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DOCKET

08-AFC-13

DATE OCT 25 2009

RECD OCT 26 2009

October 25, 2009

Jim Stobaugh
BLM - Nevada State Office
P.O. Box 12000
Reno, Nevada 89520
jim_stobaugh@blm.gov

Rich Rotte
Project Manager
Bureau of Land Management
Barstow Field Office
2601 Barstow Road
Barstow, California 92311
Richard_Rotte@blm.gov.

Re: Calico - SES Solar One Project (08-AFC-13)
Hector Road

Dear Mr. Stobaugh and Mr. Rotte:

In my September 5, 2009 letter to the Bureau of Land Management (BLM) I asserted Hector Road is a Revised Statute (R.S.) 2477 right-of-way and asked the BLM to “make an administrative determination Hector Road is a valid Revised Statute 2477 right-of-way where it crosses public lands administered by the BLM.”

In the BLM’s September 24, 2009 response to my request, Roxie C. Trost cites the BLM’s inability to make a “binding determination.” I did not request a “binding” determination. I requested an “administrative” determination. There is a difference. An “administrative” determination is a “non-binding” determination and the BLM can make non-binding determinations. The May 26, 2006 BLM Washington Office Instruction Memorandum No. 2006-159, entitled “Non-Binding Determinations of R.S. 2477 Right-of-Way Claims” states in pertinent part:

The BLM may . . . make informal, non-binding determinations [NBD] for its own land use planning and management purposes. An NBD is required before completing consultation with states or counties on any proposed improvements to a claimed R.S. 2477 right-of-way. It may also be appropriate to complete an

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NBD before taking action to close or otherwise restrict the use of a claimed R.S. 2477 right-of-way. [Emphasis added]

In May 2008, the Applicant and the Burlington Northern Santa Fe (BNSF) Railway Company entered into an Agreement for Private Crossing and shortly thereafter added gates and barricades at the BNSF crossing for Hector Road. The gated crossing closes and prevents the public and private property owners from using Hector Road.

In the BLM's September 24, 2009 response to my request, Roxie C. Trost states, "that a member of the public cannot assert title under the Quiet Title Act for access under R.S. 2477." I did not "assert title under the Quiet Title Act." I simply asserted Hector Road is a R.S. 2477 right-of-way.

In her response, Roxie C. Trost refers to my January 21, 2009 letter to the BLM and again states, ". . . the area gated by BNSF is used for administrative maintenance vehicles to access railroad tracks and is within the parameters of the right-of-way granted." I disagree. On March 12, 2009, I responded to Roxie C. Trost's February 26, 2009 letter explaining the BLM not only has "the authority but the responsibility to ensure SES's Solar One Project and all of SES's actions are within the law and do not infringe upon the rights of others." As I explained in my March 12, 2009 letter, which was not answered, the gated crossing violates the Unlawful Inclosures of Public Lands Act of 1885, the Federal Land Policy and Management Act of 1976 (FLPMA) and the California Desert Conservation Area (CDCA) Plan 1980 (as amended).

In BLM's response, Roxie C. Trost suggests I use four other routes to access my property. Two of these routes, AF410 and AF042, are sections of Hector Road blocked by the gated crossing. The other two routes, AF058 and AF298, will be eliminated by the Calico - SES Solar One Project. The only right-of-way to my property, the other private properties and land administered by the BLM is Hector Road.

Please reconsider my request the Bureau of Land Management (BLM) make an administrative determination Hector Road is a valid Revised Statute 2477 right-of-way where it crosses lands administered by the BLM.

If you object to this request or need additional time, please send a written notice to Commissioners James Boyd and Jeffrey Bryon of the Committee overseeing Tessera Solar's Application for Certification and me within 20 days of receipt of this request. Please send your response to all the parties listed on the Proof of Service as others are interested in your response.

Respectfully,

Original Signed By

Patrick C. Jackson

Enclosures:

Declaration of Service

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Proof of Service

cc: Roxie C. Trost, Field Manager, BLM, Barstow Field Office
Alan Stein, Deputy District Manager - Resources, BLM, CDD
Gregory Miller, Project Manager, BLM, CDD
Russell E. Blewett, Planning Commissioner, County of San Bernardino
Jacob Y. Babico, P.E., Traffic Division Chief, County of San Bernardino
Fred Stearn, Broker
Shawn R. Jackson, Esq.
Dr. Gavin M. Erasmus
Ira West
Sarkis Avanian
Joe Orawczyk
Ronnie Garcia, Manager, Field Safety Support, BNSF
Joshua Basofin, Defenders of Wildlife

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:) **08-AFC-13**
)
SES Solar One Power Project) **DECLARATION OF SERVICE**
_____)

I, **Patrick C. Jackson**, declare that on **October 25, 2009**, I served and filed copies of the attached **October 25, 2009 Letter to Jim Stobaugh and Rich Rotte of the Bureau of Land Management**. The original document filed with the Docket Unit, is accompanied by a copy of the most recent *Proof of Service* located on the web page for this project at:

<http://energy.ca.gov/sitingcases/solarone/>

The document has been sent to the Commission, as well as all parties in this proceeding as shown on the *Proof of Service*, in the following manner:

FOR SERVICE TO THE APPLICANT AND ALL OTHER PARTIES:

XX sent electronically to all e-mail addresses on the Proof of Service list and

XX by depositing in the United States mail at **San Dimas, California**, with first-class postage thereon fully prepaid and addressed as provided on the attached *Proof of Service* to the mailing addresses shown on the Proof of Service NOT marked "E-mail Service Preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

XX sending the original signed document and one electronic copy, mailed and e-mailed respectively, to the address below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. **08-AFC-13**
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

October 25, 2009

Date

Original Signed By

Patrick C. Jackson



**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 SES SOLAR ONE PROJECT**

Docket No. 08-AFC-13

PROOF OF SERVICE

(Revised 7/20/09)

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