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July 13, 2010

DOCKET
08-AFC-5

DATE JUL 13 2010

RECD. JUL 13 2010

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-5

1516 Ninth Street, MS-4

Sacramento, CA 95814-5512

Re: Imperial Valley Solar, LLC; Docket 08-AFC-5

Dear Docket Clerk:

Enclosed are an original and one copy of California Unions for Reliable Energy Motion to Suspend the Proceeding. Please process the document and return a conformed copy in the envelope enclosed.

Thank you for your assistance.

Yours truly,

/s/

Loulena A. Miles

LAM:bh
Enclosures

**STATE OF CALIFORNIA
California Energy Commission**

In the Matter of:

The Application for Certification for the
Imperial Valley Solar Project
(formerly known as SES Solar Two)

Docket No. 08-AFC-5

**CALIFORNIA UNIONS FOR RELIABLE ENERGY
MOTION TO SUSPEND THE PROCEEDING**

July 13, 2010

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I. Introduction

The July 7, 2010 Supplemental Staff Assessment (“SSA”) confirms that the Imperial Valley Solar Project (“Project”) does not have a reliable water supply.¹ The Project will require 51.1 acre-feet per year (“AFY”) for construction and approximately 33 AFY for operation.² The SSA analyzes two sources of water proposed by the Applicant, the Dan Boyer groundwater well in the Ocotillo/Coyote Wells groundwater aquifer and the Seeley Waste Water Treatment Facility (“SWWTF”), and concludes that neither of these water sources can adequately or reliably meet the Project’s needs.³ The Dan Boyer groundwater well can only provide two-thirds of the Project’s construction requirements, and the SWWTF is undergoing environmental review and may never be permitted, depending on the outcome of a number of studies and agency decisions. Thus, Commission Staff drew the obvious conclusion: ***“[S]taff’s analysis determined that water supplies are not sufficient to satisfy the water demands of the project...”***⁴

The question for the Committee is, what to do now? Should the Committee continue to devote the scarce resources of the Commissioners, Hearing Officer, Staff and other parties to a project that now cannot be built? Or should the Committee suspend this proceeding until the Applicant provides assurance that it has obtained a water source sufficient to construct and operate the Project? CURE has been advising Staff and the Commission since ***November 2009*** that, until the Applicant

¹ SSA pp. C.7-53 and C.7-54.

² SSA p. C.7-41.

³ SSA pp. C.7-53 and C.7-54.

⁴ SSA p. C.7-53.

can ensure a reliable water supply for its proposed Project, continuing to process its application is an inefficient use of Staff and Commission resources. The Energy Commission cannot permit the Project without identifying a reliable water supply for Project construction and operation. CURE has also explained that once the Staff Assessment is revised to include an analysis of a new, reliable water supply, the Commission must recirculate the document for public review and comment. Since the Applicant has not yet identified a reliable supply, this has not yet occurred. As the Commission well knows, it is the Applicant's responsibility to submit a reliable water supply and a back-up water supply as part of the proposed Project.

In the alternative, indeed the only alternative we can conjure up, the Commission would have to condition construction of the Project on a fully permitted and operational SWWTF upgrade.

Therefore, pursuant to Section 1716.5 of the Commission's Regulations, California Unions for Reliable Energy ("CURE") moves to suspend the proceeding because the Project does not have an adequate water supply.

II. Dan Boyer groundwater well

Although inadequate, the only water supply for the Project at this time is the Dan Boyer groundwater well in the Ocotillo/Coyote Wells groundwater aquifer. The Applicant did not identify the Ocotillo/Coyote Wells groundwater aquifer as a

potential source of water for its power plant until after the release of the Staff Assessment in the testimony phase of this proceeding.⁵

Specifically, on May 5, 2010, the Applicant filed an AFC Supplement that included a tentative “will serve letter” from the Dan Boyer Water Company that was contingent upon a later formal agreement. The Dan Boyer Water Company did not state the amount of water that would be provided to the Applicant, but it explained that the Dan Boyer well has a permitted pumping limit of only 40 AFY and would temporarily supply an unidentified amount of water for “approximately six to 11 months.” Nothing in this letter or in the Applicant’s subsequent filings provides documentation that the Dan Boyer Water Company committed to provide a sufficient supply of water to meet the Project’s construction and operational water requirements.

Additionally, there is ample evidence that using groundwater from the Ocotillo/Coyote aquifer is ill-advised at best. The aquifer is already in a chronic overdraft condition and is the only source of drinking water for a number of communities, including Ocotillo, Coyote Wells, Yuha Estates and Nomirage.⁶ Moreover, residents in the small nearby communities of Painted Gorge and West Texas rely upon the Dan Boyer well for part of their water supply.⁷

⁵ AFC Supplement, Appendix A, Will Serve Letter dated March 26, 2010, available online at www.energy.ca.gov/sitingcases/solartwo/documents/applicant/2010-05-10_Applicant_Supplement_to_the_AFC_TN-56589.pdf.

⁶ 61 Fed. Reg. 47752 (September 10, 1996).

⁷ Ocotillo Nomirage Community Area Plan, Imperial County Planning and Building Department, April 26, 1994. p. 7 and personal communication with Edie Harmon, May 6, 2010.

Because of the compelling need to protect the Ocotillo/Coyote Wells aquifer, the U.S. Environmental Protection Agency (“EPA”) designated the Ocotillo/Coyote Wells aquifer as a ***sole-source*** aquifer in 1996. Only four aquifers in California have received this designation since the program began in 1977. In designating the Ocotillo/Coyote Wells aquifer as a sole source aquifer, the EPA found that “there is no economically feasible alternative drinking water source near the designated area” and “contamination of this aquifer would create a significant hazard to public health.”⁸ Communities have already experienced limited growth potential due to the depletion of the aquifer.⁹ An Ocotillo/Nomirage Community Area Plan noted serious concerns about the future of the water quality in the basin: “The entire planning area is dependent upon groundwater. Historically, water has been of good quality. Recently, however, data seems to indicate a possible decline in water quality in some areas of the basin.”¹⁰

Commission Staff similarly concluded that the Dan Boyer well water is in a sole-source aquifer that is in a state of chronic overdraft.¹¹ Additionally, Staff concluded that it was not typical to pump 40 AFY from the Dan Boyer well and that the average annual water sales from this well is only 16.8 AFY.¹² Finally, Staff estimated that approximately 6 AFY of Dan Boyer Water Company’s permitted

⁸ 61 Fed. Reg. 47752 (September 10, 1996).

⁹ Ocotillo Nomirage Community Area Plan, Imperial County Planning and Building Department, April 26, 1994.

¹⁰ Id. at p. 7.

¹¹ SSA pp. C.7-19 and C.7-41.

¹² SSA p. C.7-40.

pumping limit of 40 AFY from this well has been used for domestic drinking water purposes and is therefore not available for the power plant.

Ultimately, the SSA concluded that the Dan Boyer well could supply ***no more than 34 AFY*** for the Project and that using this well water would result in a significant unmitigable direct and cumulative impact to the groundwater basin storage and overdraft conditions.¹³ Notably, 34 AFY does not meet the Project's water supply requirements.

Finally, water from the Dan Boyer well cannot be legally used to provide water for approximately 4% of the Project that does not overlie the aquifer because Imperial County Land Use Ordinance prohibits exporting groundwater from the Ocotillo/Coyote Wells Groundwater Basin for use in the Imperial Valley Groundwater Basin.¹⁴ The Project partially overlies the Imperial Valley Groundwater Basin.

III. Seeley Waste Water Treatment Facility

The Seeley Waste Water Treatment Facility was the water source originally planned by the Applicant. However, the SWWTF requires a major upgrade that would divert water from its current outfall feeding wetlands, the New River and ultimately the Salton Sea. Environmental review of this major upgrade is underway by the Water District, but has not been completed. Staff explains that the Seeley County Water District, as lead agency, must issue a draft and final

¹³ SSA pp. C.7-1, C.7-73, C.7-59

¹⁴ SSA p. C.7-40.

Environmental Impact Report (“EIR”) that analyzes the impacts associated with the SWWTF upgrade.

In order to complete the analysis of impacts associated with the SWWTF upgrade, a hydrologic study must be conducted to quantify how diverting the existing effluent, which currently flows into the New River, would affect the wetland and riparian habitats adjacent to the SWWTF.¹⁵ According to prior environmental review documents from the Seeley County Water District, maintaining the current effluent outfall from the SWWTF was deemed necessary to avoid the “rapid demise” of adjacent wetlands.¹⁶ These wetlands are a part of a wetland corridor along the New River¹⁷ and are subject to the jurisdiction of the US Army Corps of Engineers.¹⁸ Further, these wetlands may support the state and federally listed endangered Yuma clapper rail, state listed threatened and fully protected California black rail, state and federally listed endangered southwestern willow flycatcher and the state and federally listed endangered least Bell’s vireo.¹⁹ If the study concludes that the effluent diversion would adversely impact these species, consultation with the US Fish and Wildlife Service, pursuant to Section 7 of the Federal Endangered Species Act, will be required.²⁰

Finally, any diversion of water from the New River must be reviewed and approved by the State Water Resources Control Board in the form of a *change of use*

¹⁵ SSA p. C.7-30.

¹⁶ Final Mitigated Negative Declaration and Environmental Assessment for Proposed Seeley Water/Wastewater Master Plans, p. 17, July 22, 2003. Prepared by BRG Consulting, Inc.

¹⁷ See Opening Testimony of Scott Cashen in the Imperial Valley Solar Project proceeding.

¹⁸ Dudek. 2009. Draft Mitigated Negative Declaration for the Seeley Wastewater Reclamation Facility Improvements, Imperial County, California.

¹⁹ SSA p. C.7-30.

²⁰ Id.

permit.²¹ The Board will take into account all prior rights, the availability of water in the basin, and the flows needed to preserve in-stream uses, such as recreation and fish and wildlife habitat.²²

On the basis of these factors, Commission Staff correctly concluded that the SWWTF is not a firm and reliable water supply.²³

For these reasons, CURE urges the Committee to suspend this proceeding because the Project does not have an adequate water supply.

IV. Suspend the Proceeding or New Condition of Certification

The Dan Boyer Water Company well is not a reliable water supply for this Project, because it cannot provide the amount of water required for the Project. The SWWTF upgrade is not a reliable water supply, because it is undergoing environmental review and may never be permitted, depending on the outcome of a number of studies and agency decisions. Therefore, there is no reason not to suspend this proceeding and stop wasting the Commission's resources on this Project at this time.

An alternative to suspending this proceeding until the Applicant provides evidence of a feasible, reliable water supply is for the Commission to condition the start of Project construction on a fully permitted and operational SWWTF upgrade. This would require modifying condition of certification Soil and Water 9 in the SSA.

²¹ SSA p. C.7-85.

²² State Water Resources Control Board, Water Rights Process, Accessed at www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml.

²³ SSA p. C.7-54.

Soil and Water 9 would be revised as follows and a redline version is attached as Exhibit A:

**ASSURED WATER SUPPLY
SOIL&WATER-9**

The project owner shall provide the CPM two copies of the following: The Notice of Determination from the Seeley County Water District for the SWWTF upgrade project; (2) a take permit from the US Fish and Wildlife Service for the SWWTF, if necessary and appropriate; (3) a permit from the RWQCB Division of Water Rights for diversion of flows from the New River to the Imperial Valley Solar project; (4) any needed approval from the US Army Corps of Engineers; (5) the current executed recycled water purchase agreement for the long-term supply (40 years) between the project owner and the Seeley County Water District with a cap on the delivery rate of 51 AFY for construction and 33 AFY for operations and all terms and costs of delivery and use of recycled water by the Imperial Valley Solar project.

The project owner shall comply with the requirements of Title 22 and Title 17 of the California Code of Regulations and section 13523 of the California Water Code. The project owner must also submit to the CPM evidence that metering devices are operational on the water supply and distribution system to record, in gallons per day, the total volume of water supplied to the Project from the SWWTF for the life of the Project.

For the first year of operation, the project owner shall prepare an annual Water Use Summary, which will include the monthly average of daily water usage in gallons per day, and total water used by the project on a monthly and annual basis in acre-feet. For subsequent years, the annual Water Use Summary shall also include the annual water used by the project in prior years. The annual Water Use Summary shall be submitted to the CPM as part of the annual compliance report.

Verification: No later than 60 days prior to construction, the project owner shall submit two copies of the Seeley County Water District Notice of Determination, including the necessary documentation and proof that the specific terms of the permit have been met, the executed agreement for the supply of recycled water for the project, a take permit from US Fish and Wildlife Service if necessary and appropriate, a permit from the RWQCB Division of Water Rights, and any needed

approval from the US Army Corps of Engineers. The agreement shall specify that the water purveyor can provide water at a maximum of 51 AFY for construction and 33 acre feet per year for operation to the Imperial Valley Solar project.

This modified condition would require that the Project have a firm and reliable water supply prior to constructing the Project. Without such a condition, this proceeding should be suspended.

V. Conclusion

The Applicant cannot begin construction or operation of the Project without a reliable source of water for 51 AFY for construction and approximately 33 AFY for operations. No such water source exists. CURE urges the Committee to suspend the proceeding until the Applicant has identified a firm, adequate and reliable water supply for constructing and operating the Imperial Valley Project.

Alternatively, CURE urges Staff and the Commission to mandate a condition that the Project not be constructed or operated until the SWWTF is fully approved and operational, as set forth in CURE's revised condition of certification Soil & Water 9.

Dated: July 13, 2010

Respectfully submitted,

/s/

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EXHIBIT A

ASSURED WATER SUPPLY SOIL&WATER-9

The project owner shall provide the CPM two copies of the following: (1) The Notice of Determination from the Seeley County Water District for the SWWTF upgrade project; (2) a take permit from the US Fish and Wildlife Service for the SWWTF, if necessary and appropriate; (3) a permit from the RWQCB Division of Water Rights for diversion of flows from the New River to the Imperial Valley Solar project; (4) any needed approval from the US Army Corps of Engineers; (5) the current executed recycled water purchase agreement for the long-term supply (40 years) between the project owner and the Seeley County Water District with a cap on the delivery rate of 51.1 AFY for construction and 33 AFY for operations and all terms and costs of delivery and use of recycled water by the Imperial Valley Solar project.

~~(1) Dan Boyer Water Company's use permit; (2) documentation and proof necessary to verify that all of Imperial County's specific terms for the well permit have been met; and (3) the executed Water Purchase Agreement (agreement) between Imperial Valley Solar and the Dan Boyer Water Company for the long term supply of groundwater for the project. The agreement shall specify the agreed upon delivery rate to meet the Imperial Valley Solar project's maximum construction and operation requirements (maximum supply of 34 acre feet per year).~~

~~If recycled water becomes an alternative water supply, the project owner shall provide the CPM two copies of the executed Recycled Water Purchase Agreement (agreement) with the recycled waste water purveyor for the longterm supply (40 years) of disinfected tertiary recycled water to the Imperial Valley Solar project. The project shall not operate without a long term agreement for recycled water delivery and connection to a recycled water pipeline for project use. The agreement shall specify a delivery rate to meet Imperial Valley Solar project's maximum operation requirements and all terms and costs for the delivery and use of recycled water at the Imperial Valley Solar project. The Imperial Valley Solar project shall not connect to the new recycled water pipeline without the final agreement in place and submitted to the CPM. The project owner shall comply with the requirements of Title 22 and Title 17 of the California Code of Regulations and section 13523 of the California Water Code. The project owner shall work with the Seeley Waste Water Treatment Facility (SWWTF) to obtain approval from the RWQCB Division of Water Rights for the diversion of flows from the New River to the Imperial Valley Solar project.~~

~~If recycled water from the SWWTF available as the project's water supply, the project owner shall do the following:~~

~~1. Submit to the CPM evidence that the SWWTF has obtained approval from the RWQCB Division of Water Rights for diversion of flows from the New River to the Imperial Valley Solar project;~~

~~2. Submit to the CPM evidence that a final agreement has been made between the project owner and the SWWTF that specifies the delivery rate to meet Imperial Valley Solar project's maximum operation requirements and all terms and costs for the delivery and use of recycled water by the Imperial Valley Solar project~~

~~3. The project owner must also~~ submit to the CPM evidence that metering devices are operational on the water supply and distribution systems.

~~The Project owner must m~~4. Maintain metering devices as part of the water supply and distribution systems to monitor and record, in gallons per day, the total volume(s) of water supplied to Imperial Valley Solar project from the SWWTP.

Those metering devices shall be operational for the life of the project. ~~5.~~ For the first year of operation, the project owner shall prepare an annual Water Use Summary, which will include the monthly average of daily water usage in gallons per day, and total water used by the project on a monthly and annual basis in acre-feet. For subsequent years, the annual Water Use Summary shall also include the annual water used by the project in prior years. The annual Water Use Summary shall be submitted to the CPM as part of the annual compliance report.

Verification: No later than 60 days prior to construction the project owner shall submit two copies of the Seeley County Water District Notice of Determination, well permit, including the necessary documentation and proof that the specific terms of the permit have been met,~~5,~~ and the executed agreement for the supply of recycled groundwater for the project; a take permit from US Fish and Wildlife Service if necessary and appropriate; a permit from the RWQCB Division of Water Rights; and any needed approval from the US Army Corps of Engineers.- The agreement shall specify that the water purveyor can provide water at a ~~maximum rate up to 250,000 gpd and a~~ maximum of 51.1 AFY for construction and 334 acre feet per year for operation to the Imperial Valley Solar project.

STATE OF CALIFORNIA
California Energy Commission

In the Matter of:

The Application for Certification for the
Imperial Valley Solar Project
(formerly known as SES Solar Two)

Docket No. 08-AFC-5

PROOF OF SERVICE

I, Bonnie Heeley, declare that on July 13, 2010, I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY MOTION TO SUSPEND THE PROCEEDING**. 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/solartwo/Imperial_Valley_POS.pdf. 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 via email and by U.S. Mail with first-class postage thereon, fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked "email preferred." An original paper copy and one electronic copy, mailed and emailed respectively, were sent to the Docket Office.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on July 13, 2010.

_____/s/_____
Bonnie Heeley

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