

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

DOCKET	
08-AFC-13	
DATE	AUG 23 2010
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In the Matter of:

The Application for Certification for
the
Calico Solar Power Project
Licensing Case

Docket No. 08-AFC-13

RESPONSE TO COMMITTEE QUESTIONS

AND

**BRIEF OF INTERVENOR
COUNTY OF SAN BERNARDINO**

August 23, 2010

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PART I: RESPONSES TO COMMITTEE QUESTIONS

On August 16, 2010, via electronic mail, the Committee posed seven specific questions related to the Desert Tortoise translocation plan and related issues.

1. How many tortoises are estimated to exist (rough estimates of individuals) and how many population centers or major groups exist? What constitutes a population center or major group? Where?
2. What is the approximate total acreage of prime tortoise habitat (occupied and also that which could be occupied)? What is the approximate acreage of non-prime and marginal lands that could provide habitat for tortoise?
3. What are the main reasons for listing the desert tortoise? What is the status of the species since listing (i.e., has the population increased or decreased)?
4. Since listing, how many take permits have been issued and what have been the affects of mitigation to minimize impacts?
5. What is the range of population density per acre? How does this project's site compare? What is the maximum carrying capacity per acre for prime habitat, non-prime and marginal lands?
6. What is the range of the desert tortoise? What importance does this site play in that range?
7. What is the value of this site relative to other sites of BLM and non-BLM managed lands?

The County currently takes no position and offers no arguments as to the translocation plan aside from the concerns it raises below in its brief related to mitigation lands being required for the Desert Tortoise and other species.

PART II: BRIEF

I. Introduction

San Bernardino County (“County”) appreciates the opportunity to have participated in the permitting process and to provide comments, legal argument, and suggestions for conditions of certification on the application for certification of the Calico Solar Power Project Licensing Case (“Calico” or “Project”), a proposed 850 MW solar electric generating facility, using Stirling Engine technology, located on approximately 6,000 acres of BLM land in unincorporated eastern San Bernardino County. The Project site is approximately 37 miles east of Barstow, California.

The County supports all forms of renewable energy, if appropriately sited, with mitigation that provides protection for existing property owners and County interests. This position was articulated three times at the hearings in similar terms by three County representatives, Andy Silva from Supervisor Brad Mitzelfelt’s office (Transcript, August 4, 2010, pp. 107-111), Gerry Newcombe, from the County Administrative Officer’s office (Transcript, August 5, 2010, pp. 18-26), and County Planning Commission Russ Blewett (Transcript, August 6, 2010, pp. 65-67).

In addition, there are four significant indicators of the County's commitment in this regard. First, currently under development is the County's Greenhouse Gas Emissions Reduction Plan, a comprehensive County-wide approach to reducing greenhouse gas emissions consistent with the State's mandates. Renewable energy will be a key component of those efforts. Second, in 2007 the County adopted the "Green County San Bernardino" program¹, designed to spur the use of the so-called "green" technologies and building practices, including the use of renewable sources of energy. Third, the County entered into a Memorandum of Understanding with the Bureau of Land Management ("BLM") in order to expedite the review of development on public lands within the County's boundaries.²

And fourth, during the pendency of this action, in April and July of this year, the County Board of Supervisors took an additional step by adopting a position statement on renewable energy projects that are being proposed for construction in the desert portions of the County³. Although provided to the committee during the evidentiary hearings, for convenience, a copy of this position statement is again provided as Attachment "1." In this policy statement, the County identifies four critical issues it faces from the proliferation in the desert of renewable energy projects such as Calico: (1) Endangered species mitigation which frequently (as here) requires the acquisition of acreage in multiples of the project area; (2)

¹ <http://www.sbcounty.gov/greencountysb/>

² <http://www.sbcounty.gov/sbco/cob/AG031808/agenda.pdf>

³ http://sanbernardino.granicus.com/MediaPlayer.php?view_id=13&clip_id=1712

Infrastructure impacts, such as those to emergency services; (3) Impacts to ongoing operations and maintenance of infrastructure; and (4) Impacts to historical and recognized land use impacts. These policy issues form the core of the County's concerns related to these solar energy projects in general, and specifically as to this Project as outlined below.

In addition, the Commission should be aware that the National Association of Counties ("NACo") adopted two resolutions at its July 2010 meeting,⁴ both of which were sponsored by San Bernardino County. Copies of these resolutions are collectively Attachment "2." NACo represents more than 2,300 counties serving more than 80 percent of the nation's population. By these resolutions, NACo requests that the land and wildlife management agencies adopt procedures that provide for project mitigation other than through land transfer from private to public ownership and that historic uses of the properties targeted for renewable energy projects be recognized.

⁴ <http://www.naco.org/newsroom/countynews/Current%20Issue/8-9-10/Pages/Delegatesadoptnewpolicydirections.aspx>

II.

The County Supports Staff's Proposed Condition WORKER SAFETY – 7 to Mitigate the Direct and Cumulative Impacts on County Emergency Services

As a prelude to the discussion of this topic, the County, per its repeated representations to the Commission, is committed to negotiating the resolution of this topic, if possible. To that end, County representatives and the Project applicant have had ongoing discussions with the expectation of a mutually agreeable outcome. The County will keep the Commission appropriately advised and it is believed that if successful, the provisions agreed to will result in mitigation of these impacts to a level the County believes will be less than significant.

But until then, the County maintains that Staff has properly analyzed and recommended mitigation for these impacts under this topic.

Staff concluded that the Project will have a significant direct and cumulative impact on the local fire protection and emergency response services, and specifically the San Bernardino County Fire Department, which is the Authority having Jurisdiction over the Project area. (Supplemental Staff Assessment (“SSA”), p. C.15-4, -23). Given the remoteness of the Project site as well as the extremely large amount (95 tanks, 9 feet in diameter and 10-30

feet long (Transcript, August 6, 2010, p. 163)) of highly pressurized (up to 3,000 psi (Transcript, August 6, 2010, p. 164)) hydrogen gas that will be used and stored at the Project site, “added emergency response needs will pose significant added demands on local fire protection services” thus requiring mitigation. (SSA, p. C.15-1)

That Staff would reach these conclusions is not surprising. As the SSA points out, industrial environments possess inherent dangers during construction and operation, with workers exposed to loud noises, moving equipment, trenches, and confined spaces and may sustain falls, trips, burns, lacerations, and other injuries. They may be exposed to falling equipment or structures, chemical spills, hazardous waste, fires, explosions, and electrical sparks or electrocution. (SSA, p. C.15-5) Again, the presence of large amounts of hydrogen at high pressure amplifies these potential risks, as attested to by staff. (Transcript, August 6, 2010, p. 178 and forward)

And although the Project applicant will prepare and observe various safety and health programs and hazard prevention plans, history dictates that this site will have one or more major occurrences. Staff cites a 2005 Energy commission safety audit that found that power plant construction was not immune to safety oversights. (SSA, p. C.15-12) That a highly flammable gas, hydrogen, is being used in this Project raises additional concerns. In fact, Staff analogized the safety concerns posed by this Project with those of existing solar power

generating facilities, and although recognizing the difference in technology, concluded that comparisons about safety and risk can be drawn. (SSA, p. C.15-20) The simple history of existing solar plants is that they will require emergency response, with testimony elicited about the Luz SEGS VIII facility an illustration. (Transcript, August 6, 2010, pp. 197 and forward)

Based on this analysis, Staff appropriately concludes that “the SBCFD would not be able to respond to fire, hazmat, rescue and EMS emergencies in a timely manner at the Calico power plant.” (SSA, p. C.15-23) And, as explained in detail, the Calico power plant would cause a significant direct and cumulative impact on the local fire department. (*Id.*) Finally, staff appropriately recognizes the cumulative nature of the impact, with this Project but one of many under consideration for construction, and the budgetary shortfalls that impact the County’s ability to fulfill its mission. (SSA C.15-24)

To mitigate these impacts, staff outlines its interaction with County representatives to develop a matrix for fairly and reasonably rationing the costs of mitigation. These are outlined in the Supplemental Staff Assessment (SSA, pp. C.15-24 through 25) **and have not been refuted**. Staff’s witness, Dr. Greenberg, testified that, “[P]erhaps far and away the best analytical approach that staff has seen in 15, 16 years was conducted by the San Bernardino County Fire Department, which based its allocation for this particular solar project to mitigate direct and cumulative impacts on an approach that staff initially

developed.” (Transcript, August 6, 2010, p. 185) On these other bases in evidence, the County supports WORKER SAFETY – 7 as an appropriate condition of certification.

Similarly, Staff recognizes that the very nature of the Project poses the risk of fires, large and small, and the possibility of wildfires. (SSA, p. C.15-18) Although some of the conditions of certification require that the project applicant address both fire and emergency conditions on site, it is left to the County to provide the primary public fire protection and emergency services. (*Id.*) While internal fire protection control measures and other emergency training are important, they are not sufficient to protect the employees, traveling public and surrounding potential for wildfire and potential injuries without backup from SBCFD and other professional emergency service providers.

But fire protection and emergency response, including first response within a reasonable response time are not the only services of the County on which the Project relies. The Commission will charge the SBCFD with

- reviewing and commenting upon the Hazardous Materials Business Plan, a Risk Management Plan, and a Spill Prevention, control and Countermeasures Plan (SSA, p. C.5-10, CoC HAZ-2);
- reviewing and commenting upon the Project Construction Safety and Health Program (CoC Worker Safety – 1);

- reviewing and commenting upon the Project Operations and Maintenance Safety and Health Program (CoC Worker Safety – 2);
- acting as the Certified Unified Program Authority (SSA, p. C.5-4, 14-6) the consolidation of six state environmental programs into one;
- responding to hazardous materials; the SSA recognizes that firefighters require specialized training for emergency responses to industrial hazards and that the remoteness of the site means a minimum response time of about an hour. (SSA C.5-10); and,
- coordination with other governmental agencies in the event of an abandonment of the facility (SSA C.5-22)

Finally, toward the end of the hearing on Worker Safety on August 6, 2010, there was discussion involving what has come to commonly be known as the “Colusa conditions” from another CEC siting case (Colusa Generating Station Power Plant Project (06-AFC-09)). The County has doubts about the legality of such conditions since, as expressed by staff during the hearing, they may constitute deferred mitigation. Per the CEQA regulations, it is ordinarily inappropriate to defer formulation of a mitigation measure to the future. 14 Cal Code Regs § 15126.4(a)(1)(B). “Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.” *City of Long Beach v Los Angeles Unified Sch. Dist.*

(2009) 176 CA4th 889, 915, 98 CR3d 137. Under this standard, mitigation measures calling for a mitigation plan to be devised based on future studies are legally inadequate if they do not describe the nature of the actions expected to be incorporated in the plan. See *San Joaquin Raptor Rescue Ctr. v County of Merced* (2007) 149 CA4th 645, 669, 57 CR3d 663 (rejecting mitigation measure calling for future surveys for special status species and development of undefined habitat management plan in response to surveys); *Endangered Habitats League v County of Orange* (200S) 131 CA4th 777, 794, 32 CR3d 177 (rejecting mitigation measure requiring submission of acoustical analysis and approval of mitigation measures recommended by analysis because no mitigation criteria or potential mitigation measures were identified). In short, the County would have to see the final proposed conditions before reaching a final conclusion as to the propriety of such mitigation.

III

Acquisition of Vast Tracts of Mitigation

Land Should be Minimized

Under the SSA, staff was recommending the acquisition under BIO – 17 of a mitigation ration of 1:1 for portions of the Project south of the BNSF railroad, and 3:1 for areas north of the Railroad. This resulted in an additional set-aside of

14,365 acres of private land within the County to satisfy this mitigation requirement.

However, at the hearing on August 18, 2010, the representative of California Fish and Game revised the recommended mitigation to 5 to 1 for so-called high density tortoise habitat, to which staff seems to give almost completely deference. (Transcript, August 18, 2010, p. 317-318) From that testimony, by this writer's calculations (referencing Table 2 of Section One of the Draft Desert Tortoise Translocation Plan), 2,139 acres would be mitigated at a 1:1 ratio; 3,622 acres would be mitigated at a 3:1 ratio; and 2,198 acres would be mitigated at a 5:1 ratio. This would result in, respectively, 2,139 acres plus 10,866 acres, plus 10,990 acres, or a total of 23,995 acres of private land being acquired and permanently set aside as biological mitigation land. Coupled with the Project site area of 6,215 acres, this means that 30,210 (over 47 square miles) of public and private property will be taken out of any other productive uses.⁵

But this is not all since this is but one of many similar projects targeted for the desert areas within the County. Under the CEQA Guidelines, "a cumulative impact consists of an impact which is created as a result of the combination of the Project evaluated in the EIR together with other projects causing related

⁵ For example, the BLM Interim Policy Memorandum (CA-2009-020) dictates that lands acquired by BLM under donation agreements, acquired for mitigation/compensation purposes and with LWCF funds, are to be managed as avoidance/exclusion areas for land use authorizations that could result in surface disturbing activities.

impacts” (14 Cal Code Regs §15130(a)(1)). Cumulative impacts must be addressed if the incremental effect of a project, combined with the effects of other projects is “cumulatively considerable” (14 Cal Code Regs §15130(a)). As further described, the incremental effects are to be “viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects” (14 Cal Code Regs §15165(a)(3)).

The huge swaths of native desert land required for these projects and then layering on the mitigation is staggering. And, the Commission is reminded that this is but one of many similar projects. As a point of reference, a tract comprising 24,000 acres represents a full 17% of the 140,000 acres of potential desert tortoise habitat held in private unincorporated lands under County jurisdiction. The PMPD for the proposed Ivanpah Solar Electric Generating System (07-AFC-5) involves an addition 12,000 acres to be set aside, so just these two projects will consume about 30% of that habitat land, assuming that it is even available for acquisition. In addition, since the set-aside of tracts of land of these dimensions is unidentified, they should require their own CEQA (and National Environmental Policy Act) analysis.⁶

The SSA identifies 63 solar projects and 62 wind project applications, with a total overall area of over one million acres within the California Desert Conservation Area, with many of those projected to be sited within the County’s

⁶ The cumulative problem was illustrated by applicant’s witness, Felicia Bellows, under cross examination. She testified to a figure of something like 400,000 acres of privately held desert tortoise habitat, but a project and potential mitigation requirement of 4 million acres. (Transcript, August 5, 2010, pp. 94-96)

boundaries. (SSA, p. B.3-5) Adding a mitigation factor of 3 to 1, or the more recently proposed 5:1 means that potentially up to 5 million areas of the desert will be set aside for mitigation and will no longer be available for economic development.

This incredible consumption of desert land for the amount of power generated is illustrated by comparison to another power project within San Bernardino County approved within the last ten years. The Mountainview Power Plant Project (00-AFC-2) approved on March 22, 2001, generates almost as much power as this Project and Ivanpah combined, 1056 MW, but on a site of only 54 acres. Obviously, a natural gas-fired power plant like Mountainview creates other environmental impacts, but it produces about twenty percent more power on less than two tenths of one percent of the land impacted by Calico.

The County is cognizant of the dual approval process for this Project but to the extent possible, the Commission should coordinate with the BLM and the resource agencies in furthering other mitigation strategies. Clearly, acquisition of mitigation land is one of the mitigation strategies, but it should not be the sole strategy; and definitely should not automatically be required in multiples of the project acreage. Staff appears to agree that alternative mitigation strategies, such as habitat enhancement, that are discussed throughout the SSA.

In short, the County strongly urges the Commission to step up its work with the resource agencies to develop a comprehensive in lieu fee program that will

mitigate the biological impacts without the onerous and unrealistic requirement of every renewable energy project acquiring mitigation land in multiples of the project acreage and which.

V.

Recreation and Wilderness

The County's concerns with respect to this topic mirror those of its concerns related to mitigation land for biological resources. That is, the large expanses of property within the County required for the Project, plus the mitigation lands, all multiplied many times over as additional, similar projects are approved, becomes cumulatively significant. The argument that there are numerous additional areas at some point becomes unsustainable. The SA admits as much: "[T]he proposed project would combine with other past and reasonably foreseeable future projects to substantially reduce scenic values of wilderness areas and recreational resources in the Mojave Desert and southern California desert region and therefore, would result in a significant and unavoidable cumulative land use impact in this regard." SSA, p. C.8-2

Activities within the project site include off-road vehicles. (SSA, p. C.8-8) It is admitted that the project could indirectly impact the recreational and wilderness values for the Cady Mountains WSA. (SSA, p. C.8-11) "Therefore, the combined effect of the overall cumulative past, present, and proposed and

reasonably foreseeable projects, including the proposed project, in the desert region of San Bernardino County would adversely affect recreation and wilderness resources, resulting in a significant and unavoidable under CEQA. (SSA, p. C.8-37)

On the same basis as the acquisition of biological mitigation lands, the County requests that the Commission require reasonable mitigation, such as replacement or development of alternative recreational and wilderness opportunities.

VI.

Conclusion

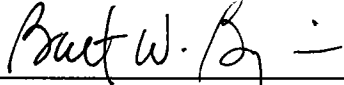
This project also underscores those challenges that come from the fact that 84% of the property within the County is within federal jurisdiction. What is more, this project illustrates how the County is required to advocate for competing interests for this and the numerous other energy projects targeted for the desert regions within the County's boundaries. On the one hand, these projects promise some direct benefits to County residents such as construction and operations jobs. But on the other, they generate real impacts on County services, plus biological mitigation requirements threaten to forever eliminate tens of thousands of acres of private property from any kind of economic use. When these projects are sited on federal land, such as with this project, the

impact is exacerbated. The County has limited, if any, land use authority and thus cannot condition these projects in the ways to mitigate these impacts that it would when federal land is not involved. Potential tax revenues are also diminished given the tax exemptions that have been mandated to foster this class of energy production.

Thus, although the County supports in a general sense the creation of renewable energy, that support is conditioned on the imposition of appropriate mitigation to the specific County impacts articulated here and throughout these proceedings.

Dated: August 23, 2010

Respectfully submitted,
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By  _____
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San Bernardino County Position on Desert Renewable Energy Projects

April 2010

San Bernardino County supports renewable energy and looks forward to the positive economic impact the development of these projects will bring to our local economy. The proliferation of utility scale and smaller energy projects in the Mojave Desert portions of our County have caused careful evaluation and consideration of the appropriate mitigation measures that are needed to protect the environment, future development, and the economy of our region. Projects fall into three general categories:

1. Solar thermal projects producing less than *50 Megawatts (MW)*, and all wind energy and solar photovoltaic projects on *private land* are completely within the County's land use jurisdiction.
2. Projects on *public land* (typically BLM) fall under the jurisdiction of the applicable federal land owner. The County's role in these cases is that of a cooperating agency. As such we are able to review and contribute to draft environmental documents before public distribution.
3. Solar thermal energy projects producing *50 MW or greater, whether on private or public land*, fall under the jurisdiction and procedures of the California Energy Commission (CEC) for permitting and environmental review. If on federal land, a joint permitting and environmental review is conducted with the applicable federal agency. The County may provide public comment or intervene, in which case it may participate in the evidentiary hearing proceedings with the ability to pursue legal action if necessary.

Projects in the first category described above can be conditioned to address impacts on County infrastructure and operations/maintenance costs. Projects in categories 2 and 3 will require a different approach to protect the County's interests. The most critical issues to address in these categories include the following:

- **Endangered Species Mitigation**
 - Support the implementation of an in lieu fee program that will provide much needed funding for conservation, habitat restoration, implementing species recovery strategies, and predation control, but not be used to purchase vast tracts of mitigation lands or impose additional restrictions on public or private land.
 - Oppose the acquisition of habitat at a multiplied (e.g. 3:1) mitigation ratio for desert renewable energy projects because the scale of the proposed projects would render vast portions of private land unavailable for future use and could severely limit the ability of future development to adequately mitigate its impacts.
 - Rationale to support these positions includes:
 1. Federal ownership (84%) of land within the County significantly reduces tax revenue needed to serve these public lands.

2. The County general fund already subsidizes fire service in the desert and maintains roads on BLM lands – further development of federal properties exacerbates an existing problem.
 3. Current proposed renewable energy projects could require 1 million acres for project sites and another 3 million acres or more for mitigation, effectively using up all available mitigation land for future development.
- **Mechanism to Address Infrastructure Impacts**
 - No current mechanism exists to address the impacts these projects will have on public safety facilities and transportation infrastructure in San Bernardino County.
 - Large scale development in desert areas already underfunded for public safety facilities because of significant federal ownership, will only exacerbate impacts on the County's limited financial resources.
 - The County is open to a variety of approaches to address this issue, including targeted Development Impact Fees and/or direct mitigation in the form of developer constructed facilities, and is requesting that the state and federal energy and resource agencies (Fish and Game, Fish and Wildlife Service, CEC, BLM, etc) implement policies and procedures requiring developers of utility scale renewable energy projects to enter into mitigation agreements, pay appropriate fees, or develop other mechanism to mitigate impacts on local agencies.
 - **Mechanism to Address Ongoing Operation/Maintenance Cost Impacts**
 - No current mechanism exists to address the impacts these projects will have on the ongoing costs of providing adequate public safety and transportation services, as well as the loss of recreation/tourism revenue.
 - The County is open to a variety of approaches to address this issue, including Possessory Interest Tax, Federal Lease Revenue Sharing, Community Facilities District Formation, and others. Preliminarily it appears that the ongoing operation and maintenance costs will be addressed by a Possessory Interest Tax, which should approximate property tax revenue given the expected long term of a federal land lease.
 - **Historic and Recognized Land Use Impacts**
 - Support mitigation requirements, implemented through the National Environmental Policy Act (NEPA) process, that address the loss of historic and recognized land uses including dispersed recreation (OHV use, hunting), livestock grazing, and general public access to public lands.
 - Projects that remove large areas of relatively flat, accessible land historically providing for grazing allotments, access routes to back country, and open OHV play should be mitigated by the dedication of other areas of public land to such activities or possibly the acquisition of lands that can be so dedicated.

If the County is unsuccessful in negotiating appropriate impact mitigation for these energy projects, its recourse would be to legally challenge the environmental document for projects in category 2, and to legally challenge the CEC decision for projects in category 3.

Resolution on acquisition of private land for wildlife mitigation, associated with renewable energy development, with subsequent transfer to federal agencies

Issue: Wildlife agencies (State and Federal) have required the purchase of private land and its transfer to government agencies or non-governmental organizations (NGOs) as mitigation for projects that will occupy habitat or impact species with status under Federal or State law or regulation. Such acquisitions remove private land from tax rolls. When the land becomes Federal, many counties not only lose the property tax revenue, they fall outside the limit of Payment in Lieu of Taxes (PILT) accounting. Large renewable energy development projects have exacerbated the situation.

Proposed Policy: NACo requests the land and wildlife management agencies adopt procedures that provide for project mitigation other than through land transfer from private to public ownership. When such transfers are deemed the only appropriate mitigation, and offsetting PILT will not occur, then agencies must provide that project developer would continue to pay the property tax on the transferred land, or fees in lieu of taxes, in perpetuity, unless the land were restored to private ownership at a future date.

Background: The land and wildlife management agencies have sought land mitigation for impacted habitat for a variety of species, mostly those with listed status under the Endangered Species Act. Such mitigation often is required at a multiplied factor, e.g. 3:1, in which the project developer must “donate” a multiple of private land to the permitting agency or designated entity as mitigation. Such land is removed from the tax rolls.

Many projects are located in counties in which PILT payments are capped because of already large Federal estates; thus transfers may add to the Federal estate and counties do not receive additional PILT payment reflecting the expanded Federal estate. Further, since the acquiring agencies are usually BLM or the Forest Service, counties cannot receive PILT under Sections 6904 or 6905.

Most projects utilize significant parts of local government infrastructure, including the use of county roads for project development, operation and maintenance. In addition development may use other county services, including solid waste disposal, law enforcement, public health, and fire and emergency medical response during the life of the project.

Offsetting the loss of tax base must become an essential part of renewable project mitigation, even when mitigation land is transferred to a state agency or NGO. Mitigation should be accomplished by project developers depositing funds for use to provide other kinds of mitigation investment equivalent to the amount that might otherwise be invested in land acquisition.

Policy options: Expand current PILT requirement that only additions to the Federal estate by NPS or in National Forest wilderness can receive payment under Section 6904. If such change were made, remove the 5-year limit on such payments.

Fiscal Urban/Rural Impact: While development may provide some positives to local economies, local governments should not be left with losses and costs associated with the project. The policy will assure a steady revenue stream regardless of mitigation requirements as well as funding for county infrastructure and services.

Sponsor: Brad Mitzelfelt, Supervisor, San Bernardino County, California

Resolution on mitigation for historic and recognized federal land multiple uses when renewable energy projects are developed on federal land

Issue: Renewable energy projects, particularly large scale solar development, remove large blocks of land from the federal estate from historic multiple use activities, including dispersed recreation, livestock grazing, and general public access. Mitigation is too often focused only on wildlife and cultural resources. Other multiple uses receive only passing mention in the environmental documentation, and are seldom offset, replaced or otherwise mitigated.

Recommended Policy: NACo requests the Bureau of Land Management and Forest Service adopt policies that provide real and substantial consideration of historic uses in the project plans and environmental documentation, and commit project developers to providing mitigation for their loss.

Background: As renewable energy development expands, the potential exclusion of historic permitted uses on Federal public lands becomes more apparent. Some projects may be benign, such as wind energy on ridge lines. Other developments such as solar on flat accessible land, remove huge areas which have historically been essential parts of grazing allotments, contained the access routes to back country, or provided areas that BLM designated as "open" for OHV recreation. Ancillary facilities and safety closures, however, for all projects, may remove areas and access from previous uses.

Some uses, such as grazing, can be mitigated through compensation or buy-out, though the effect will be a reduction from past use. There may be offsetting economic value from the energy project, but it is essential that benefits and losses both be weighed in the NEPA process and the process commit the developer to providing such mitigation.

Access through project areas cannot be addressed by the market. Development plans must provide alternate access routes. OHV open areas, if such has been legitimately provided in BLM or FS land use plans, should be similarly mitigated for, by designation of other appropriate areas or the acquisition of areas by the developer for such dedication and designation.

Failure to provide at least a degree of mitigation can result in sprawling of dispersed uses to areas of private land, encouraging trespass, and requiring engagement of law enforcement at high cost to both the land management agencies as well as local government.

NACo does not oppose development of renewable energy on public land, but wishes to assure that the NEPA process and plan of development explicitly address historic use and commit the developer to mitigation.

Policy options: None.

Fiscal Urban/Rural Impact: Renewable energy development may or may not have positive impacts on the land and the area. Projects normally result in total exclusion of the public, but their output will provide energy, employment, and increase renewable portfolios required by many states. Mitigation for impacts and use loss may add to project costs. Providing such mitigation may have an overall positive impact since the area may benefit from the new use plus retain of all or part of the current use. Providing such mitigation will also reduce the effect on local law enforcement to control trespass use that could occur if mitigation is not provided.

Sponsor: Brad Mitzelfelt, Supervisor, San Bernardino County, California

DECLARATION OF SERVICE

I, **Renee Meyer**, declare that on **August 23, 2010**, I served and filed copies of the attached, **RESPONSE TO COMMITTEE QUESTIONS AND BRIEF OF INTERVENOR COUNTY OF SAN BERNARDINO**. The original document, filed with the Docket Unit, 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/calicosolar/index.html>].

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 Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States 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 **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

- depositing in the mail an original and 12 paper copies, as follows:

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, 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.



Renee Meyer



**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 CALICO SOLAR (Formerly SES Solar One)

Docket No. 08-AFC-13

**PROOF OF SERVICE
(Revised 8/9/10)**

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