



**Mojave
Water
Agency**

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DOCKET

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August 27, 2009

Christopher Meyer, Project Manager
Siting, Transmission and Environmental Protection Division
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5112

Re: Stirling Energy Systems Solar One Project – Tessera Solar – Docket: 08-AFC-13

Dear Mr. Meyer:

The following comments are made on behalf of the Mojave Water Agency (MWA) and the MWA acting in its capacity as the Mojave Basin Area Watermaster (Watermaster).

The Watermaster was formed by the Riverside County Superior Court in 1993 to administer a Judgment which effectively adjudicated the water rights of the Mojave Basin Area (*City of Barstow, et al v. City of Adelanto, et al*). MWA was appointed initial Watermaster. A trial was held in 1995 and the Judgment after Trial was issued January 10, 1996. The case was appealed and upheld in part and overturned in part by the California Supreme Court in 2001. The Physical Solution to the long-term problems of overdraft was upheld.

The Judgment after Trial prohibits the export of water pumped from the Mojave Basin Area to areas outside the adjudicated boundary. This restriction poses a problem for SES/Tessera Solar's project if it is to rely upon the water resources of the Mojave Basin Area for its water supply.

SES/Tessera Solar proposes building a solar generation power plant on BLM property east of the MWA boundary and the Mojave Basin Area adjudicated boundary. The SES/Tessera Solar filing with the CEC does not specify a primary water source and indicates that water obtained from the Mojave Basin Area will be used as a back-up water supply. To the extent that the SES/Tessera Solar's water supply (primary or backup) originates beyond the adjudicated boundary of the Mojave Basin Area and it

can demonstrate there is no impact to the adjudicated area from the development of its water supply, the MWA and the Watermaster have no comment on the proposed project.

However, SES/Tessera Solar has approached MWA and Watermaster to explore the potential to use water pumped from the adjudicated area as its primary source of water for their project, including initial construction water. SES/Tessera Solar has been informed by Watermaster staff that in order to use water from the adjudicated area it will be necessary to obtain approval from the Riverside County Superior Court prior to exporting water. In addition, SES/Tessera Solar would be required to provide sufficient mitigation to offset any hydrologic impacts associated with an export of water from the adjudicated area.

SES/Tessera Solar has proposed to Watermaster a mechanism to offset the hydrologic impacts of exporting water out of the adjudicated area involving the purchase and retirement of pumping rights within the Baja Subarea. SES/Tessera Solar proposes to purchase sufficient pumping rights, subject to mandatory imposed reductions by the Court and other limitations of the Judgment to mitigate its export demand.

SES/Tessera Solar has indicated that it will require up to 40 acre-feet of water annually for its operations. In order for SES/Tessera Solar to export 40 acre-feet of water for use outside the adjudicated area it would be necessary for SES/Tessera Solar to acquire the pumping rights for substantially more than 40 acre-feet. The Judgment contains provisions requiring adjustment to pumping rights to account for changes in consumptive use (consumptive use is the portion of pumped water that is lost to the hydrologic system). In SES/Tessera Solar's case the consumptive use will effectively be 100% since its use is an export.

The Judgment also contains provisions for a reduction in the amount of water that a Subarea can pump without producers incurring a financial obligation to replace the amount of water pumped (known as a Free Production Allowance or FPA). The amount of available FPA is reduced each year, pursuant to court order, until a balance is achieved between supply and demand. Currently the Baja Subarea has been subjected to a reduction equal to 32.5% of its original pumping right.

The overdraft in the Baja Subarea is considerable. Estimated annual supply is roughly 5,500 acre-feet and current estimated demand is about 33,000 acre-feet. Consequently the Baja Subarea could be subjected to substantial Court mandated reductions in FPA.

The effect of continued reductions in FPA on SES/Tessera Solar's proposed plan to export water from the Baja Subarea is that it will need to purchase enough water to offset consumptive use adjustments and reductions in FPA.

SES/Tessera Solar has in concept, proposed to Watermaster a plan that would require it to purchase approximately 400 acre-feet of water right in Baja and retire 200 acre-feet as permanent mitigation. If the court adopts a FPA for Baja of 40%, SES/Tessera Solar's remaining 200 acre-feet of FPA would be subject to as much as 60% reduction leaving 80 acre-feet of water for use. Based on a consumptive use adjustment as required by Exhibit F of the Judgment, SES/Tessera Solar's export right would be reduced again by one half, resulting in 40 acre-feet of water for use outside the Baja Subarea. Water needed in the short-term for construction would be subject to the same analysis, restrictions and constraints.

The Watermaster has not fully evaluated the hydrologic conditions that would allow it to determine what the exact mitigation would need to be based on SES/Tessera Solar's proposal. However, under the proposal it should be possible to fully mitigate the volumetric hydrologic impacts. Regardless, SES/Tessera Solar would still be required to obtain court approval to export water outside the adjudicated area.

Further, MWA is prohibited from serving State Water Project (SWP) water outside its boundary. Consequently, SWP water cannot be a source for the project.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact me at 760-946-7008 or Valerie Wiegenstein at 760-946-7026.

Sincerely,



Kirby Brill
General Manager

cc: William J. Brunick, Legal Counsel
Norman T. Caouette, Assistant General Manager
Valerie Wiegenstein, Watermaster Services Manager
Robert C. Wagner, Watermaster Engineer

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