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**DATE:** August 24, 2009  
**To:** California Energy Commission  
Docket Office - #08-AFC-02  
**FROM:** Jane E. Luckhardt  
**SUBJECT:** Beacon Solar Energy Project  
**ENCLOSED PLEASE FIND:** Beacon Solar, LLC's Response to letter from John Musick  
docketed on August 12, 2009

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700 Universe Blvd., Juno Beach, FL 33408

August 21, 2009

California Energy Commission  
Attn: Eric Solorio via email to ESolorio@energy.state.ca.us

Re: Beacon Solar Energy Project  
California Energy Commission ("CEC") Docket #08-AFC-02

Dear Mr. Solorio:

This is the response of Beacon Solar, LLC ("Beacon") to the letter from John Musick docketed on August 12, 2009 ("Letter") in the above referred to CEC Docket number.

Mr. Musick does not specify whom he represents in his Letter. He refers to the "Arciero and Rudnick families". Beacon infers he represents the family of Frank Arciero, also known as Frank Arciero, Sr. ("Arciero") and the family of Elynor Rudnick ("Rudnick"), who is now deceased. Beacon would request that Mr. Musick be required to specifically identify whom he represents in this matter and that he provide evidence of representation.

Beacon disputes Arciero has any mineral or water rights in the real property conveyed to Beacon ("Beacon Property") as described in the deed dated January 2, 2008 and recorded as Document # 0208006777 Kern County Recorder ("Beacon Deed").

The claimed mineral rights of Arciero arise out a reservation in a deed from Arciero and Robert O. Reynolds doing business as Freemont Valley Ranch, dated July 15, 1981 and recorded in Book 5389, Page 733 Kern County Recorder ("Reservation Deed") which states:

RESERVING UNTO THE GRANTOR from the above described Parcels 1 through 23, an undivided 50% of all remaining minerals, oil, gas, petroleum and other hydrocarbon substances within or underlying said land.

One of the attachments to the Letter is a Quitclaim Deed from Frank Arciero, also known as Frank Arciero, Sr. and his wife, dated October 1, 1990 and recorded in Book 6475, Page 2092 Kern County Recorder ("Quitclaim Deed"), in which they remise, release and quitclaim all interest, which would include all mineral rights, in the real property described in the Quitclaim Deed. The real property described in the Quitclaim Deed includes the Beacon Property and also the real property described in the Reservation Deed.

As a result of this Quitclaim Deed, Arciero has no mineral rights in the Beacon Property. The fact that the Reservation Deed is referred to in the Beacon Deed does not constitute a new reservation or conveyance of mineral rights into Arciero.

Another attachment to the Letter is a Grant Deed from Elynor Rudnick dated January 23, 1959 and recorded in Book 3088, Page 122 Kern County Recorder (“Rudnick Deed”). In the Rudnick Deed, Elynor Rudnick reserves a one half or entire interest in the minerals, oil, gas, petroleum and other hydrocarbon substances within or underlying the West Half of Section 3 (Parcel 12 in Beacon Deed), Section 8 (Parcels 13 and 19 in Beacon Deed) and a three-fourths interest in Section 9 (Parcel 14 in Beacon Deed).

In each of these reservations, Elynor Rudnick has no right to conduct drilling or operations on the surface of the land or within the first 500 feet of subsurface without the prior written consent of the surface owner. Beacon has not consented to any drilling or operations on the surface. Whoever now owns these mineral rights have no right to conduct mineral drilling or operations on the surface or within the first 500 feet of subsurface of these portions of the Beacon Property.

The other deeds attached to the Letter do not convey or reserve any mineral rights into Arciero, Elynor Rudnick or the “Rudnick family”.

As a result of the Beacon Deed, Beacon received at least 50% of the mineral, oil and gas rights over and under the portions of the Beacon Property described as Parcels 1-10 and 15-18 in Beacon Deed and 100% of the rights over the surface and the first 500 feet of subsurface over the portions of the Beacon Property described as Parcels 12, 13, 14 and 19 in Beacon Deed.

Beacon disputes Mr. Musick’s contention that the Arciero and Rudnick families’ mineral estate includes “the right to all water encountered in the development of those mineral rights.” None of the mineral reservations in the deeds attached to the Letter included a reservation of water rights.

The term “minerals” does not include groundwater or surface water unless those rights have been expressly reserved, excepted, or granted. (*Geothermal Kinetics, Inc. v. Keystone Copper Corporation* (1964) 224 Cal.App.2d 523, 526-527.) It is well-settled law in California that water rights are a separate property interest from mineral rights, and like mineral rights, water rights must be reserved and excepted from a conveyance of real property (*Burr v. Maclay Rancho Water Co.* (1911) 160 Cal. 268) or they will pass with the deed (*Holmes v. Nay* (1921) 186 Cal. 231, 236-237). Additionally, in the construction of a grant or reservation of an interest in real property, courts do not generally imply an exception or reservation of water rights. (*Holmes v. Nay* (1921) 186 Cal. 231, 236-237.)

The Reservation Deed and the Rudnick Deed are silent as to water rights and thus there is no reservation of water. Therefore, Elynor Rudnick does not possess any express or implied right to any surface water or groundwater appurtenant to the Beacon Property. As stated above

Arciero has no mineral rights, but even if he did, he does not possess any express or implied right to any surface water or groundwater appurtenant to the Beacon Property.

Beacon and First American Title Insurance Company have conducted a search of the Beacon Property back to the patents and there has been no severance of water rights. The Beacon Deed did not contain a reservation of water rights. First American has issued an owner's title insurance policy to Beacon insuring said water rights and insuring Beacon against damage to the surface caused by anyone claiming to have water rights. Therefore, because the water rights were not expressly reserved in the deeds attached to the Letter, any water rights appurtenant to the Beacon Property passed with the Beacon Deed. Thus, contrary to Mr. Musick's assertion, Beacon is the holder of the water rights on the Beacon Property.

Beacon has addressed and denied the mineral and water right claims of Mr. Musick and the Arciero family for over a year. Beacon welcomes their cooperation but denies its solar project is not possible without their cooperation.

Please contact me at 561.304.5934, 561.691.7765 (fax) or [mikel.d.greene@fpl.com](mailto:mikel.d.greene@fpl.com) if you have any questions or comments.

Sincerely,



Mikel D. Greene  
Senior Attorney

Copy: Scott Busa  
Jane Luckhardt