

CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512
www.energy.ca.gov



November 20, 2012



Todd Stewart, Senior Director of Project Development
BrightSource Energy, Inc.
1999 Harrison Street, Ste. 2150
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**RE: RIO MESA SOLAR ELECTRIC GENERATING FACILITY (11-AFC-4)
STAFF FINAL REQUEST FOR APPLICANT TO SUBMIT LAKE AND STREAMBED
ALTERATION AGREEMENT NOTIFICATION AND INCIDENTAL TAKE PERMIT
APPLICATION**

Mr. Stewart:

Under the Warren-Alquist Act, the Energy Commission administers the California Endangered Species Act (CESA) and the state's Lake and Streambed Alteration Agreement (LSAA) programs for projects under its jurisdiction. (Pub. Resources Code, §25500.) For most other types of projects, these programs are administered by the California Department of Fish and Game (CDFG). Energy Commission staff and CDFG staff work closely to ensure that the Energy Commission's administration of both programs is consistent with applicable laws, ordinances, regulations, and standards (LORS) and with CDFG policy and precedent. Staff relies on its coordination with CDFG in its review of project impacts to these resources, preparing its recommended conditions of certification, and concluding whether the project would conform to these LORS.

In order to review the project's conformance with CESA and the LSAA program, staff and CDFG need complete information from the applicant equivalent to the CDFG's application or notification requirements in its review of other projects. To date, the applicant has not submitted these applications despite repeated formal and informal requests that they do so. Staff is hereby requesting that applicant submit these two documents no later than December 3, 2012. Failure to do so will require staff to take this matter to the Committee with a motion to compel.

I. Lake and Streambed Alteration Agreement Notification

The LSAA Notification is necessary to formally initiate CDFG coordination on this matter and will provide the applicant's up-to-date delineation of jurisdictional streambed and adjacent riparian vegetation acreage for staff's review and verification. This information is necessary for staff's evaluation of the potential impacts of the proposed project on state waters and evaluation of whether the recommended compensation for these resources (per Conditions of Certification BIO-3 and BIO-9 of the Preliminary Staff Assessment (PSA)) will be feasible. In the PSA, staff indicated that it was uncertain whether sufficient microphyll woodland would be available for purchase to satisfy the necessary 3 to 1 mitigation requirement.

Energy Commission staff and Dr. Shankar Sharma of CDFG have worked together to request the LSAA in data requests and other communication with the applicant and its consultant (URS) since February 2012. The applicant has indicated on numerous occasions, including the PSA workshop on November 14, 2012, that the complete LSAA Notification would be submitted soon.

Between the months of March and October, the applicant indicated that it would submit its complete LSAA Notification pending CDFG approval of its preliminary delineation. There is no pre-approval phase in CDFG's LSAA (or CEC's) administration of the LSAA program, as indicated in several emails between CDFG staff and the applicant's consultant during those months. Staff believes that this point was finally resolved on October 4, 2012 in an email from Pierre Martinez to you.

In the absence of the complete LSAA notification, CDFG staff has been unable to fully review the applicant's data, or make recommendations to Energy Commission staff regarding adequacy of the analysis or mitigation. However, Energy Commission staff reviewed the data provided in the AFC and subsequent project revision as a basis for its analysis and conclusions in the PSA. Staff's conclusions regarding the project's impacts to waters of the state and adjacent riparian habitat are tentative, pending further coordination with CDFG.

Staff was recently informed (per your email to Pierre Martinez, staff Project Manager, October 4, 2012) that the applicant is revising its delineation of state jurisdictional waters and mapping of adjacent riparian vegetation. Staff will need to review this revised delineation in coordination with CDFG, to evaluate its accuracy and to revise the analysis and recommended conditions of certification for the Final Staff Assessment (FSA). Without the revised delineation and complete LSAA Notification, staff will be unable to evaluate the project's impacts to waters of the state, adjacent riparian vegetation, or LORS conformance.

Staff further understands from the applicant (per PSA Workshop November 14, 2012) that the revised streambed delineation will include revised mapping and analysis of desert dry wash woodland (also called microphyll woodland or blue paloverde – ironwood woodland). This dry wash woodland habitat is closely associated with jurisdictional desert washes and it is particularly valuable as wildlife habitat. Staff will also need to review the revised mapping and acreage in coordination with CDFG, to evaluate its accuracy and to revise the analysis and recommended conditions of certification regarding compensation for impacts to this resource. Without the revised map, staff will be unable to evaluate the project's impacts to desert dry wash woodland, or assign appropriate compensation or other mitigation in the FSA.

CDFG has indicated that it normally takes 30 days to review a notification for completeness and, once determined to be complete, an additional 60 days to review the notice and determine whether it comports with the requirements for granting an LSAA. (November 14, 2012 Rio Mesa PSA Workshop.) Because staff's FSA deadline is fast approaching, it is critical that this

document be submitted immediately. Staff has made every attempt to obtain this document in a timely manner. During the PSA Workshop, the applicant indicated that the LSAA Notification would be forthcoming within a few weeks. Please submit this application to CDFG and the Energy Commission no later than December 3, 2012.

II. California Endangered Species Act Incidental Take Permit Application

An ITP Application is necessary to provide the applicant's current estimate of take for state-listed threatened or endangered species including desert tortoise and perhaps one or more bird species for staff and CDFG's review and verification. And as with the LSAA Notification, formal submittal is necessary to initiate CDFG coordination.

Timing is even more critical with regard to the ITP. CDFG has indicated that their normal permitting process requires 180 days to review an ITP Application and issue a permit. (November 14, 2012 Rio Mesa PSA Workshop.) Understanding that CDFG would not be issuing a permit in this case, their review and input is still necessary. As with the LSAA, staff has made every effort to receive the ITP Application in a timely manner. As with the LSAA Notification, please submit this application to CDFG and the Energy Commission no later than December 3, 2012.

If you have any questions, please call Pierre Martinez, Energy Commission Staff Project Manager at (916) 651-3765 or e-mail him at pierre.martinez@energy.ca.gov.

Sincerely,

Roger E. Johnson
Deputy Director
Siting, Transmission & Environmental Protection



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION FOR THE
RIO MESA SOLAR ELECTRIC
GENERATING FACILITY**

**DOCKET NO. 11-AFC-04
PROOF OF SERVICE
(Revised 11/2/12)**

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DECLARATION OF SERVICE

I, Cenne Jackson, declare that on November 21, 2012, I served and filed a copy of the attached document, dated November 20, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: <http://www.energy.ca.gov/sitingcases/riomesa/index.html>.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses marked **"hard copy required"** or where no e-mail address is provided.

AND

For filing with the Docket Unit at the Energy Commission:

- by sending electronic copies to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-AFC-04
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.ca.gov

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Originally Signed by Cenne Jackson