



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

DOCKET

08-AFC-5

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| DATE | MAY 12 2010 |
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MAY 12 2010

Colonel Thomas H. Magness
District Engineer, Los Angeles District
U.S. Army Corps of Engineers
P.O. Box 532711
Los Angeles, California 90053-2325

Subject: Public Notice (PN) SPL-2008-01244-MLM for the proposed Imperial Valley Solar Project, Tessera Solar North America, Imperial County, California

Dear Colonel Magness:

This letter is in response to your March 15, 2010 PN describing Tessera Solar North America's proposed 6,500 acre Imperial Valley Solar Project located in Imperial County, California. The project proposes discharges of dredged or fill material that would eliminate 167 acres of jurisdictional desert streams tributary to the New River and the Salton Sea. As proposed, these discharges may result in substantial and unacceptable impacts to "aquatic resources of national importance" (ARNI). The streams at this project site perform critical hydrologic, biogeochemical and habitat functions directly affecting the integrity and functional condition of the New River and Salton Sea, both listed as impaired waterbodies under the Clean Water Act (CWA) sect. 303(d). This letter identifies the permit action as a candidate for review by our respective headquarters pursuant to our agencies' established procedures.¹

The 878 acres of jurisdictional desert streams on the project site are a critical part of the Salton Sea Transboundary Watershed. There has been significant federal, state and community investment in the protection and improvement of this watershed for its agricultural, environmental and recreational values. Since the mid-1960's, federal and state agencies have undertaken and funded efforts to address salinity and other water quality problems, including \$1.5 million of EPA funding for water quality and wetland restoration projects at the Salton Sea, and \$62 million of EPA funding for wastewater infrastructure to protect human health and improve water quality in the New River.

The streams that would be directly impacted by this project provide services such as sediment transport and deposition, energy dissipation, and ground water recharge. They provide hydrological, biological and geochemical connectivity to the New River and Salton Sea, including connectivity to the Salton Sea National Wildlife Refuge. These waters represent a critical stop on the Pacific Flyway for migrating birds, including several state and federal listed and threatened species. The project site also provides a variety of habitat types for reptiles and mammals, including the flat-tailed horned lizard (*Phrynosoma mcallii*), proposed for listing under the Endangered Species Act, and Peninsula bighorn sheep (*Ovus Canadensis nelsoni*), a listed endangered species. All of these important functions will be lost or degraded by the

proposed installation of 30,000 SunCatcher dish Stirling systems and their associated equipment and infrastructure. These impacts may result in an irreversible loss of biodiversity and ecosystem stability, and harm the State of California's efforts to control and reduce pollutants and stressors currently impairing the New River and Salton Sea, such as pesticides, nutrients, salinity and selenium. Wastewater, agricultural return flows and industrial discharges are likely sources of these impairments, and the modification of flow and sedimentation regimes upstream will further reduce watershed resiliency and impact beneficial uses throughout the watershed.

Section 404 of the Clean Water Act prohibits avoidable discharges of dredged or fill material to waters of the United States. Proposals for discharges must meet EPA's regulatory standards at 40 CFR 230.10, including a comprehensive evaluation of project alternatives that avoid and minimize impacts to the aquatic environment. The only permissible discharge is the "Least Environmentally Damaging Practicable Alternative" (LEDPA). The applicant has provided a preliminary draft 404(b)(1) alternatives analysis and we are anticipating additional information on offsite alternatives, and site design (e.g., fencing and roads, additional avoidance of SunCatchers placed in desert streams, development of in holdings, alternative substation and building locations, etc.). On April 28, 2010, your staff met with us and the applicant to discuss the most recent project proposals which, if developed and approved, could further reduce impacts to aquatic resources. We are committed to continuing to work together to ensure authorization of the LEDPA and avoid elevation of this permitting decision to Washington DC.

If you wish to discuss this matter, please call me at (415) 972-3572 or have your staff contact Jason Brush, Supervisor of our Wetlands Office, at (415) 972-3483.

Sincerely,

 12 May 2010
Alexis Strauss, Director
Water Division

cc: USFWS, Carlsbad
RWQCB (7), Colorado River Basin Region
Tessera Solar North America.

¹ This letter follows field level procedures outlined in the August 1992 Memorandum of Agreement between the EPA and the Department of the Army, Part IV, paragraph 3(a) regarding section 404(q) of the Clean Water Act.