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 Our File No.: 0000343662

September 16, 2010

Imperial Valley Solar AFC Committee Members
 California Energy Commission
 Attn: Docket Number: 08-AFC-5
 1516 Ninth Street
 Sacramento, CA 95814

**Re: Comments on the Presiding Member's Proposed Decision for
 the Imperial Valley Solar Project (formerly Solar 2) (Docket
 Number 08-AFC-5)**

Dear Commissioner Byron and Commissioner Eggert:

We write to you regarding the Presiding Member's Proposed Decision (PMPD) for the Imperial Valley Solar Project, on behalf of our client of Imperial Valley Solar, LLC (IVS), the applicant for the IVS project. The IVS project will provide 709 MW of clean, renewable, solar-powered electricity and assist San Diego Gas & Electric (SDG&E) in meeting its legislatively mandated obligations under the RPS program.

We appreciate the time that the Commissioners and CEC staff have put into the IVS project and we appreciate this opportunity to comment on the PMPD. The PMPD reflects the thoughtful and detailed consideration that the Commissioners and CEC staff have given to the IVS project, its environmental impacts, the potential consumer benefits, and project's reliability. Overall, we support the analysis and conclusions set forth in this PMPD.

The PMPD references the approximate acreage numbers that were contained in the Application for Certification submitted in 2008 and the CEC staff's Supplement Staff Assessment dated July 7, 2010 and Supplement Staff Assessment Part II dated August 2, 2010. The PMPD also provides for the final accounting of the total IVS project acreage and of the amount of disturbed habitat. The acreages shown in the final accounting will then be used to calculate final compensatory mitigation requirements. The most up-to-date IVS project numbers are as follows: total IVS project acreage is 6,235 acres of public land managed by the Bureau of Land Management and 336 acres of privately-owned land. Due to the true-up allowance in the PMPD, we do not think it is necessary to update all of the numbers in the PMPD with these revised numbers. However, in reviewing the Conditions of Certification, we think that it would be prudent to add a footnote to the phased mitigation payment table in BIO-10 to confirm that phased security payments will be adjusted to reflect actual acreage and paid prior to the start of ground disturbance. We provide this table and suggested language for the footnote below:

Boston
 Hartford
 Hong Kong
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 Los Angeles
 New York
 Orange County
 San Francisco
 Santa Monica
 Silicon Valley
 Tokyo
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Table from BIO-10 of PMPD, Biological Resources, page 78.

TIME	PROJECT ACTIVITY	MITIGATION PAYMENT
Phase 1a – October 2010	Start of construction, no more than 378.3 acres of site disturbance activities.	\$574,758
Phase 1b – (estimated after the close of financing during the 1 st quarter 2011)	Completion on Phase 1 construction (300 MW); mitigation provided for 2,682.3 acres	\$3,819,470 less adjustments from phase 1a and for phase 1 b for land acquisition method, and land improvement and long-term management costs
Phase 2	Initiation and completion of Phase 2 (450 MW) mitigation provided for 3,558.1 acres	\$5,052,854 less adjustments from phase 1 b and for land acquisition method, and land improvement and long-term management costs

*The acreage calculations and required mitigation payment are preliminary estimates. Actual compensatory mitigation payment will be based upon actual acreage associated with each phase and will be confirmed prior to the start of ground disturbance.

Consistent with this change to BIO-15, the second paragraph of the verification should be revised to require the project owner to provide proof of the actual acreages prior to the start of ground disturbance.

In our review of the Conditions of Certification, we noticed that SOIL&WATER-9 was unclear and did not seem to allow us to use recycled water as soon as it is available. Therefore we suggest revising SOIL&WATER-9 as shown in the attached Exhibit A, which is consistent with the analysis in the PMPD and CEC policy to promote the use of recycled water.

Additionally, in CEC staff's Opening Brief filed August 11, 2010, CEC staff proposed two new Conditions of Certification (AQ-SC11 [generators] and REL-1 [reliability]) and a few revisions that were not included in the PMPD. We believe these revisions, which are shown in the attached Exhibit B, should be included in the final decision of the CEC. Additionally, there is a reference to "Calico" in the footnote in NOISE-6 (on page 11 of the Noise and Vibration chapter), which should be changed to IVS.

IVS Committee Members
September 16, 2010
Page 3

We thank you for this opportunity to comment on the PMPD.

Sincerely yours,

A handwritten signature in blue ink that reads "Ella Foley Gannon". The signature is written in a cursive style with a large initial "E".

Ella Foley Gannon

cc: Raoul Renaud
Marc Van Patten
Richard Knox
Sean Gallagher

Exhibit A

ASSURED WATER SUPPLY

SOIL&WATER-9 If water is to be used from the Dan Boyer Water Company, the project owner shall provide the CPM two copies of the following: (1) Dan Boyer Water Company's well registration; (2) documentation and proof necessary to verify that all of Imperial County's specific terms for the well permit have been met; and (3) an executed Water Purchase Agreement (agreement) or option 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 39 acre-feet per year).

No later than 30 days prior to use of ~~if~~ recycled water from the Seeley Waste Water Treatment Facility (WWTF) ~~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 long-term supply (40 years) of disinfected tertiary recycled water to the Imperial Valley Solar project. ~~The project shall not use recycled 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 use recycled water 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 insofar as it applies to use of water by the Imperial Valley Solar project.

The project owner shall work with the Seeley Waste Water Treatment Facility (SWWTF) to obtain approval from the ~~SWRCB~~~~RWQCB~~ Division of Water Rights for any ~~the~~ diversion of flows from the New River to the Imperial Valley Solar project.

Before recycled water from the SWWTF is used ~~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 ~~SWRCB~~~~RWQCB~~ Division of Water Rights for any 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. Submit to the CPM evidence that metering devices are operational on the water supply and distribution systems.

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 thirty (30) days prior to use of water from the Dan Boyer Water Company well, the project owner shall submit two copies of the well registration, including the necessary documentation and proof that the specific terms of the registration have been met, and the executed agreement or option for the supply of groundwater for the project. The agreement or option shall specify that the water purveyor can provide water at a maximum rate up to 250,000 gpd and a maximum of 39 acre feet per year to the Imperial Valley Solar project.

No later than 30 days prior to use of water from the SWWTF, the project owner shall submit the items referenced in paragraphs 1 through 3 above. During the life of the project, while water from the SWWTF is being used, the project owner shall comply with items referenced in paragraphs 4 and 5 above.

Exhibit B

AQ-SC3 Construction Fugitive Dust Control: The AQCMM shall submit documentation to the CPM in each Monthly Compliance Report that demonstrates compliance with the Air Quality Construction Mitigation Plan (AQCMP) mitigation measures for the purposes of minimizing fugitive dust emission creation from construction activities and preventing all fugitive dust plumes that would not comply with the performance standards identified in **AQ-SC4** from leaving the project site. The following fugitive dust mitigation measures shall be included in the Air Quality Construction Mitigation Plan (AQCMP) required by **AQ-SC2**, and any deviation from the following mitigation measures shall require prior CPM notification and approval.

- a. The main access roads through the facility to the power block areas will be either paved or stabilized using soil binders, or equivalent methods, to provide a stabilized surface that is similar for the purposes of dust control to paving, that may or may not include a crushed rock (gravel or similar material with fines removed) top layer, prior to initiating construction in the main power block area, and delivery areas for operations materials (chemicals, replacement parts, etc.) will be paved or treated prior to taking initial deliveries.
- b. All unpaved construction roads and unpaved operation and maintenance site roads, as they are being constructed, shall be stabilized with a nontoxic soil stabilizer or soil weighting agent that can be determined to be both as efficient or more efficient for fugitive dust control as ARB approved soil stabilizers, and shall not increase any other environmental impacts including loss of vegetation to areas beyond where the soil stabilizers are being applied for dust control. All other disturbed areas in the project and linear construction sites shall be watered as frequently as necessary during grading (consistent with [BIO-7 Biology Conditions of Certification that address the minimization of standing water](#)); and after active construction activities shall be stabilized with a non-toxic soil stabilizer or soil weighting agent, or alternative approved soil stabilizing methods, in order to comply with the dust mitigation objectives of Condition of Certification **AQ-SC4**.

The frequency of watering can be reduced or eliminated during periods of precipitation.

- c. No vehicle shall exceed 10 miles per hour on unpaved areas within the construction site, with the exception that vehicles may travel up to 25 miles per hour on stabilized unpaved roads as long as such speeds do not create visible dust emissions.
- d. Visible speed limit signs shall be posted at the construction site entrances.

- e. All construction equipment vehicle tires shall be inspected and washed as necessary to be cleaned free of dirt prior to entering paved roadways.
- f. Gravel ramps of at least 20 feet in length must be provided at the tire washing/cleaning station.
- g. All unpaved exits from the construction site shall be graveled or treated to prevent track-out to public roadways.
- h. All construction vehicles shall enter the construction site through the treated entrance roadways, unless an alternative route has been submitted to and approved by the CPM.
- i. Construction areas adjacent to any paved roadway below the grade of the surrounding construction area or otherwise directly impacted by sediment from site drainage shall be provided with sandbags or other equivalently effective measures to prevent run-off to roadways, or other similar run-off control measures as specified in the Storm Water Pollution Prevention Plan (SWPPP), only when such SWPPP measures are necessary so that this condition does not conflict with the requirements of the SWPPP.
- j. All paved roads within the construction site shall be swept daily or as needed (less during periods of precipitation) on days when construction activity occurs to prevent the accumulation of dirt and debris.
- k. At least the first 500 feet of any paved public roadway exiting the construction site or exiting other unpaved roads en route from the construction site or construction staging areas shall be swept as needed (less during periods of precipitation) on days when construction activity occurs or on any other day when dirt or runoff resulting from the construction site activities is visible on the public paved roadways.
- l. All soil storage piles and disturbed areas that remain inactive for longer than 10 days shall be covered, or shall be treated with appropriate dust suppressant compounds.
- m. All vehicles that are used to transport solid bulk material on public roadways and that have potential to cause visible emissions shall be provided with a cover, or the materials shall be sufficiently wetted and loaded onto the trucks in a manner to provide at least 2 feet of freeboard.
- n. Wind erosion control techniques (such as windbreaks, water, chemical dust suppressants, and/or vegetation) shall be used on all construction areas that may be disturbed. Any windbreaks installed to comply with this condition shall remain in place until the soil is stabilized or permanently covered with vegetation.

Verification: The AQCMM shall provide the CPM a Monthly Compliance Report to include the following to demonstrate control of fugitive dust emissions:

- A. a summary of all actions taken to maintain compliance with this condition;
- B. copies of any complaints filed with the District in relation to project construction; and
- C. any other documentation deemed necessary by the CPM and AQCMM to verify compliance with this condition. Such information may be provided via electronic format or disk at the project owner's discretion.

AQ-SC11 The project owner shall only use Tier 3 or higher certified engine generators, totaling no more than 1,900 horsepower, to provide project site power prior to the installation of utility construction or permanent electric power lines to the project site. These engines shall be in the range of 100 to 750 hp each and will have NOx emission that are certified under full load to be no more than 3.0 grams per brake horsepower. These engines shall be located at least 600 feet inside of the project's property fence line and total engine use for all engines shall be limited to no more than 27,360 hours or 8,400,000 hp-hrs of operation, whichever is greater. This requirement does not include small engine generators that are solely dedicated to specific pieces of equipment, such as engine generators necessary for welders.

Verification: The project owner shall submit data on the site power generators at least 15 days prior to their use that demonstrates compliance with this condition and shall submit engine use information in the Monthly Compliance Reports showing compliance with this condition's total engine use limits.

SOIL&WATER-1 Prior to site mobilization, the project owner shall obtain Compliance Project Manager's (CPM) approval for a site specific DESC that ensures protection of water quality and soil resources of the project site and all linear facilities for both the construction and operation phases of the project. This plan shall address appropriate methods and actions, both temporary and permanent, for the protection of water quality and soil resources, demonstrate no increase in off-site flooding or sedimentation potential, and identify all monitoring and maintenance activities.

The project owner shall complete all necessary engineering plans, reports, and documents necessary for the CPM to conduct a review of the proposed project and provide a written evaluation as to whether the proposed grading, drainage improvements, sediment control measures, and flood management activities comply with all requirements presented herein. The plan shall contain the following elements:

Vicinity Map: A map shall be provided indicating the location of all project elements with depictions of all major geographic features to include watercourses, washes, irrigation and drainage canals, major utilities, and sensitive areas.

Site Delineation: The site and all project elements shall be delineated showing boundary lines of all construction areas and the location of all existing and proposed structures, underground utilities, roads, and drainage facilities. Adjacent property owners shall be identified on the plan maps. All maps shall be presented at a legible scale.

Drainage: The DESC shall include the following elements:

- a. Topography. Topography for offsite areas is required to define the existing upstream tributary areas to the site and downstream to provide enough definition to map the existing storm water flow and flood hazard. Spot elevations shall be required where relatively flat conditions exist.
- b. Proposed Grade. Proposed grade contours shall be shown at a scale appropriate for delineation of onsite ephemeral washes, drainage ditches, and tie-ins to the existing topography.
- c. Hydrology. Existing and proposed hydrologic calculations for onsite areas and offsite areas that drain to the site; include maps showing the drainage area boundaries and sizes in acres, topography and typical overland flow directions, and show all existing, interim, and proposed drainage infrastructure and their intended direction of flow.
- d. Hydraulics. Provide hydraulic calculations to support the selection and sizing of the onsite drainage network, diversion facilities and BMPs.

Watercourses and Critical Areas: The DESCPC shall show the location of all onsite and nearby watercourses including washes, irrigation and drainage canals, and drainage ditches, and shall indicate the proximity of those features to the construction site. Maps shall identify high hazard flood prone areas.

Clearing and Grading: The plan shall provide a delineation of all areas to be cleared of vegetation, areas to be preserved, and areas where vegetation would be cut to allow clear movement of the SunCatchers. The plan shall provide elevations, slopes, locations, and extent of all proposed grading as shown by contours, cross-sections, cut/fill depths or other means. The locations of any disposal areas, fills, or other special features shall also be shown. Existing and proposed topography tying in proposed contours with existing topography shall be illustrated. The DESCPC shall include a statement of the quantities of material excavated at the site, whether such excavations or fill is temporary or permanent, and the amount of such material to be imported or exported or a statement explaining that there would be no clearing and/or grading conducted for each element of the project. Areas of no disturbance shall be properly identified and delineated on the plan maps.

Soil Wind and Water Erosion Control: The plan shall address exposed soil treatments to be used during construction and operation of the proposed project for both road and non-road surfaces including specifically identifying all chemical based dust palliatives, soil bonding, and weighting agents appropriate for use at the proposed project site that would not cause adverse effects to vegetation; BMPs shall include measures designed to prevent wind and water erosion including application of chemical dust palliatives after rough grading to limit water use. All dust palliatives, soil binders, and weighting agents shall be approved by the CPM prior to use.

Project Schedule: The DESCPC shall identify on the topographic site map the location of the site-specific BMPs to be employed during each phase of construction (initial grading, project element construction, and final grading/stabilization). Separate BMP implementation schedules shall be provided for each project element for each phase of construction.

Best Management Practices: The DESCPC shall show the location, timing, and maintenance schedule of all erosion- and sediment-control BMPs to be used prior to initial grading, during project element excavation and construction, during final grading/stabilization, and after construction (during project operation). BMPs shall include measures designed to control dust and stabilize construction access roads and entrances. The maintenance schedule shall include post-construction maintenance of treatment-control BMPs applied to disturbed areas following construction.

Erosion Control Drawings: The erosion-control drawings and narrative shall be designed, stamped and sealed by a professional engineer or erosion control specialist.

Agency Comments: The DESC shall include copies of recommendations, conditions, and provisions from the County of Imperial, California Department of Fish and Game (CDFG), and Colorado River Regional Water Quality Control Board (RWQCB).

Monitoring Plan: Monitoring activities shall include routine measurement of the volume of accumulated sediment in the onsite drainage ditches, and storm water diversions.

Verification: No later than ~~ninety~~thirty (90~~30~~) days prior to start of site mobilization, the project owner shall submit a copy of the DESC to the County of Imperial, the RWQCB, the AO, and CPM for review and comment. The CPM shall consider comments received from Imperial County and RWQCB.

During construction, the project owner shall provide an analysis in the monthly compliance report on the effectiveness of the drainage-erosion- and sediment-control measures and the results of monitoring and maintenance activities. Once operational, the project owner shall provide in the annual compliance report information on the results of storm water BMP monitoring and maintenance activities. The property owner shall provide the CPM with two (2) copies each of all reports, including monitoring reports.

NPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITY

SOIL&WATER-5 The project owner shall comply with the requirements of the general National Pollutant Discharge Elimination System (NPDES) permit for discharge of storm water associated with construction activity. The project owner shall submit copies of all correspondence between the project owner and the State Water Resources Control Board (SWRCB) or the Colorado River RWQCB regarding this permit to the CPM. The project owner shall also develop and implement a construction SWPPP for construction on the Imperial Valley Solar project main site, laydown areas, pipeline, and transmission line.

Verification: The project owner shall submit a copy of the construction SWPPP to the CPM at least 10 days prior to site mobilization for review ~~and approval~~, and retain a copy of the approved SWPPP on site throughout construction. The project owner shall submit copies of all correspondence between the project owner and the SWRCB or the Colorado River RWQCB regarding the NPDES permit for the discharge of storm water associated with construction activity to the CPM within 10 days of its receipt or submittal. Copies of correspondence shall include the Notice of Intent sent to the SWRCB, the confirmation letter indicating receipt and acceptance of the Notice of Intent, any permit modifications or changes, and completion/permit Notice of Termination.

DECOMMISSIONING PLAN

SOIL&WATER-10 The project owner shall identify likely decommissioning scenarios and develop specific decommissioning plans for each scenario that will identify actions to be taken to avoid or mitigate long-term impacts related to water and wind erosion after decommissioning. Actions may include such measures as a decommissioning SWPPP, revegetation and restoration of disturbed areas, post-decommissioning maintenance, collection and disposal of project materials and chemicals, and access restrictions.

Verification: At least ~~90~~thirty (30) days prior to the start of site mobilization, the project owner shall submit decommissioning plans to the CPM for review and approval prior to site mobilization. The project owner shall amend these documents as necessary, with approval from the CPM, should the decommissioning scenario change in the future.

REL-1 From the time of the Energy Commission's adoption of this condition of certification to the start of commercial operation of the Imperial Valley Solar Project, or to the closure of the Maricopa Plant, whichever occurs earlier, the project owner shall obtain and provide to the CPM quarterly data sets of reliability and maintenance data from the Maricopa Plant, including the following:

- logs of equipment failure data and operational data for all major equipment, including power conversion units, drive mechanisms, and controls. These logs shall include major equipment and plant availability factors, and major equipment and Plant forced outage rates, including their causes and durations.
- plant operating logs showing dates and times of dispatch, and power level of dispatch.

During the first two years of the commercial operation of Imperial Valley Solar Project, the project owner shall maintain quarterly data sets of reliability and maintenance data, including the information specified in paragraphs a) and b) above, for the Imperial Valley Solar Project and make the information available to the CPM upon request.

Verification: On a quarterly basis, the project owner shall submit the Maricopa project data described in paragraphs a) and b) above, to the CPM, and shall make the Imperial Valley Solar Project data available to the CPM upon request.



**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
IMPERIAL VALLEY SOLAR PROJECT**
(formerly known as SES Solar Two Project)
IMPERIAL VALLEY SOLAR, LLC

**Docket No. 08-AFC-5
PROOF OF SERVICE
(Revised 6/8/10)**

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*indicates change

DECLARATION OF SERVICE

I, Darin Neufeld, declare that on September 16, 2010, I served and filed copies of the attached Applicant's Comments on the Presiding Member's Proposed Decision. The original documents, filed with the Docket Unit, are accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[http://www.energy.ca.gov/sitingcases/solartwo/index.html\]](http://www.energy.ca.gov/sitingcases/solartwo/index.html)

The documents have 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-5
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.

Original Signed By
Darin Neufeld