

# DOCKET

08-AFC-2

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November 27, 2009

Karen Douglas  
Presiding Member

Jeffery Byron  
Associate Member

California Energy Commission

California Energy Commission

**VIA E-MAIL:** [cgraber@energy.state.ca.us](mailto:cgraber@energy.state.ca.us) ; [tsolorio@energy.state.ca.us](mailto:tsolorio@energy.state.ca.us) ;  
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Re: Beacon Solar Energy Project Docket #08-AFC-02/Beacon Solar, LLC. ("Beacon")

Dear Commissioners:

I am Vice President and General Counsel of Envirowater Management, Inc. the managing member of Envirowater, LLC. ("Envirowater"). Envirowater hereby submits the attached bona fide offer to provide "local total water service" to Beacon for the full life of the solar project starting from the time water is required by Beacon as finally approved by the Commission to the last day of the approved operation. The purpose of this bona fide offer is to financially, feasibly, reliably and environmentally provide all non-potable and potable "local total water service" for the Beacon project supplied from "local" water resources of the appropriate quality and quantity for the intended uses as required by law.

The "local total water service" will be provided by Envirowater from "facilities" financed, constructed, operated, repaired and replaced by Envirowater from its own Fremont Valley lands, its own wells and delivered through easements in existing paved roads to Beacon. Envirowater offers to dedicate the actual water rights to a "Joint Powers Authority" formed by the governments of Rosamond, California City and other adjacent governmental and private stakeholders in Southern Kern County. Envirowater also offers to dedicate those "local total water service" facilities it develops to that "JPA".

By this offer, Beacon receives the necessary total water service and the local communities will participate in the pricing and control of the water supply to ensure the protection of all vital public and private values. This offer will obviate the need for approving the strained "non-local" Beacon pipeline proposals described in the "FSA". It is inconceivable that the "PMPD" would approve Beacon dumping poor quality water harvested from as far away as Northern California into and taking good quality water from Fremont Valley in the name of renewable energy, when suitable "local" water is available.

If the offer is rejected and the "PMPD" approves creating the next potential "Hinkley, California" type disaster, Envirowater will exercise its legal rights to prevent the importation of foreign poor quality water into and exportation of good water from Fremont Valley.

Sincerely,

/S/

John Musick

## MEMORANDUM

TO: CALIFORNIA ENERGY COMMISSION

FROM: Envirowater Management, Inc., Managing Member of Envirowater, LLC., by John Musick as Vice President and General Counsel of Envirowater Management, Inc.

RE: Beacon Solar Energy Project Docket #08-AFC-02/Beacon Solar, LLC. (“Beacon”) – Envirowater, LLC. Summary of Offer for “Local Total Water Service”

DATE: November 22, 2009

### INTRODUCTION:

Envirowater Management, Inc. is the managing member of Envirowater, LLC. (“Envirowater”). Envirowater has a joint venture plus purchase and sale agreement with the “Arciero Family” for 4,815 acres of land, water and minerals adjacent to the 2,012 acre Beacon project; and shares with the Rudnick Family the mineral and water recorded reservations under the Beacon 2,012 acres of lands. I am Vice President and General Counsel and I am authorized to send this summary, the attached letter and offer of “local total water service” by those entities and the owners of those lands, minerals and water rights in Fremont Valley, California.

The purpose of this summary, the attached letter, and the offer is to break the impasse over approval of the Beacon project and add vital renewable energy development to the California electrical generation base. The purpose of the offer is also to involve all regional stakeholders in the Fremont Valley Basin and Southern Kern County area in a cooperative solution of the Beacon water supply issues. Beacon is a project proposed by a good corporate citizen and which is guided by an excellent staff and consultants. Thus, the Envirowater offer of “local total water service” is the last remaining part for the successful completion of the Beacon project.

Envirowater offers to finance, construct, operate, repair, and replace all necessary “facilities” to immediately meet all water needs of Beacon in a financially, feasibly, reliably, environmentally sound, and cooperative basin wide solution. Envirowater offers to dedicate the necessary private water rights it owns and those facilities it will build to a regional “Fremont Valley Joint Powers Authority” (“JPA”) formed by all local communities such as Rosamond CSD, California City and other public and private and military regional stakeholders for the life of the Beacon project.

Thus, that JPA will provide all customary public and private stakeholder protections associated with good government. That JPA will provide a single point of contact for all issue identification and resolution. That JPA will avoid ad hoc actions by Beacon and others. The Commission will, thus, achieve the recommendation of the final staff assessment for a regional organization for all issue identification and resolution. That JPA will closely follow the existing successful joint powers authority created by Rosamond CSD and Semitropic Water Storage District. Thus, the Fremont Valley JPA will be building upon existing successful regional public and private water supply development cooperative concepts, documents and relationships. Implementation of the Envirowater offer by the Fremont Valley JPA can thus be swift and certain which will permit the immediate approval and commencement of the vital Beacon project. Failure to implement the Envirowater offer will result in the delay or outright denial of the Beacon project. That is not a good public policy result as California needs the proper completion of the Beacon project.

## SUMMARY FACTS SUPPORTING OFFER:

Fremont Valley overlies an ancient pristine groundwater basin. The groundwater within that basin has largely been untouched by foreign or imported waters contaminated by acts of the hands of man. For eons waters came to be stored in the Fremont Valley Groundwater Basin by natural forces. That groundwater, and the surface of the entire Fremont Valley basin, went largely untouched by man until very recent decades.

In those recent decades, the Arciero family was the only major water user and producer of alfalfa on the surface of over 7,000 acres of lands in Fremont Valley by use of the groundwater from under the surface of the lands. The Arciero family irrigated and grew alfalfa on the Beacon lands for decades. The Arciero family was, and is, the largest and only user and owner of major water rights from under Fremont Valley. Prior to their large scale commercial agricultural activity, their lands, and the other lands of the basin, were basically used by ranch owners for minor grazing and some small scale home ownership.

The Arciero family owned the 2,012 acres of lands which form the basis for the Beacon solar project. The Arciero family hold record of title reservation of mineral and water rights under those Beacon lands; and the surface, sub-surface water and mineral on all of the balance of their current 4,815 acres of lands. The Beacon recorded deed acknowledges that reservation of minerals and waters by the Arciero and Rudnick family. Beacon secured a \$1.0 billion title insurance policy protecting the Beacon project from the valid exercise of those reserved mineral and water rights. Thus, Beacon is conclusively estopped from disputing the conclusion that the mineral and water rights are legally reserved by the Arciero and Rudnick families.

Beacon proposes to create on its 2,012 acres of lands formerly owned and operated as an alfalfa ranch by the Arciero family, a vitally needed addition to renewable energy development for California. The Beacon site, and off site impacted areas: (a) straddle environmentally sensitive waters of the state and nation, FEMA flood channels, and valuable water rights owned by others which are protected by law, and (b) contains environmentally sensitive species of plants, animals, insects and birds.

I have reviewed the Beacon "AFC" docket and monitored the hearings. The record demonstrates that: (a) the Beacon project will adversely impact those environmentally sensitive areas, (b) with no proper mitigation available from Beacon, (c) those mineral and water rights were reserved by members of the Arciero and Rudnick families, (d) without the full cooperation of Envirowater, Beacon cannot secure the necessary construction, plant, process, mirror washing and drinking water required by the Beacon project, (e) the proposed Beacon solution to import non-potable water is not feasible or reliable and is an environmental travesty. Thus, the record thus far supports the Final Staff Assessment ("FSA") recommendations that the Beacon project will: (a) adversely impact those environmentally sensitive values and (b) will not be a "reliable" source of solar electrical energy.

Envirowater has previously offered to provide Beacon economically and environmentally sound feasible and reliable: (a) "local total water service" of non-potable construction, plant, process

and mirror washing water, (b) potable drinking water, (c) “mitigation lands” for remediation and resolution of the environmental impacts for Beacon, and (d) to solve the mineral and water rights reservation issues. The full cooperation of Envirowater, Arciero and Rudnick families is required for Beacon to be environmentally sound, reliable and feasible. Envirowater will insure that the mitigation lands and waters are fully entitled and approved by all stakeholder groups.

To date Beacon has not responded to that offer. Instead, Beacon sent engineers and consultants onto the Arciero family lands under an access agreement executed with the Arciero family. The purpose of that on site investigation was to determine the quantity and quality of the waters under the Arciero lands for meeting the offered “local total water service”.

The Arciero family and Envirowater, LLC. fully cooperated with Beacon and the Beacon consultants for the site visits by providing all engineering data and well reports maintained by the Arciero family from decades of water production for agriculture, and also by having members of the Arciero family and ranch managers present on site with the Beacon engineers and consultants. Instead of relying on the historic Arciero family well information, knowledge and cooperation, the Beacon engineers and consultants created an erroneous map (copy attached) and went to the wrong wells.

The attached erroneous map shows two well numbers 35 located on the “Brothers Ranch”. The Brothers Ranch is one of the six ranches in the Fremont Valley owned and operated by the Arciero family. Four of the six ranches are shown in green on the attached map (“Home Ranch”, “Randsburg Ranch”, “Sons Ranch” and Brothers Ranch). Cantil Ranch and Saltdale Farm are not shown. Cantil Ranch is adjacent to Sons Ranch and Saltdale Farm is adjacent to Randsburg Ranch.

The fact of the erroneous two well numbers 35 was pointed out to the Beacon consultants. When advised of that fact, Beacon ignored the corrective actions. Instead Beacon caused the testing of the wrong wells. To make matters even more bizarre, the Beacon engineers and consultants arrived on the site, not once, but twice with insufficient equipment. To correct this failure by Beacon, one member of the Arciero family, Al Arciero, had to instruct the well drillers and well testers to stay on site while he went to the nearest hardware store and personally bought the necessary equipment to complete the tests.

Mr. Arciero also took the Beacon consultants to the proper well for testing, well number 34, correctly located on the attached map. Beacon still refused to do the correct tests.

Mr. Arciero finally was able to get the Beacon consultants to do a preliminary water level test of the correct well number 34. They confirmed excellent groundwater standing water level. They refused to take water quality tests of well number 34 even though Mr. Arciero fully explained how he operated the wells in the area of the “Brothers Ranch” for decades. He demonstrated how he installed a “Y” series of pipes so that he could “blend” the very poor non-potable TDS water of well numbers 33 (erroneously labeled 35 on the attached map), and 35 and 37 with the better, but still non-potable TDS water of well number 34. He explained the correct operational method to create properly blended water of a TDS below non-potable 1200 ppm and above potable levels. It is that “blending” operational experience based upon decades of knowledge which will

be employed by Envirowater to successfully always deliver the exact non-potable water required by Beacon.

Even with this extraordinary action of cooperation, Beacon's well tests were not completed accurately, they refused to test the correct wells for non-potable water and they removed the testing equipment from the site. There is but only one explanation for the actions by Beacon: the Beacon consultants deliberately intended to improperly test local wells so that they would not secure proper data of water quality and quantity which would support the "local total water service" offer by Envirowater.

That "local total water service" concept is supported by the FSA as one feasible alternative called the Koehn Lake alternative. Thus, the Commission can approve the Envirowater offer of "local total water service" as fully documented and supported.

Instead of this reasonable and responsible FSA documented alternative, Beacon proposes to import foreign poor quality water and unreliable quantity water harvested from basins and regions from as far away as Northern California into the pristine groundwater basin of Fremont Valley. And then Beacon proposes to export water from Fremont Valley to the same water users. All of that is blithely being proposed by Beacon without any environmental investigation of that scheme and basin wide cooperative water planning involving all stakeholders.

Envirowater and the Arciero family will resist that foreign poor quality water importation and local water exportation with every legal means.

Here is what the Beacon importation and exportation proposal means: "Hinkley, California" redux! Remember Erin Brockovich? Who can forget Julia Roberts as Erin? At Hinkley, PG&E apparently allowed water to enter the groundwater of adjacent domestic wells from lined pits. That water apparently made people sick. At the new Hinkley in Fremont Valley, FPL-E will use lined pits next to domestic wells to hold water. So we go from PG&E to FPL-E. There is always an "E" meaning energy in the name of bad public policy.

We are told that the Beacon water will come from water collected from throughout California and run through a tertiary treated water system and then delivered to Beacon. We are assured that the water will be reliable in quantity and safe in quality. Well if it so safe, move the Beacon project to the Rosamond CSD or California City tertiary treatment plant and let the water infect the local groundwater of those cities.

Quite simply, Beacon's proposal for delivering water to the Beacon site from Rosamond or California City which comes from a blending of waters from questionable Antelope Valley groundwater basin wells subject to an active contested adjudication, AVEK/SWP water sources from as far away as the Semitropic Water Storage District and from Northern California above the Delta is an outrageous travesty of water planning and use. Now, instead of a Fremont Valley pristine groundwater basin with ancient waters protected from the acts of the hands of man, the very worst possible result will occur: waters harvested from as far away as Northern California subject to the very worst possible quantity and quality delivery results of climate change, Delta environmental deterioration, Delta levee failure, earthquake and deliberate terrorism induced

hazardous deadly toxic compounds into the SWP Aqueduct could be introduced into the Fremont Valley Groundwater Basin.

We are assured that the tertiary water is safe as to quality and secure as to quantity. So was Hinkley until it was not safe and secure. Everything man makes can malfunction. So from where will the reliable quantity and safe quality water for Beacon come when the next malfunctions of a sewage plant occur?

What are the California laws designed to prevent this potential water supply and environmental disaster? Well to start with, the California Department of Water Resources water supply and the Antelope Valley wells used by Rosamond CSD or California City do not meet the water quantity (or for that matter quality) requirements of reliability under the Urban Water Management Plan Act or Water Supply Assessments for municipal water supply. (See, for example: Urban Water Management Planning Act, Division 6 Part 2.6 of the Water Code §§10610 – 10656 of the Water Code, §10910, et. seq., SB 610 of the Water Code, §§ 10910, 10912; the 1996 federal Safe Drinking Water Act amendments required Source Water Assessment Program, Section 11672.60 of the California Health and Safety Code which requires the Department of Health Services, DHS, the precursor to CDPH, to develop and implement a program to protect sources of drinking water, specifying that the program must include both a source water assessment program and a wellhead protection program; the Integrated Regional Water Management Plan Antelope Valley, <http://www.avwaterplan.org/>, which has no treatment of this proposed water use; and the California Water Resources Control Board, <http://www.swrcb.ca.gov/>, water quality protection programs.)

Where are the required reports and certifications under those various laws? They do not exist. Not a single federal, state or regional report has addressed the proposed water quantity and quality Beacon delivery scheme using the imported water of long term questionable quantity and quality. The entire systematic water delivery system must be subjected to the most rigorous investigation; none of which has occurred.

One matter which has received no investigation at all is the privatization of profits by Beacon and the socialization of costs by the citizens of Rosamond CSD, California City or Southern Kern County. The financial aspects of the Beacon scheme totally ignores all costs for existing utility service underwritten by the residents and citizens of those communities by decades of past water and sewer bills, and will be underwritten by decades in the future. Beacon will be allowed to tap onto an existing system and only pay the new incremental cost for necessary facilities. The proposed costs to Beacon by that scheme are simply a raid on the “enterprise value” of the utility owned by the citizens of the communities without proper compensation.

Is the new message: Growth must pay its own way, except when it is renewable energy?

By the proposed Beacon water importation scheme, Beacon will be allowed to tap onto an existing water and sewer system without paying anything for the privilege. No conventional land developer or industry would be allowed to connect onto such a valuable public utility system without paying a fee for buying into an existing system and the additional costs incident to that connection and service. These ignored costs make the entire Beacon scheme a private benefit at a

public cost with no corresponding benefit.

The Commission simply must not, and cannot, strain at the Gnat of “local total water service” offered by Envirowater and swallow the Beacon Camel of potentially deadly foreign imported water from hundreds of miles and many watersheds away. To do so is an absolute violation of every law and commonsense which the Commission is tasked to honor.

There is a proper way to accomplish “local total water service” to Beacon and the other water users of the basin and region, but that knowledge and sensitivity to basin wide water planning is a skill best left to water experts like Envirowater and the JPA, and not abdicated to energy experts like Beacon. For the Commission to abdicate that water service to Beacon will be trading the angel the Commission knows, Beacon the energy giant, for the devil the Commission does not know, Beacon the water and energy giant. That is a trade which is best not made lest the Commission finds itself with a hydra headed private monster controlling far too many valuable California natural resources harvested irrationally from all over the state and dumping them into the next Hinkley in Fremont valley.

#### SUMMARY OF ENVIROWATER OFFER FOR “LOCAL TOTAL WATER SERVICE”:

Envirowater offers to:

1. finance, construct, operate, repair, and replace all necessary facilities for immediate “local total water service” to Beacon
2. From water rights owned and controlled by Envirowater
3. Located on lands owned and controlled by Envirowater
4. Transmit water to Beacon from the lands of Envirowater in easements in existing paved public roads
5. Dedicate to the JPA the water rights and facilities for the life of the Beacon project as approved by the Commission
6. including dedicate any mitigation lands required by the Commission for overall non-water supply related approval of the Beacon project for additional consideration and deferral of the Envirowater extractive mineral development on and under the Beacon lands for the project life
7. Subject to the obligation by Envirowater to finance, construct, operate, repair and replace the facilities protected by contract with the JPA and Beacon
8. By using virtually the same unit prices and costs, facilities and requirements outlined by California City and Rosamond CSD in their offers to the Commission and the FSA
9. At a onetime capital payment to Envirowater of \$15,000,000 with Beacon receiving all federal, state and local reviewable energy tax credits and MACRS depreciation for the “local total water service” project eligible facilities approved by the Commission
10. Plus an annual payment to Envirowater of \$9,000,000 per year for the initial non-potable construction water supply and incidental potable water requirements for the initial Beacon project construction for the Beacon work force and operational needs as outlined in the FSA
11. And then an annual payment to Envirowater of \$2,400,000 per year for the entire “local total water service” during the operational life of the Beacon project as outlined in the FSA

12. Subject to the same general protective terms and conditions outlined in the offers by California City and Rosamond CSD
13. Plus subject to such other requirements for Beacon as the JPA establishes in its reasonable judgment
14. And all conditions required by the Commission for the protection of community benefits

CONCLUSION:

The offer for "local total water service" by Envirowater is the only environmentally sound, financially feasible, energy reliable, locally managed alternative which meets the requirements of the law and facts and sound public policy, mitigated environmental requirements of the other agencies and the final staff assessment which can be approved by the Commission without dislocations of water resources, without creating new Fremont Valley Basin litigation over water resources and minerals, and with local stakeholder involvement. Protection of the pristine Fremont Valley Groundwater Basin from the importation of potentially disastrous foreign waters into and uncontrolled exportation of good water from the pristine Fremont Valley Groundwater Basin demands no less of a wise just decision by the "PMPD".



## **ENVIROWATER, LLC. OFFER OF “LOCAL TOTAL WATER SERVICE”**

Envirowater, LLC. (“Envirowater”) submits the following bona fide fully enforceable offer to provide “local total water service” to the Beacon Solar Energy Project (“BSEP”) owned and operated by Beacon Solar, LLC (“Beacon”) to secure the approval of the California Energy Commission (“Commission”) by the Presiding Member Proposed Decision (“PMPD”) relying upon and in full conformity with the Final Staff Assessment (“FSA”) and environmental approvals by other appropriate agencies as reflected in the FSA.

The offer commits Envirowater to:

1. Reliable, environmental, financially feasible and “local total water service”
2. For all of the BSEP non-potable water and potable water requirements from the first day of approval by the Commission until the last day of commercial operations, including peaking water, construction water, emergency water, and any and all other water requirements of BSEP regardless of the nature
3. From new wells, pipelines, pumps plants, storage, treatment and water collection and return treatment and facilities, plus any and all community benefits required for protection of vital economic and environmental and water supply community needs, and including all mitigation lands imposed by the Commission
4. finance, construct, operate, repair, and replace all necessary facilities for immediate “local total water service” to Beacon
5. From all of the extensive water rights owned and controlled by Envirowater
6. Located on lands owned and controlled by Envirowater
7. Transmit water to Beacon from the lands of Envirowater in easements in existing paved public roads, or if desirable and feasible, private railroads crossing the private lands of Envirowater
8. Dedicate to the Joint Powers Authority” (“JPA”) created by the governmental and non-governmental organizations of the region the water rights and facilities for the life of the Beacon project as approved by the Commission
9. including dedicate any mitigation lands required by the Commission for overall non-water supply related approval of the Beacon project for additional consideration and deferral of the Envirowater extractive mineral development on and under the Beacon lands for the BESP project life
10. Subject to the obligation by Envirowater to finance, construct, operate, repair and replace the facilities protected by contract with the JPA and Beacon
11. By using virtually the same unit prices, costs, facilities and requirements outlined by California City and Rosamond CSD in their offers to the Commission and the FSA
12. But including additional redundancy of wells, water supplies, storage, pipelines, pumping plants to insure the reliability of water supply over and above that proposed by other parties offering water service from limited and foreign water sources
13. At a onetime capital payment to Envirowater of \$15,000,000 with Beacon receiving all federal, state and local reviewable energy tax credits, grants and MACRS depreciation for the “local total water service” project eligible facilities approved by the Commission
14. Plus an annual payment to Envirowater of \$9,000,000 per year for the initial non-potable construction water supply and incidental potable water requirements for the initial Beacon project construction for the Beacon work force and operational needs as outlined

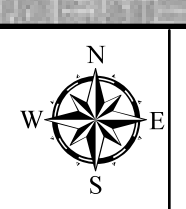
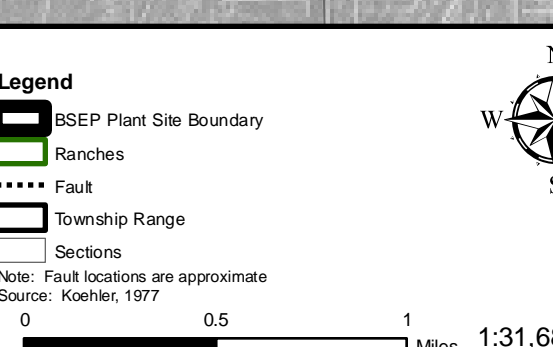
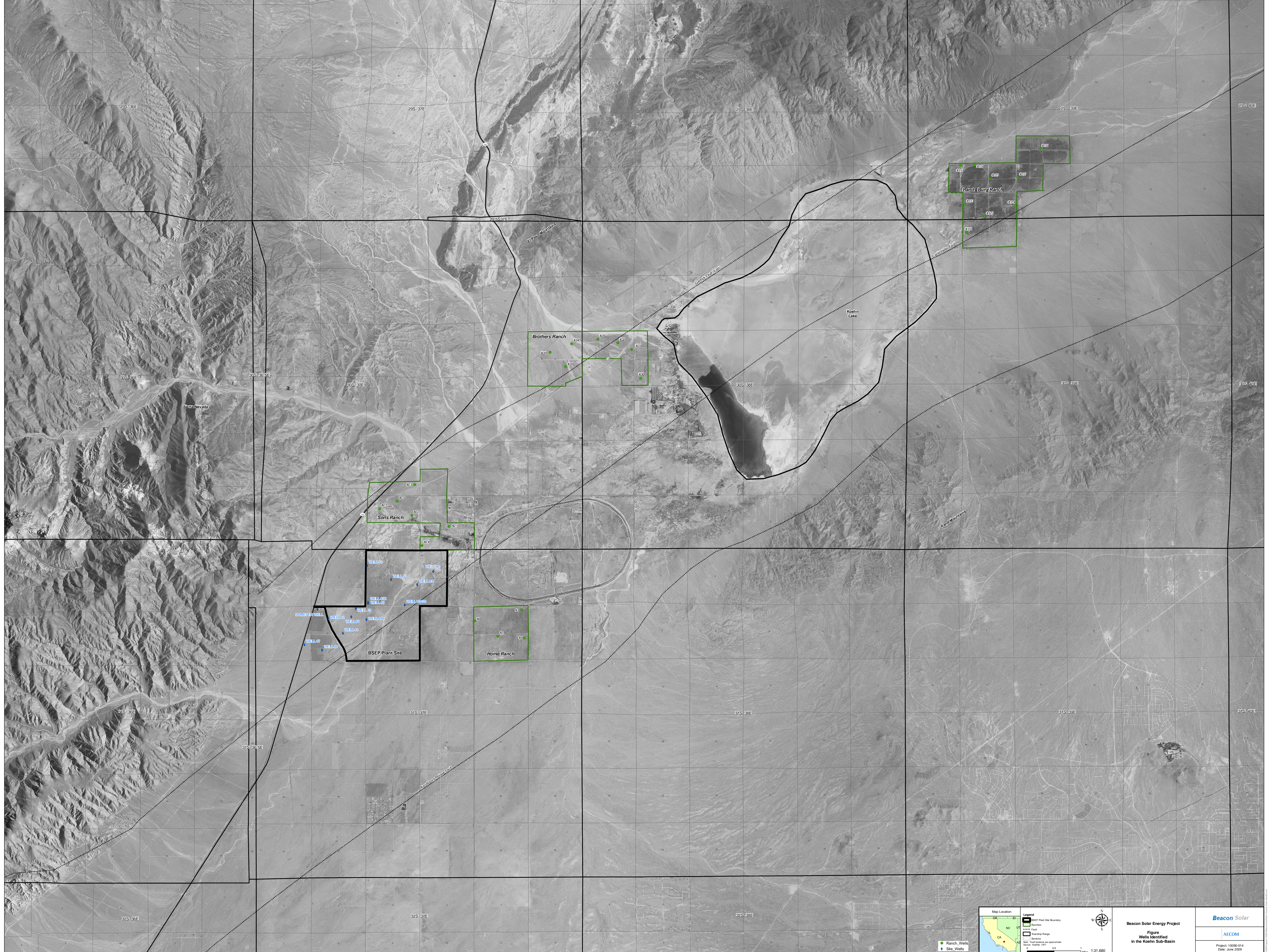
- in the final staff assessment
15. And then an annual payment to Envirowater of \$2,400,000 per year for the entire “local total water service” during the operational life of the Beacon project as outlined in the final staff assessment
  16. Subject to the same general protective terms and conditions outlined in the offers by California City and Rosamond CSD
  17. Plus subject to such other requirements for Beacon as the JPA establishes in its reasonable judgment
  18. And all conditions required by the Commission for the protection of community benefits
  19. Which community benefits will include the protection of water supply for adjacent Fremont Valley homes and businesses
  20. And financing, constructing, operating, repairing and replacing the water and sewer systems for California City, Rosamond CSD and other adjacent communities described in their offer under additional terms which will not be the obligation of Beacon and which shall be approved by the JPA created by the governmental and non-governmental public and private organizations for that region and Envirowater
  21. These costs and prices are valid for November 22, 2009 projections and will be adjusted annually based on the actual cost of power, maintenance activity, and potable water rates for the date of actual approval with an additional annual escalator of 4% or the “utility inflation index” whichever is greater for each year of operation.
  22. Secure all California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance, including full compliance with any Edwards Air Force Base or other military facilities required environmental documentation and procedures for their facilities.

Approved as to substance and form:

/s/

John Musick  
Vice President and General Counsel





Beacon Solar Energy Project  
 Figure  
 Wells Identified  
 in the Koehn Sub-Basin

Scale: 1:31,680