall below LOS C due to other traffic at the intersection or on I-10. We believe it is unreasonable to impose a LOS Standard that could be impossible to comply with even when the project is not adding any vehicle trips to the intersection. We understand that this modification was made to accommodate a request from CalTrans during the Petition To Amendment proceeding for the Palen Solar Electric Generating System (PSEGS). Staff and CalTrans agreed with removal of this standard during the PSEGS evidentiary

hearings. NextEra Blythe Solar requests that the two references to LOS C Standard be deleted from the Condition of Certification **TRANS-2**.

***Condition of Certification TRANS-13***

Staff added new Condition of Certification **TRANS-13** which is acceptable to NextEra Blythe Solar with minor modifications proposed as follows: The condition verification has a repeat in the last sentence which NextEra Blythe Solar has eliminated from language in the condition. Typically these support structures are galvanized steel, which starts as a dull, non-reflective surface and quickly turns to an even duller finish. The term "burnished" was deleted because burnishing would increase reflectivity. Additionally, the verification was modified to tie the verification timeline to the installation of the supports.

> **TRANS-13** The project owner shall construct all exposed PV panel support structures with matt**e** or **non-reflective** surfaces.
>
> **Verification:** At least 30 days prior to ~~construction~~**installation** of PV panel **supports,** the project owner shall provide documentation showing that matt**e** or ~~burnished~~ **non-reflective** surfaces will be used on all PV panel support structures. ~~matt or burnished surfaces on all PV solar panels.~~

**WORKER SAFETY AND FIRE PROTECTION**

Staff modified several and added two new Conditions of Certification for this section which are acceptable to NextEra Blythe Solar except the modifications to Condition of Certification **WORKER SAFETY-8** and new Condition of Certification **WORKER SAFETY-10**.

Staff concluded in the BSPP SA that the changes to **WORKER SAFETY-8** were needed because "it is clear that the potential for Valley Fever to impact workers during construction and operation of the proposed modified BSPP is very high." (pg 4.14-19) This conclusion is in spite of the fact that Staff found that the Center for Disease Control (CDC) and California Department of Public Health (CDPH) do not consider Riverside County to be a high risk area for Valley Fever. The SA also cited an expert (Dr. MacLean) as saying he "does not feel that construction activities are necessarily the cause of VF outbreaks (pg 4.14-18).

The language inserted into **WORKER SAFETY-8** to require that the difference between upwind and downwind PM10 monitors be less than 50 $\mu g/m^3$ is based on a SCAQMD rule, while BSPP is located in the MDAQMD. The type of monitoring proposed would be impracticable as the construction of the project will occur over a large area, where stationary monitors could not be sited correctly throughout the construction period. Results from standard PM10 monitors would take many days for filters to be analyzed, and hence would not provide timely feedback to determine if high PM10 exposures had occurred (and would not provide any direct indication of Valley Fever exposure).

As noted in the Air Quality discussion above, Staff concluded that the proposed mitigation measures are sufficient to reduce PM10 impacts to be less than significant, and hence this new measure is not needed for air quality protection. Staff recognizes that Modified Project requires significantly less grading than the prior Approved Project. Given the relatively low occurrence of Valley Fever in Riverside County, the burdensome and impractical nature of the proposed PM10 monitoring, and the mitigation measures already required by **AQ-SC3, AQ-SC4**, and current **WORKER SAFETY-8**, the PM10 monitoring should not be required as a new mitigation measure for potential Valley Fever exposure. Specifically, NextEra Blythe Solar requests the Committee reject the changes to Condition of Certification **WORKER SAFETY-8** as they are burdensome and are unrelated to the Modified Project which greatly reduces grading activities.

NextEra Blythe Solar also requests the following modifications to Staff's new Condition of Certification **WORKER SAFETY-10** to reflect a more reasonable reporting requirement.

> **WORKER SAFETY-10** The project owner shall report to the CPM within 24 hours of any incidence of heat **stroke** ~~illness (heat stress, exhaustion, stroke, or prostration)~~ occurring in any worker on-site and shall report to the CPM the incidence of any confirmed case of Valley Fever in any worker on the site within 24 hours of receipt of medical diagnosis.
>
> **Verification:** The project owner shall provide reports of heat-**stroke** ~~related~~ and Valley Fever incidences in any worker on the site via telephone call or e-mail to the CPM within 24 hours of a heat-**stroke** ~~related~~ occurrence or confirmed diagnosis of a case of Valley Fever, and shall include such reports in the Monthly Compliance Report during construction and the Annual Compliance Report during operation.

## VISUAL RESOURCES

In its SA, Staff modified the Visual Resources Conditions of Certification in a manner that is acceptable with NextEra Blythe Solar.

## CULTURAL RESOURCES

Staff deleted Condition of Certification **CUL-19** which requires conformity with the Programmatic Agreement and provides that if cultural activities conflict with the PA, the BLM is the final arbiter. The BLM Project Manager, Frank Mcmenimen, for the BSPP is also the Project Manager for the PSEGS. Mr. Mcmenimen commented at the PSA Workshop and Evidentiary Hearings for the PSEGS that BLM strongly requests that the same Condition of Certification for PSEGS (**CUL-16**) be included in the Final Decision for the PSEGS.

In addition to BLM wanting Condition of Certification **CUL-19** to be retained, NextEra Blythe Solar requests the Committee retain the condition in order to provide a clear arbiter if and when the CEC Cultural Staff and BLM Cultural Staff disagree.

All other modifications to the Cultural Resources Conditions of Certification contained in the SA are acceptable.

## LAND USE

NextEra Blythe Solar agrees with the conclusions and recommendation contained in the SA. There are no existing or new Conditions of Certification proposed by Staff in the SA.

## BIOLOGICAL RESOURCES

Staff made several changes to the Conditions of Certification that were not caused by the PTA. Nevertheless, NextEra Blythe Solar has agreed to these changes where they do not impose additional substantial burdens on construction and operation of the BSPP as Modified. NextEra Blythe Solar accepts the SA proposed modifications to Conditions of Certification **BIO-1** through **BIO-4, , BIO-9** through **BIO-11**, **BIO-23**, and **BIO-25** through **BIO-27**.

### *Condition of Certification BIO-5*

The SA modifications to Condition of Certification **BIO-5** are acceptable to NextEra Blythe Solar with the following modification to the last paragraph of the condition language relating to the presence of the Designated Biologist on site. To clarify that the Designated Biologist need not be present on site during all activities, NextEra Blythe Solar proposes the following modifications.

> If the Designated Biologist is unavailable for direct consultation, the Biological Monitor shall act on behalf of the Designated Biologist. It is expected that the Designated Biologist will **typically** be onsite during site mobilization**,** ~~pre-construction~~**,** and construction activities **or available by phone.**

### *Condition of Certification BIO-6*

Staff modified Condition of Certification **BIO-6** in a manner that is largely acceptable to NextEra Blythe Solar with minor modifications. The first modification is to delete the word “pre-construction” to clarify that the Worker Environmental Awareness Program (WEAP) cannot be implemented during “pre-construction”. The second modification is to Item 6 of the Condition of Certification relating to fire prevention measures from using vehicles on site. Since the purpose of the requirement is to reduce the potential for igniting brush from the hot underside of vehicles, we have proposed modifications to clarify that where brush is cleared and well maintained, fire risk is reduced and vehicles are free to travel in such areas.

**BIO-6** The project owner shall develop and implement a Blythe Project-specific Worker Environmental Awareness Program (WEAP) and shall secure approval for the WEAP from the CPM. The project owner shall also provide them, USFWS and CDFW a copy of all portions of the WEAP relating to desert tortoise and any other federal or state-listed species for review and comment. The WEAP shall be administered to all onsite personnel including surveyors, construction engineers, employees, contractors, contractor's employees, supervisors, inspectors, subcontractors, and delivery personnel. The WEAP shall be implemented during ~~pre-construction~~ site mobilization, construction, commissioning, operation, non-operation**,** and closure. The WEAP shall:

1. Be developed by or in consultation with the Designated Biologist and consist of an on-site or training center presentation in which supporting written material and electronic media, including photographs of protected species, is made available to all participants;
2. Discuss the locations and types of sensitive biological resources on the project site and adjacent areas, and explain the reasons for protecting these resources; provide information to participants that no snakes, reptiles, or other wildlife shall be intentionally harmed (unless posing a reasonable and immediate threat to humans);
3. Place special emphasis on desert tortoise, including pictures and information on physical characteristics, distribution, behavior, ecology, sensitivity to human activities, legal protection, penalties for violations, reporting requirements, and protection measures;
4. Provide pictures of desert tortoise, golden eagles, American badger, desert kit fox, Mojave fringe-toed lizard, and burrowing owl, provide information on sensitivity to human activities, legal protection, reporting requirements, and how to identify construction avoidance zones for these species as marked by flagging, staking, or other means, also describe the protections for bird nests and provide information as described above;
5. Provide overview for staff of potential impacts to reptiles and amphibians from vehicle strikes on all project roads (paved and unpaved) during construction operations, closure phases, reporting requirements, and protection measures;
6. Include a discussion of fire prevention measures to be implemented by workers during project activities; request workers to: a) dispose of cigarettes and cigars appropriately and not leave them on the ground or buried, b) keep vehicles on graveled, **cleared** or well-maintained **ground** ~~roads~~ at all times to prevent vehicle exhaust systems from coming in contact with roadside weeds, c) use and maintain approved spark arresters on all power equipment, and d) keep a fire extinguisher on hand at all times;

7. Describe the temporary and permanent habitat protection measures to be implemented at the project site;
8. Identify whom to contact if there are further comments and questions about the material discussed in the program; and
9. Include a training acknowledgment form to be signed by each worker indicating that they received training and shall abide by the guidelines.

The specific program can be administered by a competent individual(s) acceptable to the Designated Biologist and documented within the Monthly Compliance Report.

***Condition of Certification BIO-7***

The modifications to Condition of Certification **BIO-7** proposed in the SA are acceptable to NextEra Blythe Solar with the following deletions of the references to "preconstruction" in the Verification. The modifications are proposed to provide consistency between the conditions and the Compliance definitions.

**Verification:** The project owner shall submit the draft BRMIMP to the CPM at least 60 days prior to start of any ~~preconstruction~~ site mobilization and construction-related ground disturbance, grading, boring, and trenching. At the same time, the project owner shall provide to BLM, CDFW, and USFWS a copy of all portions of the draft BRMIMP relating to desert tortoise and any other federal or state-listed species. The project owner shall provide the final BRMIMP to the CPM**,** BLM, CDFW, and USFWS at least 30 days prior to the start of any ~~preconstruction~~ site mobilization and construction, grading, boring, or trenching. The BRMIMP shall contain all of the required measures included in all biological conditions of certification. No ~~preconstruction~~ site mobilization or construction-related ground disturbance, grading, boring or trenching may occur prior to approval of the final BRMIMP by the CPM.

***Condition of Certification BIO-8***

Staff made several modifications to Condition of Certification **BIO-8**. While most are acceptable, NextEra Blythe Solar proposes the following modifications to Items 3, 20 and 22.

Item 3 relates to the speed limit within the site and access roads. The BSPP as modified by the PTA will share the same access road with the McCoy Solar Energy Project (MSEP) to be located immediately north of the BSPP. The MSEP has obtained a Record of Decision from the BLM with agreement to the following language relating to speed limits from CDFW and USFWS. For consistency NextEra Blythe Solar provides the following

language which was also contained in the Revised PTA, to replace Staff's modifications to Item 3 of this condition. To address Staff's concern about potential impacts to the Mojave Fringe Toed Lizard (MFTL) we have added a requirement for reduced speed limit for work on the generation tie-line in the MFTL habitat which is localized near the Colorado River Substation.

3. Minimize Traffic Impacts. Vehicular traffic during project construction and operation shall be confined to existing routes of travel to and from the project site, and cross country vehicle and equipment use outside designated work areas shall be prohibited. The speed limit shall not exceed 25 miles per hour within the project area, on **dirt** maintenance roads for linear facilities, or on **dirt** access roads to the project site. **Paved roads shall not exceed 45 mph; speed limits will be lowered during the tortoise's most active period (April through May and September through October [USFWS 2010]) to 35 miles per hour. The speed limit within 3 miles of the Colorado River Substation will be posted at 10 mph.** Speed limit signs shall be posted on new access roads to the site.

Staff added Item 20 to this condition to address salvaging of top soil. NextEra Blythe Solar requests the following modifications to clarify that topsoil will not be salvaged on previously disturbed areas. In addition, the BSPP will not be storing topsoil from permanently disturbed areas as it would require substantial additional acreage that is not part of the project description. Finally, specifics such as depth and equipment are appropriate for the revegetation plan, but should not be specified in a Condition of Certification, which would require a license amendment for such changes.

**20. Salvage Topsoil. Topsoil from native desert areas to be temporarily disturbed (other than existing roads that have already been disturbed from previous construction activities)** shall be salvaged, preserved and re-used for restoration of temporarily disturbed areas, **except where less invasive methods are used to maintain soil seed banks, functioning and root crowns (e.g., drive over/crush method)**. Salvaged topsoil shall be collected, stored and applied in a way that maintains the viability of seed and soil crusts. The project owner shall excavate and collect the upper soil layer (the top 1 to 2 inches that includes the seed bank and biotic soil crust) as well as the lower soil layer ~~up to a depth of 6 to 8 inches~~ **in accordance with the Project's Revegetation Plan**. The upper and lower soil layers shall be stockpiled separately in areas that will not be impacted by other grading, flooding, erosion, or pollutants. ~~If the soil is to be stored more than 2 weeks it shall be spread out to a depth of no more than 6 inches to maintain the seed and soil crust viability~~. **As needed**,

~~The~~**the** project owner shall install temporary construction fencing around stockpiled topsoil, and signage that indicates whether the pile is the upper layer seed bank, or the lower layer, and clearly indicates that the piles are for use only in erosion control. After construction, the project owner shall replace the topsoil in the temporarily disturbed areas in the reverse order of stockpiling, **subsoil**, ~~starting with the 6-8 inch layer of subsoil,~~ and then the seed-containing upper layer of topsoil~~using a harrow or similar equipment to thinly distribute the layer to depths no greater than 1 to 2 inches~~.

Staff added a new requirement relating to the decommissioning of temporary roadways. NextEra Blythe Solar provides the following clarifying language to ensure that since temporary roads may be used periodically and not continuously, that decommissioning of the roadway will only be required after it will no longer be used.

22. **Decommission Temporary Access Roads with Vertical Mulching.** Discourage ORV use of temporary construction roads by installing vertical mulching at the head of the road to a distance necessary to obscure the road from view, **when the road is no longer in use for construction**. Boulder barricades and gates shall not be used unless the remainder of the site is fenced to prevent driving around the gate or barricade. Designated ORV routes and roads shall not be closed.

***Condition of Certification BIO-12***

Staff modified Condition of Certification **BIO-12** to reflect the reduction in desert tortoise impact acreages. In the first line of the condition the acreage amount of "3,976" should be changed to "3,975" for consistency with the mitigation table in Condition of Certification **BIO-28.**

Staff also proposed more restrictive modifications to the selection criteria of desert tortoise habitat mitigation lands in Condition of Certification **BIO-12.** NextEra Blythe Solar disagrees with these new requirements as overly burdensome given that the project footprint has been reduced nearly in half. In addition, NextEra Blythe Solar requests that the requirement that the mitigation lands provide connectivity value be deleted. Since the time that the CEC issued its Final Decision for the Approved Project, new information has been generated in the form of a USFWS report documenting desert tortoise connectivity areas in the vicinity of the project. According to this report, and subsequent conversations with USFWS and CDFW staff, the BSPP footprint is not located in any area deemed to have an important connectivity value. Because the acres to be impacted don't serve a connectivity function, the mitigation land should not be required to have a connectivity function. Therefore, we propose the following modifications to Item 1.

1. Selection Criteria for Compensation Lands. The compensation lands selected for acquisition in fee title or in easement shall:

a. be within the Colorado Desert Recovery Unit~~, with potential to contribute to desert tortoise habitat connectivity and build linkages between desert tortoise designated critical habitat, known populations of desert tortoise, and/or other preserve lands~~ ;

b. provide habitat for desert tortoise with capacity to regenerate naturally when disturbances are removed;

c. ~~be as close to the source of the impact as possible~~

d. be prioritized near larger blocks of lands that are either already protected or planned for protection, ~~such as the Chuckwalla DWMA as first priority then within the Colorado Desert Recovery Unit as the second~~ or which could feasibly be protected long-term by a public resource agency or a non-governmental organization dedicated to habitat preservation;

In addition, Staff modified the amounts of mitigation security required to reflect the reduction in the Modified Project footprint. However, it appears that there are mistakes in the mathematical calculations. As described in page 4.2-73 of the SA:

> "Per Condition of Certification **BIO-12** specifies security for acquisition of 3,976 acres and provides an estimate of associated costs. These costs include an acquisition fee of $500 per acre, initial habitat improvement costs at $330 per acre, and long-term maintenance and management fee is estimated at $1,450 per acre (Nicol pers. comm.). The estimated composite mitigation cost to meet staff's recommendation for establishing the security would be $2,280 per acre. This security amount may change when an updated appraisal is made and a Property Analysis Record is prepared for the parcels that have been selected for acquisition. These are estimates based on current costs; the requirement is defined in terms of acres, not dollars per acre, and actual costs may vary."

Using the $2,280 per acre security estimate, the correct mitigation security values should be:

- Phase 1: 1074 ac x $2280 = $2,448,720
- Phase 2: 942 x $2280 = $2,147,760
- Phase 3: 1051 x $2280 = $2,396,280
- Phase 4: 908 x $2280 = $2,070,240

Therefore we request Items 3 h. and i. of the condition be revised as follows:

h. <u>Mitigation Security.</u> The project owner shall provide financial assurances in accordance with **BIO-28** (phasing) to the CPM

and CDFW with copies of the document(s) to BLM and the USFWS, to guarantee that an adequate level of funding is available to implement the mitigation measures described in this Condition. These funds shall be used solely for implementation of the measures associated with the project in the event the project owner fails to comply with the requirements specified in this Condition, or shall be returned to the project owner upon successful compliance with the requirements in this Condition. The CPM's or CDFW's use of the security to implement measures in this Condition may not fully satisfy the project owner's obligations under this condition. Financial assurance can be provided to the CPM and ~~CDFG~~**CDFW** in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security"). Prior to submitting the Security to the CPM, the project owner shall obtain the CPM's approval, in consultation with CDFW, BLM and the USFWS, of the form of the Security. Security shall be provided in the amounts of $~~2,374,672~~ **2,448,720** for Phase 1; ~~$9,248,560~~ **2,147,760** for Phase 2**, $2,396,280 for Phase 3,** and ~~$9,859,984~~ **2,070,240** for Phase **4**. These Security estimates are based on the most current guidance from the REAT agencies (Desert Renewable Energy REAT Biological Resource Compensation/Mitigation Cost Estimate Breakdown for use with the REAT-NFWF Mitigation Account, July 23, 2010) and may be revised with updated information. This Security estimate reflects the amount that would be required for Security if the project owner acquired the ~~6,958~~ **3975** acres of mitigation lands itself. The actual costs to comply with this condition will vary depending on the final footprint of the project and its four phases, and the actual costs of acquiring, improving and managing the compensation lands.

i. **NFWF REAT Account.** The project owner may elect to fund the acquisition and initial improvement of compensation lands through NFWF by depositing funds for that purpose into NFWF's REAT Account. Initial deposits for this purpose, which includes a NFWF administrative fee, must be made in the amounts of **$2,448,720 for Phase 1, $2,147,760 for Phase 2, $2,396,280 for Phase 3, and $2,070,240 for Phase 4** ~~$2,465,611 for Phase 1a; $9,481,161 for Phase 1b; and $10,105,186 for Phase 2~~ as the security required in section 3h., above and may be provided in lieu of security**.** If this option is used for the acquisition and initial improvement, the project owner shall make an additional deposit into the REAT Account if necessary to cover the actual acquisition costs and administrative costs and fees of the compensation land

purchase once land is identified and the actual costs are known. If the actual costs for acquisition and administrative costs and fees are less than that estimated based on the *Desert Renewable Energy REAT Biological Resource Compensation/Mitigation Cost Estimate Breakdown for use with the REAT-NFWF Mitigation Account, July 23, 2010,* or more current guidance from the REAT agencies, the excess money deposited in the REAT Account shall be returned to the project owner. Money deposited for the initial protection and improvement of the compensation lands shall not be returned to the project owner.

***Condition of Certification BIO-14***

Staff proposed significant modifications to Condition of Certification **BIO-14** despite the fact that the modified project would greatly reduce potential weed-related impacts**.** NextEra Blythe Solar proposes the following modifications to allow construction to proceed in an orderly and timely fashion and to reduce the burdens of these new requirements. A few modifications to Staff's changes are proposed to optimize weed control.

**BIO-14** The project owner shall implement a Weed Management Plan (Plan) that meets the approval of the CPM. The objective of the Weed Management Plan shall be to prevent the introduction of any new weeds and the spread of existing weeds as a result of project site mobilization**,** construction, operation, and closure. The draft Weed Management Plan submitted by the Applicant previous owner (AECOM 2010a, Attachment DR-BIO-97) shall provide the basis for the final plan, subject to review and revisions from the CPM and the BLM.

1. Weed Plan Requirements. The project owner shall provide a map to the CPM indicating the location of the Weed Management Area, which shall include all areas within 100 feet of the Project Disturbance Area, access roads, staging and laydown sites, and all other areas subject to temporary disturbance. The project owner shall provide a Plan for the Weed Management Area includes at a minimum the following information: specific weed management objectives and measures for each target non-native weed species; baseline conditions; a map of the Weed Management Areas; map of existing populations of target weeds within 100 feet of the Project Disturbance Area and access roads; weed risk assessment; measures to prevent the introduction and spread of weeds; measures to minimize the risk of unintended harm to wildlife and other plants from weed control activities; monitoring and surveying methods; and reporting requirements. Weed control described in the Plan shall focus on prevention, early detection of new

infestations, and early eradication for the life of the Project. Weed control along the Project linears shall be limited to the areas where soils were disturbed during construction. Weed monitoring shall occur a minimum of once per year during the early spring months (**February**~~March~~-April) to detect seedlings before they set seed. The focus of the Plan shall be on avoiding the introduction of new invasive weeds or the spread of highly invasive species, such as Sahara mustard. Non-native species with low ecological risk, or that are very widespread, such as Mediterranean grass, shall be noted but control shall not be required. When detected, **new** infestations of high priority species shall be eradicated immediately, **if possible.**

a. Avoidance and Treatment of Dense Weed Populations. The Plan shall include a requirement to flag and avoid dense populations of the most invasive non-native weeds during any Project-related construction and operation in or adjacent to infestations. If these areas cannot be avoided, they shall be pre-treated, **if practical**, by one of the following methods: a) treating the infested areas ~~in the season prior to construction~~ by removing and properly disposing of seed heads by hand, prior to maturity, or spraying the new crop of plants that emerge in early spring ~~the season prior to construction~~ to reduce the viable seed contained in the soil, or b) removing and disposing the upper 2 inches of soil and disposing it offsite at a sanitary landfill or other site approved by the County Agricultural Commissioner , or burying the infested soil, e.g. under the solar facility or in a pit, and covering the infested soil with at least three feet of uncontaminated soil. **Where these measures are infeasible, then post-construction monitoring and control, as identified in Section 5, below, will be implemented**.

3. Cleaning Vehicles and Equipment. The Plan shall include specifications and requirements for the cleaning and removal of weed seed and weed plant parts from vehicles and equipment involved in Project-related construction and operation. Vehicles and equipment working in weed-infested areas (including previous job sites) shall be required to clean the equipment tires, tracks, and undercarriage *before* entering the Project area and, **if necessary**, before moving ~~to~~ **from** infested areas of the Project Disturbance Area to uninfested areas. Cleaning shall be conducted on all track and bucket/blade components to adequately remove ~~all visible~~ dirt and plant debris. Cleaning using hand tools, such as brushes,

brooms, rakes, or shovels, is preferred. If water must be used, the water/slurry shall be contained to prevent seeds and plant parts from washing into adjacent habitat.

4. Safe Use of Herbicides. The final Plan shall include detailed specifications for avoiding herbicide and soil stabilizer drift, and shall include a list of herbicides and soil stabilizers that will be used on the Project with manufacturer's guidance on appropriate use. The Plan shall indicate where the herbicides ~~will~~ **are expected** to be used, and what techniques will be used to avoid chemical drift or residual toxicity to special-status species and their pollinators, and consistent with the Nature Conservancy guidelines and the criteria under #2, below. **Initially**, ~~Only~~ weed control measures for target weeds with a demonstrated record of success shall be used, based on the best available information from sources such as The Nature Conservancy's The Global Invasive Species Team, California Invasive Plant Council: http://www.cal-ipc.org/ip/management/plant_profiles/index.php, and the California Department of Food & Agriculture Encycloweedia: http://www.cdfa.ca.gov/phpps/ipc/encycloweedia/encycloweedia_hp.htm. **Other methods that may be effective, or have proven to be effective, but are not yet published, may be used upon approval by the CPM and BLM.**

***Condition of Certification BIO- 15***

Staff deleted the original Condition of Certification **BIO-15** and replaced it with a new Condition of Certification with many onerous requirements. NextEra Blythe Solar disagrees with several of these provisions which seem more appropriate for a solar power tower and its risks to avian species from solar flux. Notwithstanding that the Modified Project has reduced its overall footprint, we have attempted to re-write Condition of Certification **BIO-15** in a manner that is both acceptable to NextEra Blythe Solar yet accomplish the goals and objectives outlined by Staff in the SA. Our objections to some of the requirements are summarized as:

- The condition as written would render the project unfinanceable because it leaves the cost to implement the plan completely open-ended.
- NextEra Blythe Solar does not agree with doing any use or behavioral studies during or after construction. The concern is focused on collision with PV panels; therefore, that's where the monitoring program should focus. In addition, other construction projects are not required to survey structures, fences, or utility lines for avian mortality so the BSPP shouldn't be held to different standards that are more stringent.
- NextEra Blythe Solar does not agree to conduct radar studies during construction because it is very costly and would not yield species-specific data.

- NextEra Blythe Solar is not aware of any final avian and bat guidelines for solar energy facilities and can't agree to requirements that are unknown. Current USFWS guidance is either interim or applies to wind energy, and may not be appropriate for solar energy projects.
- NextEra Blythe Energy disagrees with conducting surveys or acoustic surveys for bats. Post construction mortality and injury monitoring will elucidate which birds and bats are at risk and this is sufficient to address Project mortality issues. That is where the efforts should be focused.
- Statistically robust post construction mortality monitoring should only be conducted post-construction due to access and safety issues for the surveyors during construction.
- NextEra Blythe Solar believes one to two years of post-construction monitoring is sufficient to understand and address project risk and impacts.
- The risk profile for eagles for the BSPP is different from a power tower project and an ECP is not warranted. The risk to golden eagles has not changed since the Approved Project. We can understand why an ECP would be appropriate for PSEGS but it is not warranted for this project.

Therefore we propose the following modifications to Condition of Certification **BIO-15.**

**AVIAN AND BAT PROTECTION PLANS**

**BIO-15** The project owner shall prepare a Bird and Bat Conservation Strategy (BBCS) and submit it to the CPM for review and approval, in consultation with BLM, CDFW, and USFWS for review and comment. ~~Alternately, the CPM, in conjunction with the USFWS, BLM, and CDFW, may determine the appropriate plan for the project site and provide it to the project owner for implementation. The BBCS shall provide for the following:~~

- Survey and monitor onsite ~~and offsite~~ avian use ~~and behavior~~ **prior to commencing construction** to document species composition. ~~on and offsite, compare onsite and offsite rates of avian and bat use, document changes in avian and bat use over time (pre and post construction), and evaluate the changes in annual abundance and distribution of birds in and near the facility.~~ The project owner will submit all data gathered onsite to the CPM as specified herein, or as requested by the CPM, and will also make consulting biologists available to answer CPM inquiries.

  a. Implement a statistically robust avian and bat mortality and injury monitoring program to identify the extent of potential avian or bat mortality or injury from collisions with facility structures, including: ~~—~~assessing levels of collision-related

mortality and injury with PV panels.~~, perimeter fences, gen-tie, and other project features and structures~~;

~~b. documenting flight spatial patterns via radar that may be associated with collision-related mortality and injury, if any.~~

- Implement an adaptive management and decision-making framework for reviewing, characterizing, and responding to mortality monitoring results.
- Identify specific conservation measures and/or programs to avoid, minimize, ~~rectify,~~ reduce or eliminate over time and evaluate the effectiveness of those measures.

BBCS Components

~~The project owner shall prepare and implement a BBCS adopting all requirements applicable to solar generation in current guidelines recommended by the USFWS~~. The BBCS shall include the following components:

1. Preconstruction Baseline survey results. A description and summary of the baseline survey methods, raw data, and results.
2. Formation of a technical advisory committee (TAC), if requested by the CPM. The TAC will facilitate concurrent project owner, CPM, and state and federal wildlife agency review of seasonal and annual survey results, **development of decision-making framework for evaluating** the effectiveness of the adaptive management measures implemented by the project owner, modification of the surveys in response to the results, if necessary, and the identification of additional mitigation responses that are commensurate with the extent of impacts that may be identified in the monitoring studies. A meeting schedule for the TAC will be identified, for regular review of avian and bat injury and mortality monitoring results, and recommend any necessary changes to monitoring, adaptive management, and appropriate adaptive mitigation per . The TAC will also assist the CPM in implementing the following provisions: #2 - #8. The CPM has the authority to dissolve the TAC.
3. ~~The BBCS will contain full survey methodology and field documentation, identification of appropriate onsite and offsite survey locations, control sites, and the seasonal considerations. Bat acoustic sampling may be implemented depending on results of the project owner's baseline studies, including preconstruction data.~~

4. Avian and bat mortality and injury monitoring: An avian and bat injury and mortality monitoring program shall be implemented, including:

(a) Onsite monitoring that will systematically survey representative locations within the facility, at a level that will produce statistically robust data; account for potential spatial bias and allow for the extrapolation of survey results to non-surveyed areas **within the solar plant site boundary** and the survey interval based on scavenger and searcher efficiency trials and detection rates.

(b) Low-visibility and high-wind weather event **reporting** ~~monitoring~~ to document potential weather-related collision risks that may be associated increased risk of avian or bat collisions with project features, including foggy, highly overcast, or rainy night-time weather typically associated with an advancing frontal system, and high wind events (40 miles per hour winds) are sustained for period of greater than 4 hours. ~~The monitoring report shall include survey frequency, locations and methods.~~

(c) Statistically robust scavenger and searcher efficiency trials ~~prior and~~ post construction to document the extent to which avian or bat fatalities remain visible over time and can be detected within the project area and to adjust the survey timing and survey results to reflect scavenger and searcher efficiency rates.

(d) Statistical methods used to generate facility estimates of potential **post-construction** avian and bat impacts based on the observed number of detections during standardized searches during the monitoring season for which the cause of death can be determined and is determined to be facility-related.

(e) Field detection and mortality or injury identification, cause attribution, handling and reporting protocols consistent with applicable legal requirements.

5. Survey schedule and period. ~~All~~ Post-construction monitoring studies included in the BBCS shall be ~~conducted by a third party contractor for at least~~ **for at least one** ~~three~~ year~~s~~ following **commencement of** commercial operation **of each individual unit.** ~~and approval of the BBCS by the CPM. All surveys and monitoring studies included in the BBCS shall be conducted during construction and commercial operation.~~ At the end of the ~~three~~ **first year** ~~-year period~~, the CPM shall determine whether the survey program shall be continued for **a second year** ~~subsequent periods,~~ based on results of onsite monitoring. ~~The monitoring program may be modified with the approval of the~~

~~CPM in response to survey results, identified scavenging efficiency rates, or other factors to increase monitoring accuracy and reliability or in accordance with the adaptive management decision-making framework included in the BBCS.~~

6. Adaptive management. An adaptive management program shall be developed to identify and implement reasonable and feasible measures **needed to** ~~that would~~ reduce levels of avian or bat mortality or injury attributable to project operations and facilities **to less than ecologically significant levels.** Any such impact reduction measures must be commensurate (in terms of factors that include geographic scope, costs, and scale of effort) to the level of avian or bat mortality or injury that is specifically and clearly attributable to the project facilities. Adaptive actions undertaken will be discussed and evaluated in survey reports. The adaptive management program shall include the following elements:

(a) Reasonable measures for characterizing the extent and significance of detected mortality and injuries clearly attributable to the project.

(b) **Potential** measures that the project owner ~~will~~ **could** implement to adaptively respond to detected mortality and injuries attributable to the project, including passive avian diverter installations along the perimeter or at other locations within the project to avoid site use, the use of sound, light or other means to discourage site use consistent with applicable legal requirements, onsite prey or habitat control measures consistent with applicable legal requirements, and additional perch and nest **minimizing** ~~proofing~~ of project facilities.

7. Adaptive Mitigation: The CPM may require the project owner to implement adaptive mitigation for **ecologically** significant onsite injury or mortality of birds and bats, based on recommendations of the TAC. **The costs for such mitigation shall not exceed $100,000.** Such measures shall be approved by the CPM and may include, but not be limited to: (i) restoration of degraded habitat with native vegetation; (ii) restoration of agricultural fields to bird habitat; (iii) management of agricultural fields to enhance bird populations; (iv) invasive plant species and artificial food or water source management; (v) control and cleanup of potential avian hazards, such as lead or microtrash; (vi) retrofitting of buildings to minimize collisions; (vii) retrofitting of conductors and above ground cables to minimize collisions; (viii) animal control programs; (ix) support for avian and bat research and/or management efforts conducted by entities approved by the CPM within the project's mitigation lands or other approved locations; (x) funding efforts to address avian diseases or

depredation due to the expansion of predators in response to anthropomorphic subsidies that may adversely affect birds that use the mitigation lands or other approved locations; and (xi) contribute to the Migratory Bird Conservation Fund managed by the Migratory Bird Conservation Commission. Adaptive mitigation will be discussed and evaluated in survey reports.

~~8. Eagle Conservation Plan (ECP): The project owner shall prepare and implement an Eagle Conservation Protection Plan adopting all requirements applicable to solar generation as outlined in guidelines recommended by the USFWS (currently USFWS Land Based Wind Energy Guidelines 2011b). The ECP may be prepared as a stand-alone document or included as a chapter within the BBCS. The ECP shall describe all available baseline data on golden eagle occurrence, seasonality, activity, and behavior throughout the project area and vicinity. The ECP shall outline a study protocol to include annual pedestrian and/or helicopter surveys of golden eagle breeding sites within a 10 mile radius of the project site, to be reviewed and approved by the CPM, in consultation with the USFWS, BLM, and CDFW.~~

~~The ECP shall describe all proposed measures to minimize death and injury of eagles from (1) collisions with facility features including PV panels and gen-tie line towers or transmission lines, and (2) electrocutions on transmission lines or other project components. The ECP shall describe and evaluate any adaptive management, minimization, or mitigation efforts taken pursuant to BIO-15 #6 and BIO-15#7.~~

**Verification**: Prior to the start of construction, a draft BBCS shall be submitted to the CPM for review and comment in consultation with CDFW, BLM, and USFWS. ~~If the CPM decides to take this responsibility, in conjunction with the BLM, USFWS, and CDFG, the project owner will be notified in advance.~~ A final BBCS shall be submitted to the CPM within 60 days of construction commencement. The project owner shall provide the CPM with copies of any written or electronic transmittal from the USFWS, BLM, or CDFW related to the BBCS within 30 days of receiving any such transmittal. ~~The EPP, if submitted under separate cover, shall follow the same timeline for review, edit, and approval as the BBCS.~~

**Reporting Protocol:** ~~Verification of Survey Results (including preconstruction bird and bat use, radar data, mortality monitoring, and golden eagle monitoring): All survey results and complete reports, including raw data, shall be submitted to the CPM after each survey season and in an annual summary report throughout the course of the study period, or as otherwise directed by the CPM~~. The results of onsite

injury and mortality monitoring will be reported monthly. ~~or more frequently, if requested by the CPM~~. The reports will include all data required as part of the monitoring program~~. The Monitoring Study shall continue until the CPM, in consultation with CDFW, BLM, and USFWS, concludes that the cumulative monitoring data provide sufficient basis for estimating long-term bird mortality for the project.~~ The reports will include all monitoring data required as part of the monitoring program.

The reports shall also assess any adaptive management measure implemented during the prior year as approved by the CPM. After the ~~third~~ **first** year of the monitoring program, the CPM shall meet and confer with the TAC (if convened) to **determine if a second year is warranted** ~~the study period shall be extended~~ based on data quality and sufficiency of analysis, or if needed, to document efficacy of any adaptive management measures undertaken by the project owner. If a TAC was not convened, then ~~the study period may be extended as directed by~~ the CPM, in consultation with CDFW, BLM, and the USFWS, **shall determine if a second year of monitoring is warranted**. If a carcass or injured live special status species is found at any time by the monitoring study or project operations staff, the project owner, Designated Biologist, or other qualified biologist that may be identified by the Designated Biologist shall contact the CPM, CDFW and USFWS by email, fax or other electronic means within one working day of any such detection. Verification of other injuries or mortalities shall be within 48 hours, or as otherwise directed by the CPM.

***Condition of Certification BIO- 16***

The SA modifications to Condition of Certification **BIO-16** are acceptable to NextEra Blythe Solar except there is a need to clarify the timing and methods of nest surveys during operations and maintenance. One survey seven days prior to vegetation maintenance is sufficient to detect if birds are nesting in the vegetation.

The following changes are suggested:

3. During operations and maintenance prior to mowing and any other vegetation maintenance, **during the nesting season, a single** survey shall be conducted **within 7 days of construction or maintenance activity** to determine whether birds are nesting in the vegetation on site;

**Verification:** At least 10 days prior to the start of any site mobilization and construction ~~project~~-related ground disturbance activities during the nesting season, the project owner shall provide the CPM a letter-report describing the findings of the pre-construction nest surveys, including the time, date, and duration of the survey; identity and qualifications of the

surveyor (s); and a list of species observed. At least 10 days prior to the start of any mowing and vegetation maintenance activities **during the nesting season,** the project owner shall provide the CPM a letter-report describing the findings of the pre-construction nest surveys, including the time, date, and duration of the survey; identity and qualifications of the surveyor (s); and a list of species observed. If active or suspected active nests are detected during the survey, the report shall include a map or aerial photo identifying the location of the nest or suspected nest location and shall depict the boundaries of the no-disturbance buffer zone around the nest(s) that would be avoided during project construction.

***Condition of Certification BIO- 17***

NextEra Blythe Solar agrees with much of Condition of Certification **BIO-17** but has proposed changes to Items 1, 2b, 4b, 5a and the Verification section as shown below. Our proposed modifications to these Items are intended to rectify an inconsistency in timing of the surveys. The kit fox surveys could not be conducted concurrently with desert tortoise surveys unless the desert tortoise fencing is in place. Therefore desert tortoise fencing must be excluded from other construction activities. Additionally, in the project area, and others where there are desert kit foxes, there are many burrows and digs that do not meet the strict requirements identified in this condition, but are clearly not active. It would be an onerous requirement to monitor each for the 3-night period. Therefore, we propose the following modifications to address these two points.

**BIO-17** The project owner shall contract a qualified biologist to conduct a baseline pre-construction desert kit fox and American badger survey and develop and implement an American Badger and Desert Kit Fox Mitigation and Monitoring Plan (Plan). The survey data will be used to revise the final Plan, as necessary, with the most recent species data from the project site.

The project owner shall conduct a baseline kit fox ~~census~~ survey and submit a summary report that includes the following procedures:

1. A qualified biologist with demonstrated mammal experience shall complete a baseline pre-construction survey of desert kit fox and American badger populations on the project site and the anticipated dispersal areas for passive relocation between 30 and 60 days prior to initiation of any ground disturbing activities, ~~including site assessment and construction activities that include installation of desert tortoise fencing~~ **not including installation of perimeter/desert tortoise fencing. Surveys of the solar plant site may be conducted after the**

**perimeter fence is installed and concurrently with desert tortoise clearance surveys.** The anticipated dispersal areas shall be defined as all suitable desert kit fox habitat within 500 meters of the project boundaries where desert kit fox would likely be displaced. The survey shall identify and record the locations of all potential dens throughout the project site (or phase) and shall characterize the approximate number and distribution of the badger and kit foxes on the site and anticipated dispersal areas. Depending on the season of the surveys (i.e. breeding or non-breeding) other demographic data will be. The baseline pre-construction survey shall include the following components:

2.b. Monitoring and Protection Measures, Passive Hazing, and Den Excavation: The plan will include details on monitoring requirements, types and methods of passive hazing, and methods and timing of den excavation, including, but not limited to the following:

i. Inactive dens. Inactive dens [e.g. inactive dens are dens that are mostly or entirely silted in; **have substantial vegetation, debris or soil conditions indicating to an experienced field biologist that the den is not being used;** and ones in which the back of the den can be clearly seen (e.g., the den isn't deep and doesn't curve)] that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by badger or kit fox.

4. b Sick animals. If an American badger or desert kit fox is found sick and incapacitated on any area associated with the project site or associated linear facilities, the Designated Biologist or approved Biological Monitor shall immediately notify the CPM, BLM and CDFW personnel for immediate capture and transport of the animal to a CDFW-approved wildlife rehabilitation and/or veterinarian clinic. Following the phone notification, the CPM and CDFW shall determine the final disposition of the sick animal, if it recovers. **If the animal dies,** then a necropsy shall be performed by a CDFW-approved facility to determine the cause of death**, in accordance with measure**

**“c”, below.** ~~The project owner shall pay to have the animal transported and a necropsy performed. A written notification of the incident shall be sent to the CPM, BLM, and CDFW and contain, at a minimum, the date, time, location, and circumstance of the incident.~~

5. Additional protection measures to be included in the Plan and implemented:
   a. All pipes within the project disturbance area **outside the solar plant site, or inside the solar plant site if foxes are still on the site**, must be **fenced**, capped, and/or covered every evening or when not in use to prevent desert kit foxes or other animals from accessing the pipes.

**Verification**: No fewer than 90 days prior to the start of any, site mobilization and construction the project owner shall provide the CPM, BLM, and CDFW with a draft American Badger and Desert Kit Fox Mitigation and Monitoring Plan for review and comment.

Approximately 30 to 60 days prior to initiation of site mobilization and construction activities, **not including perimeter/desert tortoise fencing**, a qualified biologist with demonstrated mammal experience shall complete a baseline study of American badger and desert kit fox populations on the project site and the anticipated dispersal areas for passive relocation.

***Condition of Certification BIO- 18***

The SA modifications to Condition of Certification **BIO-18** are acceptable to NextEra Blythe Solar with the exception of Item 2b. In order to avoid redundant and time consuming reviews by agencies, we have proposed modified language to ensure that the burrow design will follow CDFW 2012 and be in the plan. Rather than have a separate approval of the burrow design we have deleted the redundant requirement because the entire plan must be approved by the CPM in consultation with the remaining agencies. Additionally, the acreage shown in the Verification section is incorrect and should read 39 acres of burrowing owl habitat.

The proposed changes are shown below:

- Implement Burrowing Owl Mitigation Plan. The project owner shall implement measures described in the final Burrowing Owl Mitigation Plan. The final Burrowing Owl Mitigation Plan shall be approved by the CPM, in consultation with BLM, USFWS and CDFW, and shall:

a. identify suitable sites within 1 mile of the Project Disturbance Areas for creation or enhancement of burrows prior to passive relocation efforts;
b. provide guidelines for creation or enhancement of at least two natural or artificial burrows per relocated owl; design of the artificial burrows shall be consistent with CDFW guidelines (CDFW 2012) ~~and shall be approved by the CPM in consultation with CDFW and USFWS~~**;**

**Verification:** No less than 30 days prior to the start of site mobilization and construction activities the project owner shall provide the CPM with an approved form of Security in accordance with this condition of certification. Actual Security for acquisition of ~~78~~ **39** acres of burrowing owl habitat shall be provided no later than 7 days prior to the beginning of site mobilization and construction activities.

***Condition of Certification BIO- 19***

Condition of Certification **BIO-19** was substantially re-worked by Staff. NextEra Blythe Solar disagrees with the changes for the following reasons:

1. The Modified Project presented no changes that would result in new impacts on special-status plants previously analyzed; therefore, the changes to the condition are unwarranted. Additionally, no new LORS have been enacted since the Final Decision for the Approved Project that would warrant these changes.

2. NextEra Blythe Solar believes that the CEC's mitigation requirements for special-status plants have always been more stringent than for other biological resources by requiring mitigation for non-listed plant species. Despite this, NextEra Blythe Solar was willing to accept the Condition of Certification **BIO-19** as written for the Approved Project. However, the revisions for the Modified Project result in even more stringent mitigation requirements along the linear facilities, which are unwarranted because the impacts along the linear facilities will not have a significant impact on special-status plants. NextEra Blythe Solar believes that it should not have to mitigate unless there is a significant impact. The following are reasons why the impacts from the linear facilities will not be significant:

- The linear facilities have a small footprint.
- The special-status species found along the linear facilities are annual species. At most, if construction occurs during the short time when the plants bloom, the impact would be limited to the removal of a few individual plants, rather than the seed bank, which should not be considered significant.
- Topsoil salvage will preserve and redistribute the seed bank.

3. For the McCoy project, BLM looked carefully at the risk to all CNDDB-ranked plants and determined that avoidance, minimization, and mitigation requirements are ***not*** warranted on any part of the project for CNDDB Rank 2 plants

4. The revised **BIO-19** is even more stringent than Staff has proposed for the Palen Solar Project.

***Condition of Certification BIO- 20***

The SA modifications to Condition of Certification **BIO-20** are acceptable to NextEra Blythe Solar except for the number of acres of desert sand dune habitat. The estimated impacts on sand dunes from the BSPP linear corridor should be reduced to 25.3 acres. The estimated impact acres calculated for the **Modified Project** are based on actual impacts of specific infrastructure (transmission poles, spur roads, maintenance roads, etc.).

Disturbance within sand dune area:

- Poles: 23 poles with 50'x50' disturbance for each=1.4 acres
- Spur Roads: 23 spur roads with 15'x100' disturbance=0.8 acres
- Pulling Sites: 15 pull sites at 100'x300' disturbance=10.3 acres
- Maintenance Road: 23,225.37 linear feet of road at 24' wide=12.8 acres

Total disturbance = 25.3 acres

The estimated impacts for the Approved Project's linear corridor were not developed with this level of detail; rather they were based on the total area of the linear corridor in the sand dunes, assuming the width of the corridor was approximately 100 feet. Therefore, although there have been no material changes to the linear corridor for the Modified Project, the expected construction and infrastructure details for the Modified Project are now available from which to provide a more refined estimate of the impacts, which lowers the estimated impact to 25.3 acres.

***Condition of Certification BIO- 21***

NextEra Blythe Solar agrees with Staff that the Modified Project will not impact Bighorn Sheep and therefore Condition of Certification **BIO-21** should be deleted.

***Condition of Certification BIO- 22***

The SA modifications to Condition of Certification **BIO-22** are acceptable to NextEra Blythe Solar except for the number of acres of State jurisdictional waters.

Proposed changes are as shown below:

**BIO-22** The project owner shall implement the following measures to avoid, minimize and mitigate for direct and indirect impacts to

waters of the state and to satisfy requirements of California Fish and Game Code sections 1600 and 1607.

1. Acquire Off-Site State Waters: The project owner shall acquire, in fee or in easement, a parcel or parcels of land that includes at least ~~1,384 253.2~~ **412** acres of state jurisdictional waters, or the area of state waters directly or indirectly impacted by the final project footprint. The project footprint means all lands disturbed by construction and operation of the Blythe Project, including all linears. The parcel or parcels comprising the ~~1,384 253.2~~ **412** acres of ephemeral washes shall include at least ~~639 21~~ **66** acres of desert dry wash woodland or the acreage of desert dry wash woodland impacted by the final project footprint at a 3:1 ratio. The terms and conditions of this acquisition or easement shall be as described in Condition of Certification **BIO-12** and the timing associated with **BIO-28** (phasing). Mitigation for impacts to state waters shall be within the Chuckwalla Valley or Colorado River Hydrological Units (HUs), as close to the project site as practicable.

***Condition of Certification BIO- 24***

***Golden Eagle Inventory***

Staff deleted Condition of Certification **BIO-24** and had stated the reason for the deletion is that Staff has included new mitigation measures for Golden Eagles in its new Condition of Certification **BIO-15.** The SA deletion of Condition of Certification **BIO-24** is unacceptable to NextEra Blythe Solar. There have been no new data to indicate the risk to golden eagles has increased or that the Modified Project alters any of the analysis or findings of the Final Decision relating to Golden Eagles. Therefore, there is no justification for revising the eagle requirements to change and become more stringent as rewritten in **BIO-15** by Staff. We request that Condition of Certification **BIO-24** remain as written in the Final Decision and that Condition of Certification **BIO-15** be modified as discussed above.

***Condition of Certification BIO- 28***

The SA modifications to Condition of Certification **BIO-28** are acceptable to NextEra Blythe Solar except that the numbers in Table 1 need to be corrected.

Sand dunes are only present along the gen-tie corridor and therefore NextEra Blythe Solar has moved the MFTL impact and mitigation acres from Phase 2 to Phase 1. See also the rationale discussed above for Condition of Certification **BIO-20**.

**BIO-28 Table 1. Impacts and Mitigation**

**Required For Each Phase of The Project**

| Phase | Desert Tortoise | | MFTL | | WBO | |
|---|---|---|---|---|---|---|
| | Impact (acres) | Mitigation (acres) | Impact (acres) | Mitigation (acres) | Impact (individuals /pairs) | Mitigation (acres) |
| Phase 1~~a~~ | 1,074 | 1,074 | ~~0~~**25** | ~~0~~**76** | 2 | 39 |
| Phase 2 | 942 | 942 | 0 | 0 | 0 | 0 |
| Phase 3~~2~~ | 1,051 | 1,051 | 0 | 0 | 0 | 0 |
| Phase 4 | 908 | 908 | 0 | 0 | 0 | 0 |
| Total | ~~3976~~ **3,975** | ~~3976~~ **3,975** | ~~50~~ **25** | ~~151~~ **76** | 2 | 39 |

## CONCLUSION

NextEra Blythe Solar appreciates the opportunity to provide these comments on the Staff Assessment and hopes that they will enable productive discussions at the upcoming Workshop on November 12, 2013. After the Workshop on November 12, 2013, we will prepare our PreHearing Statement incorporating the results of the Workshop so that the Committee will have a direct "roadmap" for what changes are necessary to amend the Final Decision to authorize construction and operation of the Modified Project. The PreHearing Statement will serve as NextEra Blythe Solar's testimony for the evidentiary hearing on November 19, 2013.

Dated: November 7, 2013

Respectfully Submitted,

Scott A. Galati
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