

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

bheeley@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4715

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
MARC D. JOSEPH  
ELIZABETH KLEBANER  
RACHAEL E. KOSS  
LOULENA A. MILES  
ROBYN C. PURCHIA

OF COUNSEL  
THOMAS R. ADAMS  
ANN BROADWELL  
GLORIA D. SMITH

May 21, 2010

California Energy Commission  
Attn: Docket No. 09AFC6  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

Re: 09-AFC-9 Ridgecrest Solar Power Plant Project

Dear Docket Clerk:

Enclosed are an original and one copy of California Unions for Reliable Energy's Supplemental Comments on the Staff Assessment and Draft Environmental Impact Statement. Please process the document and provide us with a conformed copy in the envelope provided.

Thank you.

Sincerely,

/s/

Bonnie A. Heeley  
Administrative Assistant

:bh  
Enclosures

<b>DOCKET</b>	
<b>09-AFC-6</b>	
DATE	<u>MAY 21 2010</u>
RECD.	<u>MAY 21 2010</u>

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

eklebaner@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
JASON W. HOLDER  
MARC D. JOSEPH  
ELIZABETH KLEBANER  
RACHAEL E. KOSS  
LOULENA A. MILES  
ROBYN C. PURCHIA

FELLOW  
AARON G. EZROJ

OF COUNSEL  
THOMAS R. ADAMS  
ANN BROADWELL  
GLORIA D. SMITH

May 21, 2010

Mr. Eric Solorio  
Siting Project Manager  
California Energy Commission  
1516 Ninth Street, Mail Slot 15  
Sacramento, CA 95814  
esolorio@energy.state.ca.us

Re: CURE's Supplemental Comments on the Staff Assessment and Draft  
Environmental Impact Statement and Draft California Desert  
Conservation Area Plan Amendment

Dear Mr. Solorio:

Pursuant to the April 29, 2010 Committee order, please find enclosed CURE's Supplemental Comments on the Staff Assessment and Draft Environmental Impact Statement and Draft California Desert Conservation Area Plan Amendment.

Thank you,

/s/

Elizabeth Klebaner

EK:bh

2321-022a

SUPPLEMENTAL COMMENTS  
of the  
CALIFORNIA UNIONS FOR RELIABLE ENERGY  
on the  
Staff Assessment/Draft Environmental Impact Statement  
Ridgecrest Solar Power Project  
Application for Certification (09-AFC-9)

May 21, 2010

Tanya A. Gulesserian  
Elizabeth Klebaner  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
T: 650/589-1660 F: 650/589-5062  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)  
[eklebaner@adamsbroadwell.com](mailto:eklebaner@adamsbroadwell.com)

Attorneys for California Unions for  
Reliable Energy

TABLE OF CONTENTS

- I. THE SA/DEIS DOES NOT ACCOMPLISH ITS PURPOSE AS AN INFORMATIONAL DOCUMENT.....1
  - A. The SA/DEIS Does Not Provide a Stable and Finite Project Description.....2
    - 1. The SA/DEIS Must be Revised to Fully and Clearly Describe the Reconfigured Project.....3
    - 2. The SA/DEIS Does Not Consider All of the Project’s Emitting Units .....4
    - 3. The SA/DEIS Does Not Consider the Out-of-Field Extension of the Project’ HTF Piping System .....5
  - B. The Applicant Has Not Yet Provided All Baseline Data to Staff...5
    - 1. The Applicant Has Not Provided Baseline Data for the Project’s Linear Features.....6
    - 2. The Applicant Has Not Provided Baseline Data for the Entirety of the Project Footprint.....7
    - 3. The Applicant Has Not Yet Provided Baseline Data for the Golden Eagle .....7
  - C. The SA/DEIS Must Disclose And Analyze All Potentially Significant Impacts .....7
    - 1. The SA/DEIS Does Not Disclose and Analyze All of the Project’s Potentially Significant Impacts to Air Quality .....8
    - 2. The SA/DEIS Does Not Analyze the Project’s Potentially Significant Impacts to the Golden Eagle .....8
    - 3. The SA/DEIS Does Not Disclose and Analyze the Project’s Potentially Significant Impacts to Cultural Resources .....9
    - 4. The SA/DEIS Does Not Disclose and Analyze All Potentially Significant Impacts to Public Safety .....9

5.	The SA/DEIS Must Disclose and Analyze All Potentially Significant Impacts Associated with Transmission System Engineering.....	10
D.	The SA/DEIS Must Incorporate Feasible and Enforceable Mitigation Measures .....	10
1.	The SA/DEIS Improperly Defers the Identification of Mitigation Measures for Project Impacts to Cultural Resources.....	11
2.	The Applicant Carries the Burden of Demonstrating that the Project’s Significant Unavoidable Impacts to the Desert Tortoise Can Be Fully Mitigated.....	12
3.	The Applicant Caries the Burden of Demonstrating that the Project’s Significant Unavoidable Impacts to the Mojave Ground Squirrel Can Be Fully Mitigated .....	14
II.	THE RSA MUST BE RECURCULATED FOR PUBLIC COMMENT.....	15
A.	The Applicant Plans to Add a Fuel Depot to the Project, Which Requires New Staff Analysis .....	16
B.	The Applicant Plans to Add Evaporation Ponds and a Water Treatment System to the Project, Which Requires New Staff Analyses.....	16
C.	The Applicant Requests a Permit Condition to Increase Daily Cooling Tower Operations, Which Requires New Staff Analyses ..	17
D.	The Applicant Requests Staff to Incorporate New Baseline Data in the Revised Staff Assessment, Which Requires New Staff Analyses.....	17
III.	CONCLUSION .....	18

On behalf of California Unions for Reliable Energy (“CURE”), this letter provides supplemental comments on the Staff Assessment/Draft Environmental Impact Statement (“SA/DEIS”) for the Ridgecrest Solar Power Project (“Project”).

The SA/DEIS provides an excellent snapshot of a Project under development. However, the SA/DEIS does not meet the standard of an informational document under CEQA. The SA/DEIS does not allow the public to intelligently weigh the environmental consequences of the Project because it was incomplete when it was published and has since been superseded, in part, by new Project changes submitted by the Applicant. As a result, the SA/DEIS does not yet inform the public about the Project, as currently proposed, its potentially significant environmental impacts, and any feasible and enforceable mitigation measures that would reduce those impacts to a level of insignificance. Staff’s revised analysis (“RSA”) must be recirculated for public comment, and the public must be given an adequate opportunity to review the significant new information that will be added to the RSA, in accordance with CEQA.

## **I. THE SA/DEIS DOES NOT ACCOMPLISH ITS PURPOSE AS AN INFORMATIONAL DOCUMENT**

In the approval process for an application for certification of a power plant project, the Commission acts as lead agency under CEQA.<sup>1</sup> In all essential respects, its process is functionally equivalent to that of all other CEQA proceedings.<sup>2</sup> The SA/DEIS serves as the functional equivalent of a draft environmental impact report,<sup>3</sup> which must be prepared by Staff to inform decision-makers and the public of a project’s environmental impacts.<sup>4</sup> The SA/DEIS, like an environmental impact report, is the “heart” of this requirement.<sup>5</sup> The environmental impact report has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”<sup>6</sup>

The SA/DEIS also must ensure that the Project avoids or reduces environmental damage when possible by requiring alternatives or mitigation

---

<sup>1</sup> Pub. Resources Code, § 25519(c).

<sup>2</sup> Pub. Resources Code, § 21080.5.

<sup>3</sup> See Memorandum of Understanding Between the U.S. Department of the Interior, Bureau of Land Management California Desert District and the California Energy Commission Staff, Concerning Joint Environmental Review For Solar Thermal Power Plant Projects, p. 4, available at [http://www.energy.ca.gov/siting/solar/BLM\\_CEC\\_MOU.PDF](http://www.energy.ca.gov/siting/solar/BLM_CEC_MOU.PDF) (“[t]he assessments provided by the Parties must be sufficient to meet all federal and state requirements for NEPA and CEQA and shall be included as part of the joint Preliminary Staff Assessment/Draft Environmental Impact Statement and the joint Final Staff Assessment/Final Environmental Impact Statement.”)

<sup>4</sup> Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (hereafter CEQA Guidelines).

<sup>5</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

<sup>6</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795.

measures.<sup>7</sup> The environmental review document serves to provide public agencies, and the public in general, with information about the effect that a proposed project is likely to have on the environment, and to “identify ways that environmental damage can be avoided or significantly reduced.”<sup>8</sup> If a project has a significant effect on the environment, the agency may approve the project only upon a finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible,” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in Public Resources Code section 21081.<sup>9</sup>

The dual purpose of the environmental impact report is echoed in the Commission’s regulations. The staff assessment must be sufficient to “inform interested persons and the commission of the environmental consequences of the proposal . . . and indicate the staff’s positions on the environmental issues affecting a decision on the applicant’s proposal.”<sup>10</sup> The Commission’s regulations place the burden on the Applicant to show a reasonable likelihood that the principal adverse impacts on the environment can be mitigated or avoided.<sup>11</sup>

The Applicant has not met its burden, and the SA/DEIS does not meet the requirements of CEQA or the Commission’s regulations. As we briefly set out in our initial comments on the SA/DEIS, the SA/DEIS is fundamentally and basically inadequate and precludes meaningful agency and public review of the Project because the Applicant has not yet provided information that is core to Staff’s analysis.<sup>12</sup>

#### **A. The SA/DEIS Does Not Provide a Stable and Finite Project Description**

“[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].”<sup>13</sup> The SA/DEIS fails to set forth a coherent Project description. The SA/DEIS should be revised to include a complete description of the reconfigured Project, and to provide a stable and accurate Project description across all resource areas.

---

<sup>7</sup> Cal. Code Regs., tit. 14, § 15002, subd. (a)(2)-(3); *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1354.

<sup>8</sup> Cal. Code Regs., tit. 14, § 15002, subd. (a)(2).

<sup>9</sup> *Ibid.*; Cal. Code Regs., tit. 14, § 15092, subd. (b)(2)(A)-(B).

<sup>10</sup> Cal. Code Regs., tit. 20, § 1742.5(c).

<sup>11</sup> Cal Code Regs., tit. 20, § 1723.5(a)(2); *see* Cal. Code Regs., tit. 20, § 1704(a)(3).

<sup>12</sup> *See* Cal. Code Regs., tit. 14, § 15088.5 (a)(4); *see, e.g., Cadiz Land Co. v. Rail Cycle L.P.*, 83 Cal. App. 4th 74, 95 (2000); *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal. App. 4th 99, 130 (2001).

<sup>13</sup> *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

1. The SA/DEIS Must Be Revised to Fully and Clearly Describe the Reconfigured Project

The configuration of the Project was revised by the Applicant in order to reduce direct impacts to the El Paso Wash. However, the SA/DEIS fails to provide a clear and complete description of the Project with respect to the Applicant's originally proposed Project footprint. Specifically, information regarding the relative size of the reconfigured solar fields, changes to the Project linear features, and the engineering changes resulting from the reconfiguration of the facility are absent from the Project Description and Alternatives chapter of the SA/DEIS; this information is buried in the Cultural Resources chapter.

The organization of the RSA should be revised so that the public can readily understand the reconfigured Project before embarking on a review of its environmental impacts. This information is key to the public's understanding of the Project under review. The following information, taken from the Cultural Resources chapter of the SA/DEIS, should be included in the beginning of the document, in the Project Description and Alternatives chapter of the RSA:

This adjustment [of the southern solar field] results in an *approximate 4% reduction in the area of disturbance of the southern solar field*;<sup>14</sup>

The area of disturbance associated with the north solar field has *increased by approximately 25%* to offset the reduction of the south solar field;<sup>15</sup>

Engineered drainages along the perimeters of both the north and south solar fields *are being* [or, have been] *redesigned* to accommodate the new solar field configuration;<sup>16</sup>

To mitigate the overall *losses in process efficiency* resulting from the new configuration, the process performance of the steam cycle was improved by adding cells to the air cooled condenser;<sup>17</sup>

The movement of the power block to the north of Brown Road will result in a *longer gen tie line alignment* [increasing its length] from *1,250 ft to 3,900 ft*;<sup>18</sup>

---

<sup>14</sup> SA/DEIS, p. C.3-23 (emphasis added).

<sup>15</sup> *Id.* at p. C.3-24.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, p. C.3-25.



The reconfiguration will also result in the need for the gen-tie line to cross over *Brown Road*;<sup>19</sup>

HTF piping will span over *El Paso Wash* via a new pipe bridge, under *Brown Road* via a pair of culverts, and onward into the south solar field.<sup>20</sup>

A clear and consistent description of the proposed Project should also be incorporated across all resources areas of the RSA to facilitate the public's understanding of the Project's potentially significant environmental impacts.

## 2. The SA/DEIS Does Not Consider All of the Project's Emitting Units

The SA/DEIS does not include in its analyses of the Project's air quality impacts, the proposed land treatment unit ("LTU") for the bioremediation of soils contaminated by spills and leaks of heat transfer fluid ("HTF").<sup>21</sup> According to the Application for Certification ("AFC"), the Project will use one LTU which will be designed in accordance with a facility-specific WDR permit from the Lahontan Regional Water Quality Control Board.<sup>22</sup> Fugitive VOC emissions from the Project LTU have been estimated at 0.169 lb/day and 0.031 tons/year for one 250-MW power block.<sup>23</sup> Although the Applicant has not yet provided Staff with the exact description of the LTU, nor obtained approval for its design from the Lahontan Regional Water Quality Control Board, the LTU "is expected to comprise an area of about 8 acres."<sup>24</sup> Once the Applicant supplies Staff with the necessary data, the RSA should be revised to provide a consistent Project description across all resource areas. In particular, the Air Quality chapter of the RSA should include the LTU.

The RSA should also be revised to include an analysis of potentially significant impacts to air quality and public health resulting from the Project's new and altered emissions units, including a new fuel depot and the changed daily operations of the Project's cooling tower.<sup>25</sup> These Project changes were made by the Applicant after the publication of the SA/DEIS and are discussed more fully in Section II of these comments.

---

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (emphasis added).

<sup>21</sup> Compare SA/DEIS, p. B.1-3 and SA/DEIS, p. C.1-15.

<sup>22</sup> AFC, pp. 5.16-19-20.

<sup>23</sup> See Exhibit A.

<sup>24</sup> SA/DEIS, p. B.1-30.

<sup>25</sup> See SA/DEIS, p. C.7-12 and pp. C.1-15-1.16, C.1-18.

### 3. The SA/DEIS Does Not Consider the Out-of-Field Extension of the Project's HTF Piping System

HTF is a synthetic hydrocarbon liquid mixture of diphenyl ether and biphenyl, and is classified as a hazardous material by the State of California.<sup>26</sup> During Project operation, HTF is heated to 750°F and piped through a series of heat exchangers where it releases its stored heat to generate high pressure steam.<sup>27</sup> The reconfigured Project proposes to extend HTF piping from the power block and over the El Paso Wash, to connect the northern and southern solar fields.<sup>28</sup> However, the SA/DEIS does not evaluate this potentially hazardous element of the Project because the Applicant has not yet provided a complete description of its design.<sup>29</sup>

While the SA/DEIS requires the Applicant to reduce the potential hazards related to out-of field reaches of the HTF piping system where it would cross Brown Road (by undergrounding the piping and restricting access to the pipe), no mitigation is required for the portion of the HTF pipe that would extend over the El Paso Wash.<sup>30</sup> Absent such mitigation, it is difficult to understand how the reconfigured Project would avoid impacts to the El Paso Wash as intended. The RSA should be revised to include an analysis of the unprotected HTF piping over the El Paso Wash and its potentially significant impacts to public safety and the environment.

#### **B. The Applicant Has Not Yet Provided All Baseline Data to Staff**

CEQA defines “baseline” as the physical environment as it exists at the time CEQA review is commenced.<sup>31</sup> The identification of the environmental baseline is the starting point for an environmental impact analysis.<sup>32</sup> An accurate description of the environmental setting is critical to an accurate, meaningful evaluation of environmental impacts. Before the impacts of a project can be assessed and mitigation measures considered, an [environmental review document] must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.<sup>33</sup> In other words, the

---

<sup>26</sup> SA/DEIS, p. B.1-6.

<sup>27</sup> AFC, p. 1-1.

<sup>28</sup> *Id.* (emphasis added).

<sup>29</sup> SA/DEIS, p. C.4-8.

<sup>30</sup> *Id.* See Project Description Figure 1, dated March 2010, for a depiction of the Applicant's reconfigured Project.

<sup>31</sup> Cal. Code Regs., tit. 14, §15125(a); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453 (“*Riverwatch*”).

<sup>32</sup> See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management District* (March 15, 2010) 48 Cal.4th 310, 316; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278 (“*Fat*”), citing Remy, et al., Guide to the Calif. Environmental Quality Act (1999) p. 165.

<sup>33</sup> *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

determination of baseline conditions is the first, rather than the last step, in the environmental review process.<sup>34</sup>

1. The Applicant Has Not Provided Baseline Data for the Project's Linear Features

The Project will require the construction of a 4.6 mile long water pipeline to supply water from the Indian Wells Valley Water District for Project construction and operation.<sup>35</sup> Construction of the pipeline would disturb approximately 16.3 acres, and will be located within the China Lake Boulevard and Brown Road County right of ways.<sup>36</sup> At the time of publication of the SA/DEIS, the Applicant had not supplied Staff with focused surveys and vegetation mapping results for the proposed water pipeline route. Therefore, the SA/DEIS lacks information regarding the quality of habitat and the species that would be disturbed within the 16.4 acres of temporary and permanent disturbance caused by the construction and operation of the proposed water pipeline.<sup>37</sup>

The Project will also require a realignment of the proposed transmission line, which will result in a larger area of disturbance than the originally proposed transmission alignment. Specifically, in order to connect with the power block, the gen-tie will cross over Brown Road and will increase in length from 1,250 to 3,900 feet.<sup>38</sup> The total area of disturbance resulting from the construction of the transmission line is estimated at 58.2 acres.<sup>39</sup> The Applicant has not yet provided Staff with the survey results detailing "habitat(s) associated with the proposed transmission line route."<sup>40</sup> Therefore, the SA/DEIS also lacks baseline information regarding the quality of habitat and the species that would be disturbed within the proposed alignment of the transmission line.

Although the SA/DEIS sets forth estimates of Project impacts to vegetation communities, special status species, and cultural resources, this analysis may have to be revised after the Applicant completes surveys of the baseline conditions along the Project's linear features and submits final Project plans to Staff.<sup>41</sup> The RSA must be recirculated for public review and comment once Staff incorporates this

---

<sup>34</sup> *Save Our Peninsula Committee*, 87 Cal.App.4th at 125.

<sup>35</sup> SA/DEIS, p. C.2-4.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> SA/DEIS, p. C.3-25.

<sup>39</sup> See SA/DEIS, p. C.2-28.

<sup>40</sup> SA/DEIS, pp. C.2-5, C.2-28-29.

<sup>41</sup> See, e.g., SA/DEIS, p. C.3-103 ("[I]t is possible that there would be some additional ground disturbing work that might be necessary in the course of maintenance to the subsurface linear facilities and that such activity could affect resources that had escaped damage in the original construction. Monitoring of such work will be addressed in subsequent documents, in particular the Programmatic Agreement.")

outstanding information regarding the Project setting into its environmental analysis.

2. The Applicant Has Not Provided Baseline Data for the Entirety of the Project Footprint

With the reconfigured Project alternative, the acreage of disturbance area has increased from approximately 1,738 acres to 2,002 acres.<sup>42</sup> The Applicant has not yet provided the survey results for the several hundred acres that were not previously surveyed for biological resources or mapped for vegetation communities. Similarly, direct impacts to cultural resources could not be assessed at the time of publication of the SA/DEIS.<sup>43</sup> The RSA must be revised to account for the changed area of impact once the Applicant submits baseline data for the entire Project footprint, and that analysis must be made available for public review in accordance with CEQA.

3. The Applicant Has Not Yet Provided Baseline Data for the Golden Eagle

The Eagle Protection Act requires an incidental take permit for the take of golden eagles. The Project site contains potential foraging habitat for golden eagles, and there are known nesting locations within the estimated foraging distance for golden eagles.<sup>44</sup> However, the SA/DEIS does not identify the number of golden eagles that could potentially be impacted by the Project because the Applicant has not yet submitted results of focused golden eagle surveys to Staff.<sup>45</sup> The RSA must be revised to identify whether the Project could potentially affect take of the golden eagle and the number of eagles that would potentially be impacted by the Project. Staff's analysis must also be made available for public review in accordance with CEQA.

**C. The SA/DEIS Must Disclose And Analyze All Potentially Significant Impacts**

CEQA requires the SA/DEIS to disclose and analyze *all* potentially significant adverse environmental impacts of a proposed project.<sup>46</sup> Similarly,

---

<sup>42</sup> *Id.*

<sup>43</sup> See SA/DEIS, p. C.3-25 (“In addition, regarding the less efficient use of land area, the staggered field configuration results in triangular spaces at the “offsets” in the field design that may be disturbed in the process of grading the site. These areas are currently being evaluated to minimize any impact.”) (“The disturbed areas west of the south field may be able to be further reduced at such time as SCE has finalized their design for the realignment.”)

<sup>44</sup> SA/DEIS, p. C.2-31.

<sup>45</sup> *Id.*, at C.2-32.

<sup>46</sup> Pub. Resources Code, § 21100(b)(1).

Commission regulations require that Staff give “complete consideration of significant environmental issues in the proceeding.”<sup>47</sup>

1. The SA/DEIS Does Not Disclose and Analyze All of the Project’s Potentially Significant Impacts to Air Quality

The analysis of Project operational emissions is no longer accurate. The SA/DEIS provides that the Project’s two-cell cooling tower would have a maximum daily run time of 16 hours a day. However, on May 12, 2010, the Applicant requested a revision to the Kern County Air Pollution Control District’s permit conditions that would allow the Project’s wet cooling tower to operate 24 hours per day rather than 16 hours per day.<sup>48</sup> This Project change increases the daily emissions of PM10 and PM2.5 above the amounts analyzed in the SA/DEIS. The SA/DEIS also does not analyze emissions from recently added Project components.<sup>49</sup>

The SA/DEIS may no longer reflect an accurate analysis of the Project’s impacts on air quality during construction. At the April 22, 2010 public workshop, Staff indicated that more stringent measures for dust suppression during grading may be included in the RSA to reduce and minimize worker exposure to the coccidiomycosis fungus (also known as Valley Fever) during construction grading activities.<sup>50</sup> The implementation of enhanced dust control measures, such as increased frequency of watering, would increase emissions from diesel trucks during construction above the levels analyzed in the SA/DEIS. The RSA should be revised consistent with the proposed changes to construction activities, and Staff’s analysis must be recirculated for public review and comment in accordance with CEQA.

2. The SA/DEIS Does Not Analyze the Project’s Potentially Significant Impacts to the Golden Eagle

As has already been discussed, the SA/DEIS does not include an analysis of Projects impacts to the golden eagle because the Applicant has not yet submitted baseline information regarding this species for Staff’s review and analysis. The information will be included in the RSA and must be made available for public review and comment in accordance with CEQA.

---

<sup>47</sup> *Id.*, § 1742.5(d).

<sup>48</sup> Letter to Mr. Glen Stephens, Kern County Air Pollution Control District from Billy Owens, Director Project Development Solar Millennium, LLC, regarding Application for a Change of Conditions for the Cooling Tower at the Ridgecrest Solar 1, LLC Power Project, May 12, 2010.

<sup>49</sup> See Comments Section II.

<sup>50</sup> See also SA/DEIS, p. C.14-34.

3. The SA/DEIS Does Not Disclose and Analyze the Project's Potentially Significant Impacts to Cultural Resources

The SA/DEIS identifies 71 cultural resources that will be directly impacted by the Project,<sup>51</sup> and concludes that 14 cultural resources and 17 archaeological sites, 13 prehistoric sites, and 4 historic sites in the inventory of the Project area are eligible for listing in the California Register of Historic Resources and for inclusion in the National Register of Historic Places.<sup>52</sup> However, the SA/DEIS does not provide an analysis of the Project's impacts to these resources. The SA/DEIS makes no secret of the fact that an impact analysis has not yet been conducted. It states,

Staff *would* assess as significant and adverse all project-related construction impacts . . . to all known resources located in the APE (Area of Potential Effects).<sup>53</sup>

With regard to impacts as a result of Project operation, the SA/DEIS states,

[i]t is possible that there would be some additional ground disturbing work that might be necessary in the course of maintenance to the subsurface linear facilities and that such activity could affect resources . . . Monitoring of such work *will be* addressed in subsequent documents, in particular the Programmatic Agreement.<sup>54</sup>

At such time that Staff completes its impact analysis, the analysis must be included in the RSA and recirculated for public review and comment in accordance with CEQA.

4. The SA/DEIS Does Not Disclose and Analyze All Potentially Significant Impacts to Public Safety

The SA/DEIS does not discuss the Project's potentially significant impacts to public safety and the environment from the exposed portion of HTF piping that would extend beyond the Project security fence and over the El Paso Wash. The RSA must include an analysis of such impacts, and the public must be given an opportunity to review and comment on the revised analysis in accordance with CEQA.

---

<sup>51</sup> SA/DEIS, p. C.3-51.

<sup>52</sup> SA/DEIS, pp. C.3-87-88.

<sup>53</sup> SA/DEIS, p. C.3-108 (emphasis added).

<sup>54</sup> *Id.* at p. C.3-103 (emphasis added).

5. The SA/DEIS Must Disclose and Analyze All Potentially Significant Impacts Associated with Transmission System Engineering

The SA/DEIS correctly states that the Commission is required under CEQA to conduct environmental review of the whole of the Project, which may include facilities not licensed by the Commission.<sup>55</sup> As such, the Commission must analyze the Project's downstream transmission impacts.<sup>56</sup> The SA/DEIS further states that, "[t]he Phase I Interconnection Study (Phase I Study) results no longer provide a meaningful forecast of the reliability impacts of the proposed project" and that reliance on the Phase I Study would be tantamount to "idle speculation."<sup>57</sup>

According to the SA/DEIS, the Phase II Interconnection Study will not be completed until September, 2010,<sup>58</sup> and therefore an analysis of potentially significant impacts associated with any downstream transmission facilities identified in the study will be conducted by the California Public Utilities Commission.<sup>59</sup> This legal conclusion cannot be squared with CEQA's requirement that the lead agency analyze "the whole of the action" prior to Project certification. The RSA must be revised to include Staff's analysis of the Project's downstream transmission impacts once the Phase II Interconnection Study is available. Staff's analysis must then be recirculated for public review and comment in accordance with CEQA.

At the May 17, 2010 Committee Status Conference, Staff requested an extension for the issuance of the RSA until the results of the Phase II Interconnection Study could be made available and incorporated into the RSA. We strongly support Staff's request and hope that the Committee adopts a Project schedule that allows Staff to comply with CEQA.

**D. The SA/DEIS Must Incorporate Feasible and Enforceable Mitigation Measures**

A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>60</sup> Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.<sup>61</sup> Such measures must be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and

---

<sup>55</sup> SA/DEIS, p. D.5-1 (citing Cal. Code Regs. tit. 14, § 15378).

<sup>56</sup> *Id.*

<sup>57</sup> SA/DEIS, p. D.5-5.

<sup>58</sup> *Id.*

<sup>59</sup> SA/DEIS, p. D.5-7.

<sup>60</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

<sup>61</sup> *Id.*, § 15126.4(a)(2).

technological factors.<sup>62</sup> Importantly, formulation of mitigation measures may not be deferred to post project certification studies.<sup>63</sup> An EIR is inadequate if “[t]he success or failure of mitigation efforts . . . may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.”<sup>64</sup>

The SA/DEIS lacks effective, feasible mitigation for numerous impacts it identifies as significant. As such, the SA/DEIS is inadequate under CEQA. By deferring the development of specific mitigation measures, the SA/DEIS has also denied the public a meaningful opportunity to comment on the efficacy and feasibility of the measures.

### 1. The SA/DEIS Improperly Defers the Identification of Mitigation Measures for Project Impacts to Cultural Resources

The SA/DEIS proposes, as the *sole* measure for mitigating the Project’s potentially significant impacts to cultural resource, the requirement that the Applicant comply with the terms of the programmatic agreement that the BLM is to execute under 36 C.F.R. section 800.14(b)(3).<sup>65</sup> The SA/DEIS states that,

Staff *would* make recommendations that the impacts of this alternative [reconfigured Project] on cultural resources *would have to be* avoided or mitigated with specific modes of mitigation detailed in the programmatic agreement, executed for this project [*sic*].<sup>66</sup>

The SA/DEIS also clarifies that Staff’s anticipated recommendations will be included in a programmatic agreement that has yet *to be negotiated and signed*.<sup>67</sup> This is a textbook example of improper deferral of mitigation that is prohibited under CEQA. Courts have routinely set aside EIRs that condition a permit on recommendations of a report that has yet to be performed.<sup>68</sup>

“Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s

---

<sup>62</sup> Cal. Code Regs., tit. 14, § 15364.

<sup>63</sup> *Id.*, § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309.

<sup>64</sup> *Communities for a Better Environment v. City of Richmond* (2010) WL1645906 \*14 (quoting *San Joaquin Raptor* (2007) 149 Cal.App.3d 296, 307).

<sup>65</sup> SA/DEIS, p. C.3-117.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at C.3-103.

<sup>68</sup> *See, e.g., Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1396; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794.



goals of full disclosure and informed decision making.”<sup>69</sup> Foreclosing the public from participating in the CEQA process before adequate mitigation is incorporated in the RSA violates CEQA. The RSA must be recirculated for public comment after the terms of the Programmatic Agreement are included in Staff’s analysis.

2. The Applicant Carries the Burden of Demonstrating that the Project’s Significant Unavoidable Impacts to the Desert Tortoise Can Be Fully Mitigated

Under CEQA, for the “kinds of impacts for which mitigation is known to be feasible, the environmental review document may give the lead agency a choice of measures to adopt, so long as the measures are coupled with specific and mandatory performance standards to ensure that the measures, as implemented, will be effective.”<sup>70</sup> However, where there is evidence that mitigation measures are not feasible, or the agency has not fully committed to implementing those measures, the agency has but one option: it must defer approval of the Project until the proposed measures can be “fully developed, clearly defined, and made available to the public and interested agencies for review and comment.”<sup>71</sup> “Fundamentally, the development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that involves other interested agencies and the public.”<sup>72</sup> Mitigation measures must be set forth *in an environmental review document* to enable public review and comment in accordance with CEQA.<sup>73</sup>

Impacts to species listed under the California Endangered Species Act may be mitigated through an incidental take permit issued pursuant to Section 2081(b) of the Fish and Game Code. Section 2081(b) provides that an incidental take permit may be issued upon a showing of several conditions, four of which are relevant here.<sup>74</sup> First, the impacts of the authorized take shall be minimized and *fully mitigated*.<sup>75</sup> The fully mitigated provision has been interpreted to mean that “mitigation must be sufficient to prevent listed species from becoming more threatened and endangered than they were before the proposed project was built.”<sup>76</sup> Second, *where various measures are available*, to meet this obligation, the measures required shall maintain the applicant’s objectives to the greatest extent possible.<sup>77</sup>

---

<sup>69</sup> *Communities for a Better Environment v. City of Richmond* (2010) WL1645906 \*14.

<sup>70</sup> *Id.* at \*15.

<sup>71</sup> *Id.* at \*16.

<sup>72</sup> *Id.* at \*14.

<sup>73</sup> Pub. Resources Code § 21100(b)(3); Cal Code Regs., tit. 20, § 151269e), 15126.4; *see also*, Cal. Code Regs., tit. 20, § 1742.5(a)-(c).

<sup>74</sup> Cal. Fish & Game Code § 2081(b).

<sup>75</sup> *Id.*

<sup>76</sup> Energy Commission Staff Opening Brief, In the Matter of Application for Certification for the Ivanpah Solar Electric Generating System, Docket No. 07-AFC-5, p. 9.

<sup>77</sup> *Id.*

Third, all required measures shall be capable of successful implementation.<sup>78</sup> Fourth and finally, *the Applicant* shall demonstrate adequate funding to implement the required measures, and that the action will not jeopardize the continued existence of the species.<sup>79</sup>

The conclusions reached in the SA/DEIS regarding Project impacts to Desert tortoise are supported by the best available science. We agree with Staff's conclusion that the Project site provides the abundance of flora and fauna that contributes to its unique ability to support DT.<sup>80</sup> Staff's conclusion that the DT population at the project site is important to the overall conservation effort is supported by substantial evidence.<sup>81</sup> We also agree with Staff's conclusion that "there is *no evidence* supporting the belief that other lands can be enhanced to support population densities as found on the Project site."<sup>82</sup> Staff's conclusion that the Project site would contribute to significant losses of suitable habitat available for DT dispersal is also supported by substantial evidence. The proposed site supports a high density of DT relative to known populations in the Mojave, and DT habitat at the Project site provides suitable habitat for individual DTs from the south.<sup>83</sup> In addition, movements to the north and east are somewhat limited by development associated with Ridgecrest and movement barriers associated with US 395, and State Routes 14 and 178.<sup>84</sup> In conclusion, Staff finds that impacts to "the proposed site's high value habitat and tortoise concentration will not be possible to replace through CEQA."<sup>85</sup>

What the RSA must make explicit is that Staff independently found, based on the Applicant's submissions, consultation with the California Department of Fish and Game and its own research, that the impacts of the reconfigured Project on the Desert tortoise *cannot* be fully mitigated and that no alternative measures are *available* to fully mitigate the Project's impacts to the Desert tortoise. Staff also found that even with the minimization measures proposed in the SA/DEIS, the Applicant has not met its burden to show no jeopardy to the continued existence of the Desert tortoise. Any change in Staff's position with regard to the Project's unavoidable impacts to the Desert tortoise would require *the Applicant* to provide new information, or a Project change, to demonstrate that the Project will not jeopardize the continued existence of the species.

---

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* § 2081(b)(4), (c).

<sup>80</sup> SA/DEIS, p. C.2-39.

<sup>81</sup> *Id.* at p. C. 2-38.

<sup>82</sup> SA/DEIS, p. C. 2-39 (emphasis added).

<sup>83</sup> SA/DEIS, p. C.2-39.

<sup>84</sup> SA/DEIS, p. C.2-40.

<sup>85</sup> SA/DEIS, p. C.2-50.

3. The Applicant Carries the Burden of Demonstrating that the Project's Significant Unavoidable Impacts to the Mojave Ground Squirrel Can Be Fully Mitigated

Under CEQA, for the “kinds of impacts for which mitigation is known to be feasible, the environmental review document may give the lead agency a choice of measures to adopt, so long as the measures are coupled with specific and mandatory performance standards to ensure that the measures, as implemented, will be effective.”<sup>86</sup> However, where there is evidence that mitigation measures are not feasible, or the agency has not fully committed to implementing those measures, the agency has but one option: it must defer approval of the Project until the proposed measures can be “fully developed, clearly defined, and made available to the public and interested agencies for review and comment.”<sup>87</sup> “Fundamentally, the development of mitigation measures, as envisioned by CEQA is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that involves other interested agencies and the public.”<sup>88</sup> Mitigation measures must be set forth *in an environmental review document* to enable public review and comment in accordance with CEQA.<sup>89</sup>

Impacts to species listed under the California Endangered Species Act may be mitigated through an incidental take permit issued pursuant to Section 2081(b) of the Fish and Game Code. Section 2081(b) provides that an incidental take permit may be issued upon a showing of several conditions, four of which are relevant here.<sup>90</sup> First, the impacts of the authorized take shall be minimized and *fully mitigated*.<sup>91</sup> The fully mitigated provision has been interpreted to mean that “mitigation must be sufficient to prevent listed species from becoming more threatened and endangered than they were before the proposed project was built.”<sup>92</sup> Second, *where various measures are available*, to meet this obligation, the measures required shall maintain the applicant’s objectives to the greatest extent possible.<sup>93</sup> Third, all required measures shall be capable of successful implementation.<sup>94</sup> Fourth and finally, *the Applicant* shall demonstrate adequate funding to implement the required measures, and that the action will not jeopardize the continued existence of the species.<sup>95</sup>

---

<sup>86</sup> *Id.* at \*15.

<sup>87</sup> *Id.* at \*16.

<sup>88</sup> *Id.* at \*14.

<sup>89</sup> Pub. Resources Code § 21100(b)(3); Cal Code Regs., tit. 20, § 151269e), 15126.4; *see also*, Cal. Code Regs., tit. 20, § 1742.5(a)-(c).

<sup>90</sup> Cal. Fish & Game Code § 2081(b).

<sup>91</sup> *Id.*

<sup>92</sup> Energy Commission Staff Opening Brief, In the Matter of Application for Certification for the Ivanpah Solar Electric Generating System, Docket No. 07-AFC-5, p. 9.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* § 2081(b)(4), (c).

Staff concludes that Project impacts to Mojave ground squirrel connectivity can be minimized but *cannot* be fully mitigated.<sup>96</sup> As with the Desert tortoise, the Staff proposes mitigation measures to minimize such impacts, “in the event the Commission approves the project.” However, Staff makes clear that compensatory mitigation will not fully mitigate the loss of Mojave ground squirrel connectivity, and that “the unique characteristics and geographic location of this site makes it irreplaceable.”<sup>97</sup>

The conclusions reached in the SA/DEIS regarding Project impacts to the Mojave ground squirrel are supported by the best available science. Staff’s conclusion that the Project would substantially reduce the connectivity of the Little Dixie Wash core population to the west of the Project site with known populations east of the City of Ridgecrest, and the populations to the south of the Project with the Olancha core population, is supported by substantial evidence. In fact, one of the principal studies supporting this finding was authored by the Applicant’s consultant, Dr. Phil Leitner.<sup>98</sup> Staff’s conclusions have also been strongly endorsed by the California Department of Fish and Game.<sup>99</sup> At the May 3, 2010 public workshop, a representative from the U.S. Fish and Wildlife Service acknowledged the importance of the site to the future viability of the Mojave ground squirrel. These expert agency opinions are particularly relevant to the Commission’s, and the public’s, understanding of the Project’s impact on the squirrel. We agree with Staff’s recommendation that the proposed Project site should be avoided and the site should be preserved in a natural state.<sup>100</sup>

A contrary conclusion from Staff would require *the Applicant* to provide new information, or a Project change, to demonstrate that the Project will not jeopardize the continued existence of the species. Any such new information would have to be incorporated into the RSA and recirculated for public comment in accordance with CEQA.

## II. THE RSA MUST BE RECIRCULATED FOR PUBLIC COMMENT

When significant new information is added to a draft environmental review document after the close of public comment and before Project certification, a revised draft environmental review document must be noticed and recirculated for public comment.<sup>101</sup> New information is significant, for the purpose of CEQA, when

---

<sup>96</sup> SA/DEIS, p. C. 2-50.

<sup>97</sup> SA/DEIS, p. C. 2-52.

<sup>98</sup> *See generally*, SA/DEIS, pp. C.2-35-37.

<sup>99</sup> *See* CDFG Presentation of David Hacker for the May 3-4 public workshop.

<sup>100</sup> *See* SA/DEIS, p. C.2-37.

<sup>101</sup> Pub. Resources Code, § 21092.1.

the environmental review document is “changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.”<sup>102</sup>

As detailed in these comments, significant new information will be added to the RSA regarding the Project, its environmental setting, potentially significant impacts, and Staff’s recommendations to mitigate those impacts. In addition, the Applicant has made several late changes to the Project, which constitute significant new information, and which require the recirculation of the RSA in accordance with CEQA.

**A. The Applicant Plans to Add a Fuel Depot to the Project, Which Requires New Staff Analyses**

At a public workshop held on April 22, 2010, the Applicant indicated that a fuel depot will be added to the Project. The Applicant also indicated that an “index of changes” resulting to the Project’s original air emissions calculations would be submitted to enable Staff to revise its analysis. At the workshop, the Applicant indicated that such index would also include corrected mirror washing events and previously unaccounted for painting operations. This new information will change Staff’s analysis regarding the Project’s potentially significant impacts to air quality and public health and constitutes significant new information under CEQA. The Commission’s regulations require Staff to assess the Applicant’s submittal and to prepare a report that is provided to the public and the decisionmakers for review.<sup>103</sup>

**B. The Applicant Plans to Add Evaporation Ponds and a Water Treatment System to the Project, Which Require New Staff Analyses**

At a public workshop held on April 23, 2010, the Applicant informed Staff that evaporation ponds and a water treatment system would be added to the Project. The Applicant has, on several occasions, represented that any potentially significant adverse impacts resulting from this Project change would be mitigated in the same manner as was proposed for the Beacon Solar Energy Project. If any such mitigation were to be proposed by Staff, it must be added to the RSA as new conditions of certification and would constitute significant new information regarding significant new impacts under CEQA.

---

<sup>102</sup> Cal. Code Regs. tit 14, § 15088.5.

<sup>103</sup> Cal. Code Regs., tit. 20, § 1742.5.

**C. The Applicant Requests a Permit Condition to Increase Daily Cooling Tower Operations, Which Requires New Staff Analyses**

Just on May 12, 2010, the Applicant requested an additional change to the Project's air permit conditions that would allow the Project to increase daily emissions of particulates during operation.<sup>104</sup> This change would be reflected in the RSA as a new condition of certification and constitutes significant new information under CEQA.

**D. The Applicant Requests Staff to Incorporate New Baseline Data in the Revised Staff Assessment, Which Requires New Staff Analyses**

In comments on the SA/DEIS, the Applicant requested that Staff incorporate the result of biological and jurisdictional delineation surveys in the RSA.<sup>105,106</sup> According to the Applicant, this new data regarding the environmental setting of the Project would be made available "later this spring."<sup>107</sup> Importantly, however, the public has not had an opportunity to comment on the adequacy of the Applicant's survey protocols. The Applicant simply informed Staff on April 9, 2010, that new surveys of the revised Project footprint were ongoing.<sup>108</sup> If Staff plans to rely on this new information, the public must be given an opportunity to review and comment on any changed assumptions regarding the Project's environmental setting. Such assumptions constitute significant new information under CEQA.

The new information that will be provided by the Applicant to Staff in the weeks following publication of the SA/EIS is, *admittedly*, significant. Therefore, Staff's revised analysis must be recirculated to allow the public the opportunity to evaluate and comment on the revised Project components, and Staff's independent analysis of any new information regarding the Project's environmental setting and potentially significant adverse impacts and required mitigation measures.

---

<sup>104</sup> Letter to Mr. Glen Stephens, Kern County Air Pollution Control District from Billy Owens, Director Project Development Solar Millennium, LLC, regarding Application for a Change of Conditions for the Cooling Tower at the Ridgecrest Solar 1, LLC Power Project, May 12, 2010.

<sup>105</sup> We note that this Project was redesigned in February 2010 in an attempt to reduce impacts to the El Paso Wash.

<sup>106</sup> Ridgecrest Solar 1, LLC's Initial Comments on the Biological Resources Section of the Staff Assessment/Draft Environmental Impact Statement, Docket No. 09-AFC-09, April 30, 2010, p. 11 ("Applicant's SA Comments"); *see also* Letter to Rick York, California Energy Commission from William Graham, AECOM, regarding Biological Survey Methodologies for the Blythe, Palen and Ridgecrest Solar Power Project Sites 2010, March 30, 2010 (docketed on April 9, 2010).

<sup>107</sup> Applicant's SA Comments, p. 11.

<sup>108</sup> Letter to Rick York, California Energy Commission from William Graham, AECOM, regarding Biological Survey Methodologies for the Blythe, Palen and Ridgecrest Solar Power Project Sites 2010, March 30, 2010 (docketed on April 9, 2010).

### III. CONCLUSION

We commend Staff for its dedication and its efforts to provide an adequate analysis of this Project, particularly in light of the shortened review period and the unique difficulties presented by this Project. However, numerous data gaps and inconsistencies in the SA/DEIS, as well as the Applicant's recent revisions to the Project, have deprived the public of a meaningful opportunity to evaluate the environmental consequences of the Project at this time. Once this Project comes into full focus and the Applicant provides Staff with all of the required information to produce an adequate environmental review document, Staff's revised analysis must be recirculated for public review and comment in accordance with CEQA's requirements.

Sincerely,

/s/

Tanya A. Gulesserian  
Elizabeth Klebaner

EK:bh

**EXHIBIT A**



KERN COUNTY AIR POLLUTION CONTROL DISTRICT

PRELIMINARY DETERMINATION OF COMPLIANCE

2700 "M" Street, Suite 302  
Bakersfield, CA 93301-2370  
Phone: (661) 862-5250  
Fax: (661) 862-5251



Field Office  
Phone: (661) 823-9264

ISSUE DATE: MONTH XX, 2010	APPLICATION NO.: 0368006
EXPIRATION: MONTH XX, 2012	DATE: SEPTEMBER 17, 2009

DETERMINATION OF COMPLIANCE IS HEREBY GRANTED TO:

**SOLAR MILLENNIUM, LLC**

<b>DETERMINATION OF COMPLIANCE IS HEREBY GRANTED FOR:</b>			
<u>Bio-Remediation of Hydrocarbon Contaminated Soil</u>			
<small>(See attached sheets for equipment description and conditions)</small>			
<b>S</b> SW26	<b>T</b> 27S	<b>R</b> 39E	<b>Location:</b> APN: 341-110-02
			<b>Startup Inspection</b>

This document serves as a temporary Permit to Operate only as provided by Rule 201 of the District's Rules and Regulations. For issuance of a Permit to Operate, Rule 208 requires equipment authorized by this Determination of Compliance be installed and operated in accordance with conditions of approval. Changes to these conditions must be made by application and must be approved before such changes are made. This document does not authorize emission of air contaminants in excess of New Source Review limits (Rule 210.1) or Regulation IV emission limits. Emission testing requirements set forth on this document must be satisfied before a Permit to Operate can be granted.

UPON COMPLETION OF CONSTRUCTION AND/OR INSTALLATION, PLEASE TELEPHONE DISTRICT

Validation Signature:

\_\_\_\_\_  
*David L. Jones*  
Air Pollution Control Officer

g:\ATCLTR (2/2006)

**CONDITIONS OF APPROVAL:**

Pursuant to Rule 209, "conditional approval" is hereby granted. Please be aware compliance with all conditions of approval imposed by any applicable Determination of Compliance remain in effect for life of project, unless modified by application.

**EQUIPMENT DESCRIPTION:** Bio-Remediation of Hydrocarbon Contaminated Soil, including following equipment and design specifications:

- A. 800-ft. by 200-ft. bio-remediation/land-farm facility,
- B. Irrigation system for bio-remediation/land-farm facility, and
- C. Bio-remediation fertilizer for enhanced bio-remediation.

**DESIGN CONDITIONS:**

- a. Bio-remediation area shall be lined with minimum 60-mil high density polyethylene (HDPE) or alternate lining approved by Lahontan Regional Water Quality Board (LRWQB). (Rule 210.1)
- b. Permittee shall provide District with depth of bio-remediation operation area. (Rule 210.1)

**OPERATIONAL CONDITIONS:**

- 1. Visible emissions from bio-remediation/land-farm facility shall not equal or exceed 0% opacity for more than 5 minutes in any two hour period. (Rule 210.1 BACT Requirement)
- 2. Permittee shall have flame ionization detector (FID) or photo ionization detector (PID) on site to measure soil VOC emissions (measured as hexane). (Rule 210.1)
- 3. Permittee shall maintain weekly VOC readings of bio-remediation area during any time it is operated. Permittee shall provide protocol for VOC readings, soil acidity (pH), soil moisture content (% weight), soil temperature (°F), and Nutrient Ratio (C:N:P) to be approved by District staff. (Rule 210.1)
- 4. If soil in bio-remediation area registers a VOC reading of less than 50-ppm by volume, measured three inches above soil surface, with FID or PID compliance with Condition No. 5 is not required. (Rule 210.1)
- 5. If soil in bio-remediation area registers a VOC reading greater than or equal to 50-ppm (calibrated to methane) by volume, measured three inches above soil surface, with FID or PID bio-remediation operation shall comply with the following conditions. (Rule 210.1)
  - a. Affected soil stockpile shall be covered with minimum 10-mil plastic sheeting within 24-hours of detection to control emissions during treatment until VOC readings 3-inches above the uncovered soil stockpile are less than 50-ppmv (Rule 210.1);
  - b. Covered soil stockpile shall be treated by enhanced bio-remediation using accepted environmental engineering practices to maintain conditions suitable for bio-remediation. Soil in stockpiles shall be conditioned as necessary through addition of nutrients, moisture and air as needed;
  - c. The following parameters in treatment area shall be monitored according to approved protocol: VOC readings over treatment area in use, soil acidity (pH), soil moisture content (% weight), soil temperature (°F), and Nutrient Ratio (C:N:P);
  - d. Records of soil treatment and monitoring results shall be maintained at the site for a period of at least 5-years, and

- e. If bio-remediation operation is not effective after 2 months (i.e. VOC readings show no reduction in VOC content), Permittee shall propose alternate method of soil remediation for District approval.
6. Soil moisture content shall be maintained according to District approved protocol. (Rule 210.1)
7. Compliance with all operational conditions shall be verified by appropriate recordkeeping, including records of operational data needed to demonstrate compliance. Such records shall be kept on site in readily available format. (Rule 209)
8. No emission resulting from use of this equipment shall cause injury, detriment, nuisance, annoyance to or endanger comfort, repose, health or safety of any considerable number of persons or public. (Rule 419 and CH&SC 41700)

**CONSTRUCTION ACTIVITY:**

All construction phase emissions shall be controlled utilizing reasonably available control provisions, e.g. construction site and unsurfaced roadway dust control, conscientious maintenance of mobile and piston engine-powered equipment, etc.

**STATE OF CALIFORNIA AIR TOXICS HOT SPOTS REQUIREMENTS:**

Facility shall comply with California Health and Safety Code Sections 44300 through 44384. (Rule 208.1)

**COMPLIANCE TESTING REQUIREMENTS:**

Should inspection reveal conditions indicative of non-compliance, compliance with hourly and concentration emission limits for VOC shall be verified pursuant to Rule 108.1 and KCAPCD Guidelines for Compliance Testing, within 45 days of District request.

**EMISSION LIMITS:**

Emissions rate of each air contaminant from this unit shall not exceed following limits:

<b><u>Volatile Organic Compounds (VOC):</u></b>	0.17 lb/day
<b>(as defined in Rule 210.1)</b>	0.03 ton/yr

(Emissions limits established pursuant to Rule 210.1, unless otherwise noted.)

Compliance with maximum daily emission limits shall be verified by source operator (with appropriate operational data and recordkeeping to document maximum daily emission rate) each day source is operated and such documentation of compliance shall be retained and made readily available to District for period of three years. (Rules 209 and 210.1)

**DECLARATION OF SERVICE  
RIDGECREST SOLAR POWER PROJECT  
Docket No. 09-AFC-9**

I, Bonnie Heeley, declare that on May 21, 2010, I served and filed copies of the attached Supplemental Comments of the California Unions for Reliable Energy dated May 21, 2010. The original document, filed with the Docket Office, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[http://www.energy.ca.gov/sitingcases/solar\\_millennium\\_ridgecrest/Ridgecrest POS.pdf](http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest/Ridgecrest_POS.pdf).

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Office via email and U.S. Mail as addressed below.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed at South San Francisco, CA on may 21, 2010.

\_\_\_\_\_/s/\_\_\_\_\_  
Bonnie Heeley

CALIFORNIA ENERGY COMMISSION Attn: Docket No. 09-AFC-9 1516 Ninth Street, MS-4 Sacramento, CA 95814-5512 <a href="mailto:docket@energy.state.ca.us">docket@energy.state.ca.us</a>	Alice Harron Senior Project Manager 1625 Shattuck Avenue, Suite 270 Berkeley, CA 94709-1161 <a href="mailto:harron@solarmillennium.com">harron@solarmillennium.com</a>	Elizabeth Copley AECOM Project Manager 2101 Webster Street, Suite 1900 Oakland, CA 94612 <a href="mailto:Elizabeth.copley@aecom.com">Elizabeth.copley@aecom.com</a>
Scott Galati Galati/Blek, LLP 455 Capitol Mall, Suite 350 Sacramento, CA 95814 <a href="mailto:sgalati@gb-llp.com">sgalati@gb-llp.com</a>	Peter Weiner Matthew Sanders Paul Hastings Janofsky & Walker LLP 55 2 <sup>nd</sup> Street, Suite 2400-3441 San Francisco, CA 94105 <a href="mailto:peterweiner@paulhastings.com">peterweiner@paulhastings.com</a> <a href="mailto:matthewsanders@paulhastings.com">matthewsanders@paulhastings.com</a>	California Unions for Reliable Energy T.Gulesserian/M.D.Joseph/E.Klebaner Adams Broadwell Joseph & Cardozo 601 Gateway Boulevard, Suite 1000 South San Francisco, CA 94080 <a href="mailto:tgulesserian@adamsbroadwell.com">tgulesserian@adamsbroadwell.com</a> <a href="mailto:eklebaner@adamsbroadwell.com">eklebaner@adamsbroadwell.com</a> [VIA EMAIL ONLY]
Desert Tortoise Council Sidney Silliman 1225 Adriana Way Upland, CA 91784 <a href="mailto:gssilliman@csupomona.edu">gssilliman@csupomona.edu</a>	Janet Eubanks, Project Manager US Dept. of the Interior, Bureau of Land Mngmnt., California Desert District 22835 Calle San Juan de los Lagos Moreno Valley, CA 92553 <a href="mailto:Janet_Eubanks@ca.blm.gov">Janet_Eubanks@ca.blm.gov</a>	<a href="mailto:e-recipient@caiso.com">e-recipient@caiso.com</a> [VIA EMAIL ONLY]
James D. Boyd Vice Chair/Presiding Member California Energy Commission 1516 Ninth Street Sacramento, CA 95814 <a href="mailto:jboyd@energy.state.ca.us">jboyd@energy.state.ca.us</a>	Anthony Eggert Commissioner/Associate Member California Energy Commission 1516 Ninth Street Sacramento, CA 95814 <a href="mailto:aeggert@energy.state.ca.us">aeggert@energy.state.ca.us</a>	Kourtney Vaccaro, Hearing Officer California Energy Commission 1516 Ninth Street Sacramento, CA 95814 <a href="mailto:kvaccaro@energy.state.ca.us">kvaccaro@energy.state.ca.us</a>

<p>Eric Solorio, Project Manager California Energy Commission 1516 Ninth Street Sacramento, CA 95814 <a href="mailto:esolorio@energy.state.ca.us">esolorio@energy.state.ca.us</a></p>	<p>Jared Babula, Staff Counsel California Energy Commission 1516 Ninth Street Sacramento, CA 95814 <a href="mailto:jbabula@energy.state.ca.us">jbabula@energy.state.ca.us</a></p>	<p>Jennifer Jennings Public Adviser California Energy Commission 1516 Ninth Street Sacramento, CA 95814 <a href="mailto:publicadviser@energy.state.ca.us">publicadviser@energy.state.ca.us</a></p>
<p>Billy Owens Director, Project Development Solar Millennium 1625 Shattuck Ave. #270 Berkeley, CA 94709-1161 <a href="mailto:owens@solarmillennium.com">owens@solarmillennium.com</a></p>	<p>Basin and Range Watch Laura Cunningham Kevin Emmerich PO Box 70 Beatty, NV 89003 <a href="mailto:bluerockiguana@hughes.net">bluerockiguana@hughes.net</a></p>	<p>Western Watersheds Project Michael J. Connor, Ph.D. California Director PO Box 2364 Reseda, CA 91337-2364 <a href="mailto:mjconnor@westernwatersheds.org">mjconnor@westernwatersheds.org</a></p>
<p>Tim Olson Advisor to Commissioner Boyd California Energy Commission 1516 Ninth Street Sacramento, CA 95814-5512 <a href="mailto:tolson@energy.state.ca.us">tolson@energy.state.ca.us</a></p>	<p>Terri Middlemiss/D.Burnett Kern Crest Audubon Society PO Box 984 Ridgecrest, CA 93556 <a href="mailto:Catbird4@earthlink.net">Catbird4@earthlink.net</a> <a href="mailto:imdanburett@verizon.net">imdanburett@verizon.net</a></p>	<p>Center for Biodiversity Ileene Anderson Public Lands Desert Director PMB 447, 8033 Sunset Blvd. Los Angeles, Ca 90046</p>
<p>Center for Biodiversity Lisa T. Belenky, Sr. Atty. 351 California St. #600 San Francisco, CA 94104</p>		