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September 16, 2010

<b>DOCKET</b> 08-AFC-5	
DATE	SEP 16 2010
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California Energy Commission  
Attn: Docket No 08AFC5  
1516 Ninth Street  
Sacramento, CA 95814

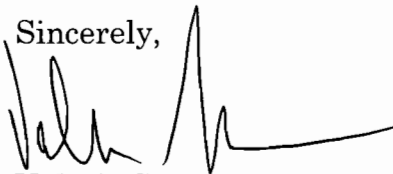
Re: Docket No. 08-AFC-5, SES Solar Two Project

Dear Docket Clerk:

Enclosed are an original and copy of CURE's letter: CALIFORNIA UNIONS FOR RELIABLE ENERGY INITIAL COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION (9/16/10). Please docket the letter, conform the copy and return the copy in the envelope provided.

Thank you for your assistance.

Sincerely,



Valerie Stevenson  
Administrative Assistant

:vs  
Enclosures

2218-162v

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

In the Matter of:

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

Docket No. 08-AFC-5

**CALIFORNIA UNIONS FOR RELIABLE ENERGY  
INITIAL COMMENTS ON THE  
PRESIDING MEMBER'S PROPOSED DECISION**

September 16, 2010

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UNIONS FOR RELIABLE ENERGY

## **I. Introduction**

California Unions For Reliable Energy (“CURE”) submits these initial comments on the Presiding Member’s Proposed Decision for the Imperial Valley Solar Project (“Project”), pursuant to the Committee’s August 26, 2010 Notice of Committee Conference. These initial comments and proposed revisions to conditions of certification are not exhaustive. CURE will supplement these comments with any additional proposed revisions prior to the close of the Commission’s 30-day comment period.

## **II. The Committee Can Not Approve the 709 Mw Project Proposed By the Applicant at the Final Hearing**

The PMPD’s proposal to approve the 709 Mw alternative violates CEQA and the Commission’s regulations. The 709 Mw alternative is a new project that was presented by the Applicant for the first time at the final evidentiary hearing on the Project.

Commission Staff and CURE plainly and unequivocally explained that the Commission does not have the legal authority to approve the 709 Mw alternative because Staff did not analyze this alternative and it is configured in such a way that the new project design may result in the need for mitigation measures not included in the Applicant’s new proposal.<sup>1</sup>

The 709 Mw alternative does not eliminate impacts to waters of the U.S. and would result in new significant adverse environmental impacts that have not yet been analyzed by Staff. Specifically, the new project eliminates roads within the Project site and would require off-road travel for maintenance of all approximately 30,000 SunCatcher units.

Staff did not analyze the newly proposed 709 Mw project and did not set forth its analysis of that project, as required by Section 1742.5 of the Commission’s regulations. Before approving a project, the Commission must conclude that Staff’s report has been completed in compliance with CEQA, that the Commission has reviewed and considered the information in the report prior to approving the project, and that Staff’s report reflects the Commission’s independent judgment and analysis. (14 Cal. Code Regs. §15090(a); see Pub. Res. Code § 21082.1(c)(3).) The report must be presented prior to evidentiary hearings. (20 Cal. Code Reg. §§ 1723.5(d), 1742.5(b).) Because no analysis was conducted, no party was provided an opportunity to review Staff’s analysis

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<sup>1</sup> Staff Opening Brief, p. 4.

In fact, the Applicant did not provide a complete version of this alternative to the parties or the Committee until August 9, 2010, *after* the final evidentiary hearing for the Project.<sup>2</sup>

Although Staff never analyzed this new project and CURE was not provided any opportunity to submit written testimony on the new project, CURE submitted expert comments to the Bureau of Land Management on the new project's significant impacts. Comments of Dr. Chris Bowles explain that this ad-hoc off-road travel would damage the desert pavement and cryptobiotic crusts as a result of unrestricted access to areas not demarcated by a formal road. No best management practices or other provisions to minimize erosion on these travel routes were included in the new project design. As a result, the Project would pose new and different significant soil erosion and sedimentation impacts that have not been studied by Staff. The Project would also pose new and different significant impacts from subsequent sediment transport to the washes and streams. Dr. Bowles' comments are included herein as Exhibit A. Further, contrary to the conclusion in the PMPD, the 709 Mw project fails to provide adequate corridors for the movement of the flat-tailed horned lizard across the Project site, as explained by CURE's expert biologist, Scott Cashen, during the July 27, 2010 evidentiary hearing.

The PMPD's reliance upon *Dusek v. Anaheim Redevelopment Agency* (1985) 173 Cal.App.3d 1029 for the proposition that the 709 Mw Project is merely a smaller project with less impact and need not undergo environmental review is misplaced. The 709 Mw alternative is a new design that is distinct from the alternatives analyzed by Staff and poses new potentially significant environmental impacts that have not been analyzed by the Commission to date.

The PMPD's proposal to approve the 709 Mw alternative violates CEQA and the Commission's regulations. The Commission cannot approve the 709 Mw alternative until Staff analyzes the significant impacts from the new design and prepares a report prior to an evidentiary hearing.

### **III. The PMPD Violates CEQA By Deferring Analysis of Significant Impacts to Cultural Resources Until After Project Approval**

The Project site contains a prehistoric landscape that includes ritualized human remains, village sites, and the National Historic Juan Bautista de Anza Trail, the corridor of the Anza expedition, the first overland route from New Spain to San Francisco. The PMPD's proposal to approve the Project *prior to the analysis* of the Project's impacts to cultural resources violates the basic principle of CEQA: to determine significant impacts prior to Project approval.

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<sup>2</sup> The first time Exhibit 129 was submitted was in Applicant's Rebuttal Testimony (an incomplete version), two working days before the final evidentiary hearing.

The PMPD admits that the Commission and Bureau of Land Management (“BLM”) have not yet provided a complete evaluation of all potentially eligible resources, citing to ARRA funding deadlines as the justification. The PMPD explains that the Commission and BLM will identify the significance of specific cultural resources *after the Project is approved*. (Cultural resources p.3.) However, ARRA funding deadlines have no place in a CEQA impact analysis.

The PMPD also justifies deferring the identification of cultural resources because of the quantity of resources present: “the high number of cultural resources for this project renders the evaluation of all known resources infeasible...” (Cultural Resources, p. 67.) CEQA does not contain a provision that enables the Commission to side-step the identification of significant project impacts because of the quantity of the impacts. The significance of these impacts is precisely what requires the analysis in the first place. The PMPD does not provide or have any legal support for its justification for deferring the required analysis. The PMPD’s deferral of the identification of significant cultural resources on the Project site, one of the first steps in a CEQA analysis, is a plain violation of CEQA.

The PMPD also improperly defers the development of mitigation until after project approval. The PMPD relies upon a Programmatic Agreement to be signed and finalized by the BLM pursuant to Section 106 of the National Historic Preservation Act, as the primary method for identifying significant cultural resources and appropriate mitigation measures, and for ensuring implementation of those mitigation measures. This deferral of analysis and mitigation is improper, and it violates CEQA.

Under CEQA, the details of mitigation may only be deferred until after Project approval in limited circumstances.<sup>3</sup> Deferral is permissible only if “the lead agency: (1) undertook a complete analysis of the significance of the environmental impact, (2) proposed potential mitigation measures early in the planning process, and (3) articulated specific performance criteria that would ensure that adequate mitigation measures were eventually implemented.”<sup>4</sup> The decision must commit the agency to a realistic performance standard or criterion that will ensure the mitigation of the significant effect; and disallow the occurrence of physical changes to the environment unless the performance standard is or will be satisfied.<sup>5</sup>

In this instance, the PMPD specifies performance standards to mitigate impacts to cultural resources with associative values but then concludes that these performance standards are unlikely to be met through the consultation process.

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<sup>3</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670-671, quoting *Endangered Habitats League Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793.

<sup>4</sup> *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.

<sup>5</sup> See Remy et al., *Guide to the California Environmental Quality Act* (11th ed. 2007), p. 551.

(See, i.e., “this performance standard is a test that no mitigation measure negotiated under the PA is likely to meet.” (Cultural Resources, p. 77).)

Plainly put, CEQA’s preferred strategy for mitigating significant impacts to cultural resources is avoidance. The PMPD is correct that mitigation fashioned after the Project is approved and is not likely to reduce impacts to a historical trail or trail segment to less than significant and the Commission’s performance standards will not be met. The PMPD is not correct that this approach is acceptable.

Project redesign in order to achieve avoidance of cultural resources is much more feasible prior to Project approval when all alternatives are before the agency and reconfiguration is still practicable. Once construction has begun and resources are committed to a specific configuration, the feasibility of project redesign will be significantly reduced. Staff testified under oath that the feasibility of project redesign is reduced over time, “the further the applicant is along in the design process, and it narrows down, the further in time you get, the less options there are to introduce major changes into the design of the project.” (Hearing 8/16/2010 Tr. p. 51, McGuirt.)

The Committee has an obligation under CEQA to conduct its own analysis of potentially significant environmental impacts to cultural resources and to formulate appropriate mitigation measures or commit to specific performance standards whenever significant environmental impacts are identified. The PMPD does not do either.

The Committee should direct Staff to conduct an ethnographic study of cultural resources and obtain Native American input. If the Committee seeks to defer the formulation of specific mitigation it must require the Applicant to meet specific performance standards. The PMPD’s assortment of possible mitigation measures that may or may not be effectively implemented after the Project is approved improperly restricts the mitigation options to reduce Project impacts to less than significant.

#### **IV. The PMPD Can Not Permit Use of the Dan Boyer Water Well and Can Not Rely on the Sole Source Drinking Water Aquifer**

The PMPD proposes to approve two potential water sources for the Project: groundwater from the Dan Boyer well in the Ocotillo/Coyote Wells sole source aquifer and a proposed upgrade to the Seeley Waste Water Treatment Facility (“SWWTF”).

However, the Dan Boyer well is not a reliable water supply. The U.S. Environmental Protection Agency (“EPA”), Staff and CURE provided comments and

evidence regarding significant uncertainties associated with this purported water supply.

There is no evidence in the record that the Dan Boyer well is adequate in terms of quantity or availability. For example, the Applicant says it needs 42.35 AF for construction (attached as Exhibit B); the PMPD says only 39 AFY is available for construction.

The Applicant says the well is available for 6-11 months; the PMPD says it needs to rely on the well for 36 months.

Neither the Applicant nor Commission Staff analyzed the cumulative impacts of the Project pumping on groundwater resources in the Ocotillo-Coyote Wells Groundwater Basin.<sup>6</sup> However, this Project, in combination with other existing and proposed projects, including the Wind Zero Project and the U.S. Gypsum facility,<sup>7</sup> will result in potentially significant cumulative impacts to the Ocotillo-Coyote Wells aquifer.<sup>8</sup> The Commission cannot ignore significant cumulative impacts when the aquifer is the sole source of drinking water for four desert communities.

The EPA echoes these concerns in their comments on the FEIS (attached as Exhibit C):

The [Boyer] "Will Serve Letter" references a six-to-eleven month period, but the FEIS indicates up to) years. Unanticipated delays...could occur. The FEIS indicates that the proposed Project will not affect nearby residential/private wells, but it is still unclear whether the FEIS analysis factored in up to 67 afy of withdrawals for the Coyote Wells project in the same area. Thus, there is still some uncertainty whether nearby wells would be affected.

Ultimately, the PMPD relies upon speculation and unsupported assumptions to base its decision that the use of the water from the Dan Boyer Well will be adequate in quantity and duration and is an appropriate source of water for the Project. Reliance on the Dan Boyer well should not be permitted for this Project.

#### A. Suggested Changes to Conditions of Certification

Delete Soil&Water 2 and Revise Soil&Water-9 as follows:

~~**SOIL&WATER-2** The Imperial Valley Solar Project plans to utilize groundwater purchased from the Dan Boyer Water Company, during~~

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<sup>6</sup> See *Hearing Tr.*, July 26, 2010, pp. 228-229.

<sup>7</sup> See <http://www.wind-zero.com/>

<sup>8</sup> Dr. Bowles Additional Rebuttal Testimony on Behalf of CURE pp. 5-6.

~~the period recycled water is not available from the Seeley County Water District. This condition limits water purchases from the Dan Boyer Water Company to 39 acre-feet per year, and specifies that water purchases and use restrictions have been met and documented by both Imperial Valley Solar and Dan Boyer Water Company. This condition also limits use of groundwater to a period of thirty-six (36) months from the date of first construction-related ground disturbance. Use of ground water for a period exceeding thirty-six (36) months is prohibited unless the project owner seeks a Project Amendment extending the permissible period of groundwater use.~~

~~No later than thirty (30) days before any use of water from the Dan Boyer well, the project owner shall document that all required metering devices are in place and maintained as required by the well owner's permit. An annual summary of daily water sales by the water purveyor differentiating between Imperial Valley Solar power purchases and other water customers (which need to be identified and which may be collectively accounted for) shall be submitted to the CPM in the annual compliance report. This report shall include copies of all the Dan Boyer Water Company invoices to Imperial Valley Solar as back-up for the reported sales and deliveries.~~

~~**Verification:** At least thirty (30) days prior to use of water from the Dan Boyer Water Company for Imperial Valley Solar project, the project owner shall submit to the CPM evidence that metering devices have been installed and are operational on the Dan Boyer Water Company well. In the annual compliance report, the project owner shall provide a report on the servicing, testing, and calibration of the metering devices.~~

~~The project owner shall submit a water use summary report to the CPM in the annual compliance report for the entire time that Imperial Valley Solar is using water from this well. As part of this report, the project owner shall include the monthly sales invoices of all sales to Imperial Valley Solar by the Dan Boyer Water Company. The monthly sales invoices shall differentiate between water sold to Imperial Valley Solar and water sold to other customers (which need to be identified and which may be collectively accounted for). The annual water use summary report shall be based on the volume of water used by Imperial Valley Solar and shall distinguish recorded daily use of potable and operation water. The report shall include the project's daily maximum, monthly range, and monthly average in gallons per day, and the annual use in acre-feet. After the first year and for subsequent years, this information shall also include the yearly range and yearly average potable and operation water used by the project.~~

## **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 RWQCB Division of Water Rights for 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 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 SWWTF. 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.

### **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.

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 systems.

The Project owner must 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. 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, and 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 51.1 AFY for construction and 33 acre feet per year for operation to the Imperial Valley Solar project.

V. **The PMPD Must Require Staff's Proposed Condition To Mitigate Significant Impacts to Peninsular Bighorn Sheep, Not the Applicant's Last-Minute Proposal to Mitigate Impacts by Removing Tamarisk**

The PMPD concludes that the Applicant's proposal to remove tamarisk on 247 acres of Carrizo Creek would mitigate the Project impacts to all bighorn foraging habitat on the Project site. (Biological Resources, p. 37.) The PMPD improperly dismisses the expert testimony of Scott Cashen and Dr. Vernon Bleich by stating that CURE's witnesses "expressed concern over this form of mitigation, but offered no alternative."

However, CURE's witnesses did more than merely express concern, they provided substantial evidence that the tamarisk removal scheme proposed by the Applicant a) is not likely to mitigate the significant impacts to bighorn sheep foraging habitat to a level that is less than significant and b) may result in additional significant impacts to other threatened or endangered avian species known to nest in tamarisk in Carrizo Creek and marsh.

Additionally, CURE's experts did not need to propose an alternative, as suggested by the PMPD, because ***a clear superior alternative had already been proposed by Commission Staff***, the acquisition and enhancement of 881 acres of ephemeral wash foraging habitat for peninsular bighorn sheep, preserved in perpetuity and managed with long-term management and maintenance funding.

Staff also independently concluded that the evidence does not support a finding that the restoration of Carrizo Creek would adequately mitigate significant impacts to peninsular bighorn sheep foraging habitat on the Project site. (Staff's Opening Brief, p. 12.) Staff correctly points out that the Applicant's proposal was submitted at the last minute and was not analyzed in the Staff Assessment. (Id.) According to Staff, the short-term restoration period (5 years) is not long enough to ensure the tamarisk doesn't recolonize the creek soon after the Applicant's removal is complete. The Applicant's witness Dr. Patrick Mock testified that "ideally" tamarisk would not recolonize the creek, but it certainly could, and then speculated that the Park likely had a monitoring program to address this.

The PMPD appears to impute a monitoring program on the Anza-Borrego Park *without any support in the record that the Park is able or willing to perform long-term management of the Applicant's mitigation*: "the long term management shall be the responsibility of State Parks and shall be done in connection with the overall management of the Anza Borrego State Park." (Biological Resources, p. 91.) The PMPD cites to no evidence from the Park of a commitment to continue the efforts required to ensure tamarisk does not recolonize the creek.

CEQA requires that mitigation be feasible and effective. There is no evidence in the record that the mitigation proposed by the PMPD in BIO-17 is feasible and would be effective.

#### A. Suggested Changes to Conditions of Certification

BIO-17, as proposed by Staff in the Supplemental Staff Assessment, should be substituted for the BIO-17 that was proposed by the Applicant and incorporated into the PMPD.

### ~~WATERS OF THE U.S., WATERS OF THE STATE AND PENINSULAR BIGHORN SHEEP FORAGING HABITAT IMPACT MINIMIZATION AND COMPENSATION MEASURES~~

~~**BIO-17** — The project owner is required to compensate for the loss of 247 acres 89 Biological Resources of ephemeral wash foraging habitat for the Peninsular bighorn sheep (PBHS) defined as the 28% of the ephemeral washes on site that provide sufficient vegetation to potentially provide PBHS foraging opportunities, as well as the functional loss of 38.2 of permanently impacted, 14 acres of temporarily impacted, 1.63 acres of indirectly impacted waters of the U.S and 48 acres of indirectly impacted waters of the state. Mitigation presented within this proposed Condition of Certification is designed to mitigate for impacts resulting from implementation of the alternative preliminarily determined by the U.S. Army Corps of Engineers to be the least environmentally damaging practicable alternative. This alternative substantially reduces impacts to federal and state jurisdictional waters. Further review and possible revision of compensation land acreage requirements will be necessary following determination of the final project footprint and impacts. If changes are made to the project footprint, the mitigation requirement will be equal to the amount of the 247 acres of ephemeral washes on the site that provide potential PBHS foraging habitat at a 1:1 ratio, the amount of permanently impacted waters of the U.S. at a 5:1 ratio and the amount of temporarily impacted waters of the U.S. at a 1:1 ratio.~~

~~————— If all or any portion of the acquired habitat compensation lands from **BIO-10** meets the criteria for bighorn sheep foraging habitat and provide for the~~

replacement of the functional values associated with the impacted waters of the U.S. and the impacted waters of the state, then the requirements of **BIO-17** are reduced by that amount.

~~In coordination with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and State Parks, the applicant has proposed to conduct enhancement and rehabilitation of Carrizo Creek and marsh located west/northwest of the project on the Anza Borrego State Park. This area was chosen because it is within the same watershed as the project and is within known PBHS populations. The measures are focused on Tamarisk (*Tamarix* spp.) removal which will restore and enhance the aquatic functions of this area and PBHS foraging habitat. If this mitigation option is chosen, the applicant shall do the following:~~

~~Carrizo Creek Enhancement Plan: the applicant shall prepare an enhancement and rehabilitation plan that shall cover approximately 25 miles of Carrizo Creek from the headwaters downstream through Carrizo Marsh (Carrizo Creek Enhancement Plan). The enhancement and rehabilitation plan shall be prepared in accordance with the Corps' and EPA's Final Mitigation Rule (33 CFR Part 325 and 332 [40 CFR Part 230]) and will include detailed methods for the initial removal, retreatment methods, limited native species replanting, monitoring and reporting protocols, and performance standards.~~

~~Mitigation Plan. Prepare a Mitigation Plan which provides for the rehabilitation and enhancement of 247 ephemeral washes consistent with the Carrizo Creek Plan. Although the applicant will prepare the enhancement and rehabilitation plan for the entire 25-mile reach of Carrizo Creek, the applicant will only be responsible for the enhancement and rehabilitation the amount necessary to mitigate direct and indirect impacts to waters of the U.S. and PBHS foraging habitat. The amount of mitigation shall be 247 acres of the Carrizo Creek. The Mitigation Plan shall include the measures needed to rehabilitate and enhance 247 acres of Carrizo Creek, monitoring of the rehabilitated and enhanced areas for 5 years, submitting annual reports to the CPM, Corps, USFWS, CDFG and BLM; success criteria; long term management requirements; and adaptive management provisions if the success criteria are not being met. The Mitigation Plan shall be submitted to the CPM, Corps, and USFWS for approval.~~

~~Long Term Management. Following completion of the initial 5 year monitoring period and concurrence from the Corps that the Mitigation Plan's success criteria, the long term management shall be the responsibility of State Parks and shall be done in connection with the overall management of the Anza Borrego State Park.~~

~~Funding. The applicant shall be responsible for funding the measures outlined in the approved Management Plan. It is estimated that the initial rehabilitation and enhancement will cost approximately \$494,000 (\$2,000 per acre) and that the 5 years of monitoring and active management will cost approximately \$230,000 (\$60,000 for the first three years when it is anticipated that some follow up control for tamarisk will be required as well as replanting of native vegetation and other weed control; \$50,000 for years four and five of the monitoring period where it is anticipated that efforts will be limited mostly to monitoring and maintenance). Long term management is estimated to cost \$170,924 (based on an assumed cost of \$692 per acre). The estimates regarding the cost associated with carrying out the enhancement/rehabilitation methods, monitoring and maintenance are based on Tamarisk Coalition cost estimates that were updated as of 2008. These numbers are appropriate for planning purposes; the actual cost, however, will depend on the degree of infestation present. The total cost of meeting the requirements of this condition is estimated to be \$994,924.~~

~~Security. The project owner shall provide security to ensure satisfaction of the terms of this condition as follows: (1) prior to initiation of ground-disturbing activity for Phase 1A, the applicant shall provide security in the amount of \$494,000 to ensure the implementation of the enhancement and rehabilitation measures; (2) remainder of the security associated with this mitigation measure equaling \$400,924 shall be provided prior to initiation of ground-disturbing activity for Phase 1B. For purposes of this Condition, financial close shall be defined as sixty days following receipt of the DOE loan guarantee.~~

~~Should the applicant not proceed with the above described mitigation of the Carrizo Creek, the applicant shall either, in coordination with the CEC, BLM, Corps, USFWS and CDFG, identify similar enhancement and rehabilitation measures on state or federally owned lands or acquire lands on which similar enhancement and rehabilitation measures can be implemented. If alternative measures are proposed, the mitigation land shall meet the following criteria. Although the criteria for ephemeral wash foraging habitat and habitat of the waters of U.S. and of waters of the state are listed separately below, any alternative compensation lands acquired pursuant to this conditions must meet both sets of criteria.~~

~~1. Selection Criteria for Compensation Lands: Land selected as compensation for loss of ephemeral wash PBHS foraging habitat must satisfy the following criteria;~~

~~Be within the "Essential Habitat Line" for PBHS, as delineated by the USFWS Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (USFWS 2000). If sufficient available suitable habitat is not found within the Essential Habitat Line, then habitat immediately adjacent to the Essential Habitat Line must be purchased, and also of equal or higher quality habitat than present within the project site.~~

~~Be comprised of the same or higher quality habitat of demonstrated known utilization by PBHS as forage, and selected in conjunction with input from CDFG and the USFWS. Land selected as compensation for impacts to waters of the U.S. and for impacts to waters of the state must satisfy the following criteria:~~

~~Compensation land purchased in Sonoran creosote scrub habitat must include ephemeral washes with at least 48 acres of waters of the state and 247 acres of waters of the U.S. and must allow for enhancement measures that will fully mitigate for the functional values of waters of the U.S. and waters of the state impacted by the project.~~

~~Be characterized by similar soil permeability, hydrological and biological functions as the impacted drainages.~~

~~Located in the Colorado Desert.~~

~~2. Review and Approval of Compensation Lands Prior to Acquisition: The Project owner shall submit a formal acquisition proposal to the CPM describing the parcel(s) intended for purchase. This acquisition proposal shall discuss the suitability of the proposed parcel(s) as compensation lands for FTHL in relation to the criteria listed above, and must be approved by the CPM. The CPM will share the proposal with and consult with Corps, CDFG, BLM, and the USFWS before deciding whether to approve or disapprove the proposed acquisition.~~

~~3. Compensation Lands Acquisition Requirements: The project owner shall comply with the following requirements relating to acquisition of the compensation lands after the CPM, in consultation with Corps, CDFG, BLM, and the USFWS, has approved the proposed compensation lands:~~

~~a. Preliminary Report. The Project owner, or approved third party, shall provide a recent preliminary title report, initial hazardous materials survey report, biological analysis, and other necessary or requested documents for the proposed compensation land to the CPM. All documents conveying or conserving compensation lands and all conditions of title are~~

subject to review and approval by the CPM, in consultation with Corps, CDFG, BLM and the USFWS. For conveyances to the State, approval may also be required from the California Department of General Services, the Fish and Game Commission and the Wildlife Conservation Board.

- b. ~~Title/Conveyance.~~ The Project owner shall acquire and transfer fee title to the compensation lands, a conservation easement over the lands, or both fee title and conservation easement, as required by the CPM in consultation with CDFG. Any transfer of a conservation easement or fee title must be to CDFG, a nonprofit organization qualified to hold title to and manage compensation lands (pursuant to California Government Code section 65965), or to BLM or other public agency approved by the CPM in consultation with CDFG. If an approved non-profit organization holds fee title to the compensation lands, a conservation easement shall be recorded in favor of CDFG or another entity approved by the CPM. If an entity other than CDFG holds a conservation easement over the compensation lands, the CPM may require that CDFG or another entity approved by the CPM, in consultation with CDFG, be named a third party beneficiary of the conservation easement. The Project owner shall obtain approval of the CPM, in consultation with CDFG, of the terms of any transfer of fee title or conservation easement to the compensation lands.
- c. ~~Initial Protection and Habitat Improvement.~~ The project owner shall fund activities that the CPM, in consultation with the Corps, CDFG, USFWS and BLM, requires for the initial protection and habitat improvement of the compensation lands. These activities will vary depending on the condition and location of the land acquired, but may include trash removal, construction and repair of fences, invasive plant removal, and similar measures to protect habitat and improve habitat quality on the compensation lands. The costs of these activities are estimated at \$27 an acre, but will vary depending on the measures that are required for the compensation lands. A non-profit organization, CDFG or another public agency may hold and expend the habitat improvement funds if it is qualified to manage the compensation lands (pursuant to California Government Code section 65965), if it meets the approval of the CPM in consultation with CDFG, and if it is authorized to participate in implementing the required activities on the compensation lands. If CDFG takes fee title to the compensation lands, the



habitat improvement fund must be paid to CDFG or its designee.

- d. ~~Property Analysis Record.~~ Upon identification of the compensation lands, the Project owner shall conduct a Property Analysis Record (PAR) or PAR-like analysis to establish the appropriate amount of the long-term maintenance and management fund to pay the in-perpetuity management of the compensation lands. The PAR or PAR-like analysis must be approved by the CPM, in consultation with CDFG, before it can be used to establish funding levels or management activities for the compensation lands.
- e. ~~Long-term Maintenance and Management Funding.~~ The Project owner shall provide money to establish an account with non-wasting capital that will be used to fund the long-term maintenance and management of the compensation lands. The amount of money to be paid will be determined through an approved PAR or PAR-like analysis conducted for the compensation lands. The amount of required funding is initially estimated to be \$692 for every acre of compensation lands. If compensation lands will not be identified and a PAR or PAR-like analysis completed within the time period specified for this payment (see the verification section at the end of this condition), the Project owner shall either provide initial payment of \$170,924 (calculated at \$692 an acre for 247 acres) or the project owner shall include \$170,924 to reflect this amount in the security that is provided to the Energy Commission under section 3.h. of this condition. The amount of the required initial payment or security for this item shall be adjusted for any change in the project footprint as described above. If an initial payment is made based on the estimated per-acre costs, the project owner shall deposit additional money as may be needed to provide the full amount of long-term maintenance and management funding indicated by a PAR or PAR-like analysis, once the analysis is completed and approved. If the approved analysis indicates less than \$692 an acre will be required for long-term maintenance and management, the excess paid will be returned to the project owner. The project owner must obtain the CPM's approval of the entity that will receive and hold the long-term maintenance and management fund for the compensation lands. The CPM will consult with CDFG before deciding whether to approve an entity to hold the project's long-term maintenance and management funds. The project owner shall ensure that an agreement is in place with the long-term

maintenance and management fund holder/manager to ensure the following requirements are met:

- i. ~~Interest.~~ Interest generated from the initial capital long-term maintenance and management fund shall be available for reinvestment into the principal and for the long-term operation, management, and protection of the approved compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action that is approved by the CPM in consultation with CDFG and is designed to protect or improve the habitat values of the compensation lands.
  - ii. ~~Withdrawal of Principal.~~ The long-term maintenance and management fund principal shall not be drawn upon unless such withdrawal is deemed necessary by the CPM, in consultation with CDFG, or by the approved third-party long-term maintenance and management fund manager, to ensure the continued viability of the species on the compensation lands.
  - iii. ~~Pooling Long-Term Maintenance and Management Funds.~~ An entity approved to hold long-term maintenance and management funds for the Project may pool those funds with similar non-wasting funds that it holds from other projects for long-term maintenance and management of compensation lands for local populations of desert tortoise. However, for reporting purposes, the long-term maintenance and management funds for this Project must be tracked and reported individually to the CPM and CDFG.
- f. ~~Other Expenses.~~ In addition to the costs listed above, the project owner shall be responsible for all other costs related to acquisition of compensation lands and conservation easements, including but not limited to the title and document review costs incurred from other state agency reviews, overhead related to providing compensation lands to CDFG or an approved third party, escrow fees or costs, environmental contaminants clearance, and other site cleanup measures.
- g. ~~Management Plan.~~ The project owner shall prepare a Management Plan for the compensation lands in

~~consultation with the entity that will be managing the lands. The Management Plan shall reflect site-specific enhancement measures for the drainages on the acquired compensation lands. The objective of the Management Plan shall be to enhance the wildlife value and the aquatic functions of the drainages and may include enhancement actions such as weed control, fencing to exclude livestock and OHVs, or erosion control. The plan shall be submitted for approval of the CPM, in consultation with CDFG, BLM and USFWS.~~

- ~~h. Mitigation Security. The project owner shall provide financial assurances as provided above to the CPM, with copies of the final document to CDFG, to guarantee that an adequate level of funding is available to implement any of the mitigation measures required by this condition that are not completed prior to the start of ground-disturbing project activities. Financial assurances shall be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security") approved by the CPM in consultation with CDFG. Prior to submitting the Security to the CPM, the project owner shall obtain the CPM's approval, in consultation with CDFG, of the form of the Security. The CPM may draw on the Security if the CPM determines the project owner has failed to comply with the requirements specified in this condition. The CPM may use money from the Security solely for implementation of the requirements of this condition, The CPM's use of the Security to implement measures in this condition may not fully satisfy the project owner's obligations under this condition. The Security shall be returned to the Project owner in whole or in part upon successful completion of the associated requirements in this condition.~~

~~Security shall be provided in the amount of \$894,924 or (\$910,479 if the project owner elects to use the REAT Account with NFWF pursuant to paragraph 3.h. of this condition, below). The security is calculated in part, from the items that follow but adjusted as specified below (consult **Biological Resources Mitigation/Compensation Cost Estimate Table** for the calculation of estimated costs):~~

~~land acquisition costs for compensation land, calculated at \$500/acre x 881 acres = \$123,500;~~

- ~~———— initial protection and habitat improvement activities on the compensation land, calculated at \$2,000/acre x 247 acres = \$494,000;~~
- ~~———— long term maintenance and management on the compensation land calculated at \$692/acre x 247 acres = \$170,924;~~
- ~~———— pre-acquisition liability survey at no less than \$3,000 per parcel (assuming 160 acres per 2 parcels): = \$6,000;~~
- ~~———— appraisal fees at \$5,000 per parcel = \$10,000;~~
- ~~———— Agency cost to accept land calculated at (land cost x 15%) x 1.17 (17% of the 15% for overhead) = \$21,674.25;~~
- ~~———— Closing and escrow cost at \$5,000 per parcel = \$10,000;~~
- ~~———— Third party administrative costs (land cost x 10%) = \$12,350.~~
- ~~———— NFWF fee = \$63,031 (if NFWF is used for acquisition).~~
- ~~———— The amount of security shall be adjusted for any change in the project footprint as described above. In addition the amount of security that is required may be phased to be consistent with phased development. The amount of Security required would be based on the amount of waters of the U.S., waters of the state or PBHS impacted, whatever is the greatest. For Phase 1A, the amount of security is estimated to be \$46,536.05.<sup>9</sup> In addition, the amount of Security specified in this section may be reduced in proportion to any of the secured mitigation requirements that the project owner has completed at the time the Security is required to be submitted. If all or any portion of required habitat compensation lands from **BIO-10** and **BIO-17** meets the criteria set forth for special status compensation lands may be used to fulfill that portion of the obligation for this condition, thus reducing the compensation acreage amount needed to fulfill the needed 247 acres. Also, if the project owner transfers funds for long term management of the compensation lands to an entity approved to hold those funds, the~~

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<sup>9</sup> This number is conservatively estimated based on the entire amount of ephemeral washes located within the Phase 1A disturbance area, although not all these washes will be disturbed and only a subset would be considered PBHS foraging habitat.

~~Security would not include any amount for long-term maintenance and management of the lands. The project owner will be entitled to partial or complete release of the Security as the secured mitigation requirements are successfully completed.~~

- ~~i. The project owner may elect to comply with the requirements in this condition for acquisition of compensation lands, initial protection and habitat improvement on the compensation lands, or long-term maintenance and management of the compensation lands by funding, or any combination of these three requirements, by providing funds to implement those measures into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF). To use this option, the Project owner must make an initial deposit to the REAT Account in an amount equal to the estimated costs (as set forth in the Security section of this condition) of implementing the requirement. If the actual cost of the acquisition, initial protection and habitat improvements, or long-term funding is more than the estimated amount initially paid by the project owner, the project owner shall make an additional deposit into the REAT Account sufficient to cover the actual acquisition costs, the actual costs of initial protection and habitat improvement on the compensation lands, or the longterm funding requirements as established in an approved PAR or PAR-like analysis. If those actual costs or PAR projections are less than the amount initially transferred by the applicant, the remaining balance shall be returned to the project owner.~~
  - ~~ii. The responsibility for acquisition of compensation lands may be delegated to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the Energy Commission. Such delegation shall be subject to approval by the CPM, in consultation with CDFG, BLM and USFWS, prior to land acquisition, enhancement or management activities. Agreements to delegate land acquisition to an approved third party, or to manage compensation lands, shall be executed and implemented within 18 months of the Energy Commission's certification of the project.~~
- ~~4. The project owner may choose to satisfy its mitigation obligations identified in this condition by paying an in lieu fee instead of acquiring compensation lands, pursuant to Fish and Game code sections 2069 and 2099 or any other applicable in-lieu fee provision, to the extent the in-lieu fee provision is found by the~~

~~Commission to be in compliance with CEQA and CESA requirements.~~

- ~~5. Notification. The project owner shall notify the CPM and CDFG in writing, at least five days prior to initiation of project activities in jurisdictional areas as noted and at least five days prior to completion of project activities in jurisdictional areas. The project owner shall notify the CPM and CDFG of any change of conditions to the project, the jurisdictional impacts, or the mitigation efforts, if the conditions at the site of a proposed project change in a manner which changes risk to biological resources that may be substantially adversely affected by the proposed project. The notifying report shall be provided to the CPM and CDFG no later than seven days after the change of conditions is identified. As used here, change of condition refers to the process, procedures, and methods of operation of a project; the biological and physical characteristics of a project area; or the laws or regulations pertinent to the project as defined below. A copy of the notifying change of conditions report shall be included in the annual reports.~~

~~Biological Conditions: a change in biological conditions includes, but is not limited to, the following: 1) the presence of biological resources within or adjacent to the project area, whether native or non-native, not previously known to occur in the area; or 2) the presence of biological resources within or adjacent to the project area, whether native or non-native, the status of which has changed to endangered, rare, or threatened, as defined in section 15380 of Title 14 of the California Code of Regulations.~~

~~Physical Conditions: a change in physical conditions includes, but is not limited to, the following: 1) a change in the morphology of a river, stream, or lake, such as the lowering of a bed or scouring of a bank, or changes in stream form and configuration caused by storm events; 2) the movement of a river or stream channel to a different location; 3) a reduction of or other change in vegetation on the bed, channel, or bank of a drainage, or 4) changes to the hydrologic regime such as fluctuations in the timing or volume of water flows in a river or stream.~~

~~Legal Conditions: a change in legal conditions includes, but is not limited to, a change in Regulations, Statutory Law, a Judicial or Court decision, or the listing of a species, the status of which has changed to endangered, rare, or threatened, as defined in section 15380 of Title 14 of the California.~~

6. ~~Waters of the U.S. and Waters of the State Impact Minimization and Compensation Measures. The project owner shall provide a copy of Condition of Certification **BIO-17** from the Energy Commission Decision to all contractors, subcontractors, and the Applicant's project supervisors. Copies shall be readily available at work sites at all times during periods of active work and must be presented to any CDFG personnel or personnel from another agency upon demand. The CPM reserves the right to issue a stop work order or allow CDFG to issue a stop work order after giving notice to the project owner and the CPM, if the CPM in consultation with CDFG, determines that the project owner has breached any of the terms or conditions or for other reasons, including but not limited to the following:~~

~~— The information provided by the applicant regarding streambed alteration is incomplete or inaccurate;~~

~~— New information becomes available that was not known to it in preparing the terms and conditions;~~

~~— The project or project activities as described in the SAA have changed; or~~

~~— The conditions affecting biological resources changed or the CPM or BLM Biologist, in consultation with CDFG or USACE, determines that project activities would result in a substantial adverse effect on the environment. Should project conditions change and impacts to bed, bank, or channel occur on any of the water ways along the reclaimed water pipeline route, a revised Lake and Streambed Alteration Agreement (LSAA) application must be submitted to the Commission in consultation with CDFG either (1) for a Commission determination that the revised LSAA application complies with CEQA and CESA; or (2) should the project conditions change after a final decision in on the AFC in this proceeding, through an application for amendment to the Commission's final decision issued in this proceeding.~~

**Verification:** ~~Prior to groundbreaking activities, the applicant shall submit to the CPM an enhancement and rehabilitation plan for the Carrizo Creek and a Mitigation Plan for restoring the 247 acres of Carrizo Creek consistent with the restoration and rehabilitation plan. The applicant shall submit documentation that the enhancement and rehabilitation plan and the Mitigation Plan have been approved by the Corps, USFWS, and State Parks. No later than 18 months after ground-disturbing activities, the applicant shall submit documentation that the initial enhancement and rehabilitation measures have been completed. The applicant shall submit annual monitoring reports to the CPM, Corps, USFWS, CDFG, State Parks and CDFG documenting the success~~

~~of the enhancement and rehabilitation activities. At the end of the initial 5 year monitoring period, applicant shall submit documentation to the CPM that the Corps has accepted the mitigation as being complete and documentation that funding has been provided to State Parks for the long term management of the mitigation lands and that State Parks has accepted such funds and has agreed to carry out long term management of these areas.~~

~~If the applicant elects to acquire lands to satisfy this condition, no later than 12 months after the start of ground-disturbing project activities, the project owner, or a third-party approved by the CPM, in consultation with CDFG and BLM, shall submit a formal acquisition proposal to the CPM describing the parcel(s) intended for purchase containing no less than 247 acres of PBHS foraging habitat and 247 acres of ephemeral drainages, and shall obtain approval from the CPM, in consultation with CDFG, BLM, and USFWS, prior to acquisition.~~

~~Draft agreements to delegate land acquisition to CDFG, BLM, or an approved third party and agreements to manage compensation lands shall be submitted to Energy Commission staff for review and approval (in consultation with CDFG) prior to land acquisition. Such agreements shall be mutually approved and executed at least 30 days prior to start of any project-related ground-disturbance activities. The project owner shall provide written verification to the CPM that the compensation lands have been acquired and recorded in favor of the approved recipient(s). Alternatively, before beginning project ground-disturbing activities, the project owner shall provide Security in accordance with section 3.h of this condition. Within 180 days after the land purchase, as determined by the date on the title, the project owner shall provide the CPM with a management plan for review and approval, in consultation with CDFG, BLM, and USFWS, for the compensation lands and associated funds.~~

~~The project owner shall complete and submit to the CPM a PAR or PAR-like analysis no later than 60 days after the CPM approves compensation lands for acquisition. The project owner shall fully fund the required amount for long-term maintenance and management of the compensation lands no later than 30 days after the CPM approves a PAR or PAR-like analysis of the anticipated long-term maintenance and management costs of the compensation lands. Written verification shall be provided to the CPM and CDFG to confirm payment of the long-term maintenance and management funds.~~

~~No later than 60 days after the CPM determines what activities are required to provide for initial protection and habitat improvement on the compensation lands, the project owner shall make funding available for those activities and provide written verification to the CPM of what funds are available and how costs will be paid. Initial protection and habitat improvement activities on the compensation lands shall be completed, and written verification provided to the CPM, no later than six months after the CPM's determination of what activities are required on the compensation lands.~~

~~If electing to satisfy the requirements of this condition by utilizing the options created by CDFG pursuant to SBX8 34, the Project owner shall notify the Commission that it would~~



~~like a determination that the Project's in-lieu fee proposal meets CEQA and CESA requirements.~~

~~No fewer than 30 days prior to the start of work potentially affecting jurisdictional state waters, the project owner shall provide written verification (i.e., through incorporation into the BRMIMP) to the CPM that the above best management practices will be implemented and provide a discussion of work in jurisdictional state waters in Compliance Reports for the duration of the project.~~

## **LAKE AND STREAMBED AND PENINSULAR BIGHORN SHEEP FORAGING HABITAT IMPACT MINIMIZATION AND COMPENSATION MEASURES**

**BIO-17** The project owner is required to compensate for the loss of 881 acres of ephemeral wash foraging habitat for the Peninsular bighorn sheep (PBHS), as well as the functional loss of 48 acres of state jurisdictional waters. Mitigation presented within this proposed Condition of Certification is designed to mitigate for impacts resulting from implementation of Drainage Avoidance #1 Alternative, This alternative substantially reduces impacts to state jurisdictional waters and waters of the U.S. Further review and possible revision of compensation land acreage requirements will be necessary following determination of the final project footprint and impacts. The acquisition of jurisdictional state waters can be included with the FTHL, burrowing owl, golden eagle, American badger, and desert kit fox mitigation lands (**BIO-10**) if they are acquired within 18 months of start of construction.

If FTHL habitat mitigation lands are not acquired within 18 months, the project owner shall independently provide 48 acres of off-site desert ephemeral wash habitat.

If all or any portion of the acquired habitat compensation lands from **BIO-10** meets the criteria for bighorn sheep foraging habitat and state waters compensation lands, then the requirements of **BIO-17** are reduced by that amount.

Although the criteria for ephemeral wash foraging habitat and waters of the state habitat are listed separately below, the compensation lands acquired pursuant to this conditions must meet both sets of criteria.

1. Selection Criteria for Compensation Lands: Land selected as compensation for loss of ephemeral wash PBHS foraging habitat must satisfy the following criteria;

- a. Be within the “Essential Habitat Line” for PBHS, as delineated by the USFWS Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (USFWS 2000). If sufficient available suitable habitat is not found within the Essential Habitat Line, then habitat immediately adjacent to the Essential Habitat Line must be purchased, and also of equal or higher quality habitat than present within the project site.
- b. Be comprised of the same or higher quality habitat of demonstrated known utilization by PBHS as forage, and selected in conjunction with input from CDFG and the USFWS.

Land selected as compensation for impacts to state jurisdictional waters must satisfy the following criteria:

- c. Compensation land purchased in Sonoran creosote scrub habitat must include ephemeral washes with at least 48 acres of state jurisdictional waters, mitigated at a 1:1 ratio.
  - d. Be characterized by similar soil permeability, hydrological and biological functions as the impacted drainages.
  - e. Located in the Colorado Desert.
2. Review and Approval of Compensation Lands Prior to Acquisition: The Project owner shall submit a formal acquisition proposal to the CPM describing the parcel(s) intended for purchase. This acquisition proposal shall discuss the suitability of the proposed parcel(s) as compensation lands for FTHL in relation to the criteria listed above, and must be approved by the CPM. The CPM will share the proposal with and consult with CDFG, BLM, and the USFWS before deciding whether to approve or disapprove the proposed acquisition.
  3. Compensation Lands Acquisition Requirements: The project owner shall comply with the following requirements relating to acquisition of the compensation lands after the CPM, in consultation with CDFG, BLM, and the USFWS, has approved the proposed compensation lands:
    - a. Preliminary Report. The Project owner, or approved third party, shall provide a recent preliminary title report, initial hazardous materials survey report, biological analysis, and other necessary or requested documents for the proposed compensation land to the CPM. All documents conveying or conserving compensation lands and all conditions of title are

subject to review and approval by the CPM, in consultation with CDFG, BLM and the USFWS. For conveyances to the State, approval may also be required from the California Department of General Services, the Fish and Game Commission and the Wildlife Conservation Board.

- b. Title/Conveyance. The Project owner shall acquire and transfer fee title to the compensation lands, a conservation easement over the lands, or both fee title and conservation easement, as required by the CPM in consultation with CDFG. Any transfer of a conservation easement or fee title must be to CDFG, a non-profit organization qualified to hold title to and manage compensation lands (pursuant to California Government Code section 65965), or to BLM or other public agency approved by the CPM in consultation with CDFG. If an approved non-profit organization holds fee title to the compensation lands, a conservation easement shall be recorded in favor of CDFG or another entity approved by the CPM. If an entity other than CDFG holds a conservation easement over the compensation lands, the CPM may require that CDFG or another entity approved by the CPM, in consultation with CDFG, be named a third party beneficiary of the conservation easement. The Project owner shall obtain approval of the CPM, in consultation with CDFG, of the terms of any transfer of fee title or conservation easement to the compensation lands.
- c. Initial Protection and Habitat Improvement. The project owner shall fund activities that the CPM, in consultation with the CDFG, USFWS and BLM, requires for the initial protection and habitat improvement of the compensation lands. These activities will vary depending on the condition and location of the land acquired, but may include trash removal, construction and repair of fences, invasive plant removal, and similar measures to protect habitat and improve habitat quality on the compensation lands. The costs of these activities are estimated at \$27 an acre, but will vary depending on the measures that are required for the compensation lands. A non-profit organization, CDFG or another public agency may hold and expend the habitat improvement funds if it is qualified to manage the compensation lands (pursuant to California Government Code section 65965), if it meets the approval of the CPM in consultation with CDFG, and if it is authorized to participate in implementing the required activities on the compensation lands. If CDFG takes fee title to the compensation lands, the habitat improvement fund must be paid to CDFG or its designee.

- d. Property Analysis Record. Upon identification of the compensation lands, the Project owner shall conduct a Property Analysis Record (PAR) or PAR-like analysis to establish the appropriate amount of the long-term maintenance and management fund to pay the in-perpetuity management of the compensation lands. The PAR or PAR-like analysis must be approved by the CPM, in consultation with CDFG, before it can be used to establish funding levels or management activities for the compensation lands.
  
- e. Long-term Maintenance and Management Funding. The Project owner shall provide money to establish an account with non-wasting capital that will be used to fund the long-term maintenance and management of the compensation lands. The amount of money to be paid will be determined through an approved PAR or PAR-like analysis conducted for the compensation lands. The amount of required funding is initially estimated to be \$692 for every acre of compensation lands. If compensation lands will not be identified and a PAR or PAR-like analysis completed within the time period specified for this payment (see the verification section at the end of this condition), the Project owner shall either provide initial payment of \$609,652 (calculated at \$692 an acre for 881 acres) or the project owner shall include \$609,652 to reflect this amount in the security that is provided to the Energy Commission under section 3.h. of this condition. The amount of the required initial payment or security for this item shall be adjusted for any change in the project footprint as described above. If an initial payment is made based on the estimated per-acre costs, the project owner shall deposit additional money as may be needed to provide the full amount of long-term maintenance and management funding indicated by a PAR or PAR-like analysis, once the analysis is completed and approved. If the approved analysis indicates less than \$692 an acre will be required for long-term maintenance and management, the excess paid will be returned to the project owner. The project owner must obtain the CPM's approval of the entity that will receive and hold the long-term maintenance and management fund for the compensation lands. The CPM will consult with CDFG before deciding whether to approve an entity to hold the project's long-term maintenance and management funds.

The project owner shall ensure that an agreement is in place with the longterm maintenance and management fund

holder/manager to ensure the following requirements are met:

- i. Interest. Interest generated from the initial capital long-term maintenance and management fund shall be available for reinvestment into the principal and for the long-term operation, management, and protection of the approved compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action that is approved by the CPM in consultation with CDFG and is designed to protect or improve the habitat values of the compensation lands.
  - ii. Withdrawal of Principal. The long-term maintenance and management fund principal shall not be drawn upon unless such withdrawal is deemed necessary by the CPM, in consultation with CDFG, or by the approved third-party long-term maintenance and management fund manager, to ensure the continued viability of the species on the compensation lands.
  - iii. Pooling Long-Term Maintenance and Management Funds. An entity approved to hold long-term maintenance and management funds for the Project may pool those funds with similar non-wasting funds that it holds from other projects for long-term maintenance and management of compensation lands for local populations of desert tortoise. However, for reporting purposes, the long-term maintenance and management funds for this Project must be tracked and reported individually to the CPM and CDFG.
- f. Other Expenses. In addition to the costs listed above, the project owner shall be responsible for all other costs related to acquisition of compensation lands and conservation easements, including but not limited to the title and document review costs incurred from other state agency reviews, overhead related to providing compensation lands to CDFG or an approved third party, escrow fees or costs, environmental contaminants clearance, and other site cleanup measures.
  - g. Management Plan. The project owner shall prepare a Management Plan for the compensation lands in

consultation with the entity that will be managing the lands. The Management Plan shall reflect site-specific enhancement measures for the drainages on the acquired compensation lands. The objective of the Management Plan shall be to enhance the wildlife value of the drainages and may include enhancement actions such as weed control, fencing to exclude livestock and OHVs, or erosion control. The plan shall be submitted for approval of the CPM, in consultation with CDFG, BLM and USFWS.

- h. Mitigation Security. The project owner shall provide financial assurances to the CPM, with copies of the final document to CDFG, to guarantee that an adequate level of funding is available to implement any of the mitigation measures required by this condition that are not completed prior to the start of ground-disturbing project activities. Financial assurances shall be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security") approved by the CPM in consultation with CDFG. Prior to submitting the Security to the CPM, the project owner shall obtain the CPM's approval, in consultation with CDFG, of the form of the Security. The CPM may draw on the Security if the CPM determines the project owner has failed to comply with the requirements specified in this condition. The CPM may use money from the Security solely for implementation of the requirements of this condition. The CPM's use of the Security to implement measures in this condition may not fully satisfy the project owner's obligations under this condition. The Security shall be returned to the Project owner in whole or in part upon successful completion of the associated requirements in this condition.

Security shall be provided in the amount of \$1,297,656.86 or (\$1,388,492.84 if the project owner elects to use the REAT Account with NFWF pursuant to paragraph 3.h. of this condition, below). The security is calculated in part, from the items that follow but adjusted as specified below (consult **Biological Resources Table 5** for the calculation of estimated costs):

- i. land acquisition costs for compensation land, calculated at \$500/acre x 881 acres = \$440,500;
- ii. initial protection and habitat improvement activities on the compensation land, calculated at \$27/acre x 881 acres = \$23,787;

- iii. long-term maintenance and management on the compensation land calculated at \$692/acre x 881 acres = \$609,652;
- iv. pre-acquisition liability survey at no less than \$2,500 per parcel (assuming 40 acres per parcel): (No. of parcels = 881 acres ÷ 40 acres = 22 parcels) 22 parcels x \$2500 = \$55,000;
- v. appraisal fees at \$3,000 per parcel = \$3000 x 22 parcels = \$66,000; vi. BLM cost to accept land = \$102,717.86 (if BLM is determine to be most reasonable land manager); and
- vii. NFWF fee = \$90,835.98 (if NFWF is used for acquisition).

The amount of security shall be adjusted for any change in the project footprint as described above. In addition, the amount of Security specified in this section may be reduced in proportion to any of the secured mitigation requirements that the project owner has completed at the time the Security is required to be submitted. If all or any portion of required habitat compensation lands from **BIO-10** and **BIO-17** meets the criteria set forth for special status compensation lands may be used to fulfill that portion of the obligation for this condition, thus reducing the compensation acreage amount needed to fulfill the needed 881 acres. Also, if the project owner transfers funds for long-term management of the compensation lands to an entity approved to hold those funds, the Security would not include any amount for long-term maintenance and management of the lands. The project owner will be entitled to partial or complete release of the Security as the secured mitigation requirements are successfully completed.

- i. The project owner may elect to comply with the requirements in this condition for acquisition of compensation lands, initial protection and habitat improvement on the compensation lands, or long-term maintenance and management of the compensation lands by funding, or any combination of these three requirements, by providing funds to implement those measures into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF). To use this option, the Project owner must make an initial deposit to the REAT Account in an amount equal to the estimated costs (as set forth in the Security section of this condition) of implementing the requirement. If the

actual cost of the acquisition, initial protection and habitat improvements, or long-term funding is more than the estimated amount initially paid by the project owner, the project owner shall make an additional deposit into the REAT Account sufficient to cover the actual acquisition costs, the actual costs of initial protection and habitat improvement on the compensation lands, or the long-term funding requirements as established in an approved PAR or PAR-like analysis. If those actual costs or PAR projections are less than the amount initially transferred by the applicant, the remaining balance shall be returned to the project owner.

The responsibility for acquisition of compensation lands may be delegated to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the Energy Commission. Such delegation shall be subject to approval by the CPM, in consultation with CDFG, BLM and USFWS, prior to land acquisition, enhancement or management activities. Agreements to delegate land acquisition to an approved third party, or to manage compensation lands, shall be executed and implemented within 18 months of the Energy Commission's certification of the project.

4. The project owner may choose to satisfy its mitigation obligations identified in this condition by paying an in lieu fee instead of acquiring compensation lands, pursuant to Fish and Game code sections 2069 and 2099 or any other applicable in-lieu fee provision, to the extent the in-lieu fee provision is found by the Commission to be in compliance with CEQA and CESA requirements.
5. Notification. The project owner shall notify the CPM and CDFG in writing, at least five days prior to initiation of project activities in jurisdictional areas as noted and at least five days prior to completion of project activities in jurisdictional areas. The project owner shall notify the CPM and CDFG of any change of conditions to the project, the jurisdictional impacts, or the mitigation efforts, if the conditions at the site of a proposed project change in a manner which changes risk to biological resources that may be substantially adversely affected by the proposed project. The notifying report shall be provided to the CPM and CDFG no later than seven days after the change of conditions is identified. As used here, change of condition refers to the process, procedures, and methods of operation of a project; the biological and physical characteristics of a project area; or the laws or regulations pertinent to the project as defined below. A copy of the notifying change of conditions report shall be included in the annual reports.



- 27 Biological Conditions: a change in biological conditions includes, but is not limited to, the following: 1) the presence of biological resources within or adjacent to the project area, whether native or non-native, not previously known to occur in the area; or 2) the presence of biological resources within or adjacent to the project area, whether native or non-native, the status of which has changed to endangered, rare, or threatened, as defined in section 15380 of Title 14 of the California Code of Regulations.
  
- 27 Physical Conditions: a change in physical conditions includes, but is not limited to, the following: 1) a change in the morphology of a river, stream, or lake, such as the lowering of a bed or scouring of a bank, or changes in stream form and configuration caused by storm events; 2) the movement of a river or stream channel to a different location; 3) a reduction of or other change in vegetation on the bed, channel, or bank of a drainage, or 4) changes to the hydrologic regime such as fluctuations in the timing or volume of water flows in a river or stream.
  
- 27 Legal Conditions: a change in legal conditions includes, but is not limited to, a change in Regulations, Statutory Law, a Judicial or Court decision, or the listing of a species, the status of which has changed to endangered, rare, or threatened, as defined in section 15380 of Title 14 of the California.

6. Lake and Streambed Impact Minimization and Compensation Measures. The project owner shall provide a copy of Condition of Certification **BIO-17** from the Energy Commission Decision to all contractors, subcontractors, and the Applicant's project supervisors. Copies shall be readily available at work sites at all times during periods of active work and must be presented to any CDFG personnel or personnel from another agency upon demand. The CPM reserves the right to issue a stop work order or allow CDFG to issue a stop work order after giving notice to the project owner and the CPM, if the CPM in consultation with CDFG, determines that the project owner has breached any of the terms or conditions or for other reasons, including but not limited to the following:

- 27 The information provided by the applicant regarding streambed alteration is incomplete or inaccurate;

- 27 New information becomes available that was not known to it in preparing the terms and conditions;
- 27 The project or project activities as described in the SAA have changed; or
- 27 The conditions affecting biological resources changed or the CPM or BLM Biologist, in consultation with CDFG or USACE, determines that project activities would result in a substantial adverse effect on the environment.

Should project conditions change and impacts to bed, bank, or channel occur on any of the water ways along the reclaimed water pipeline route, a revised Lake and Streambed Alteration Agreement (LSAA) application must be submitted to the Commission in consultation with CDFG either (1) for a Commission determination that the revised LSAA application complies with CEQA and CESA; or (2) should the project conditions change after a final decision in on the AFC in this proceeding, through an application for amendment to the Commission's final decision issued in this proceeding.

**Verification:** No later than 12 months after the start of ground-disturbing project activities, the project owner, or a third-party approved by the CPM, in consultation with CDFG and BLM, shall submit a formal acquisition proposal to the CPM describing the parcel(s) intended for purchase containing no less than 48 acres of state jurisdictional waters and 881 acres of applicable PBHS foraging habitat, and shall obtain approval from the CPM, in consultation with CDFG, BLM, and USFWS, prior to acquisition. Draft agreements to delegate land acquisition to CDFG, BLM, or an approved third party and agreements to manage compensation lands shall be submitted to Energy Commission staff for review and approval (in consultation with CDFG) prior to land acquisition. Such agreements shall be mutually approved and executed at least 30 days prior to start of any project-related ground disturbance activities. The project owner shall provide written verification to the CPM that the compensation lands have been acquired and recorded in favor of the approved recipient(s). Alternatively, before beginning project ground-disturbing activities, the project owner shall provide Security in accordance with section 3.h of this condition. Within 180 days after the land purchase, as determined by the date on the title, the project owner shall provide the CPM with a management plan for review and approval, in consultation with CDFG, BLM, and USFWS, for the compensation lands and associated funds.

The project owner shall complete and submit to the CPM a PAR or PAR-like analysis no later than 60 days after the CPM approves compensation lands for acquisition. The project owner shall fully fund the required amount for long-term maintenance and management of the compensation lands no later than 30 days after the CPM approves a PAR or PAR-like analysis of the anticipated long-term maintenance and management costs of the compensation lands. Written verification shall be provided to the CPM and CDFG to confirm payment of the long-term maintenance and management funds.

No later than 60 days after the CPM determines what activities are required to provide for initial protection and habitat improvement on the compensation lands, the project owner shall make funding available for those activities and provide written verification to the CPM of what funds are available and how costs will be paid. Initial protection and habitat improvement activities on the compensation lands shall be completed, and written verification provided to the CPM, no later than six months after the CPM's determination of what activities are required on the compensation lands.

If electing to satisfy the requirements of this condition by utilizing the options created by CDFG pursuant to SBX8 34, the Project owner shall notify the Commission that it would like a determination that the Project's in-lieu fee proposal meets CEQA and CESA requirements.

No fewer than 30 days prior to the start of work potentially affecting jurisdictional state waters, the project owner shall provide written verification (i.e., through incorporation into the BRMIMP) to the CPM that the above best management practices will be implemented and provide a discussion of work in jurisdictional state waters in Compliance Reports for the duration of the project.

Dated: September 16, 2010

Respectfully submitted,

/s/

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**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 September 16, 2010, I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY INITIAL COMMENTS ON PRESIDING MEMBER'S PROPOSED DECISION**. 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](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 September 16, 2010.

\_\_\_\_\_  
/s/  
Valerie Stevenson

CALIFORNIA ENERGY  
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# EXHIBIT A



Hydraulics | Hydrology | Geomorphology | Design

## MEMORANDUM

<b>Date:</b>	August 23, 2010
<b>To:</b>	Jim Stobaugh, National Project Manager, Bureau of Land Management
<b>From:</b>	Chris Bowles, Ph.D., P.E., Chris Campbell, M.S.
<b>Project:</b>	Imperial Valley Solar Project
<b>Subject:</b>	FEIS Comments on the LEDPA

### 1 INTRODUCTION

This document provides a summary of our review of the Final Environmental Impact Statement (FEIS) for the Imperial Valley Solar Project and California Desert Conservation Area Plan Amendment (Project):

Our review focused primarily on Appendix H as it relates to the Least Environmentally Damaging Alternative (LEDPA) and the associated significant impacts related to this preferred alternative.

Our comments have been prepared at the request of the California Unions for Reliable Energy (CURE).

Many of our original comments made on the DEIS and contained in the memorandum that we sent to Michelle Mattson of the US Army Corps of Engineers (USACE) on May 12, 2010 remain of concern. A copy of that memorandum is included here for reference.

### 2 OVERVIEW OF MODIFICATIONS MADE WITHIN THE LEDPA

The impacts of the preferred alternative proposed by the Applicant have been reduced, according to the FEIS. However, the LEDPA, which proposes to reduce the number of access roads and to removal all spur roads, has new and persistent significant impacts, neither of which were analyzed in the FEIS. These impacts are due, primarily, to two aspects of the LEDPA:

1. The proposed location of SunCatchers in washes and streams; and
2. The proposed reduction in number of access roads and the proposed removal of spur roads.



These comments focus on the significant impacts of the proposed LEDPA, although we also briefly note our concerns as detailed in our comments on the DEIS and the May 12, 2010 memorandum to USACE.

### **3 SIGNIFICANT IMPACTS THAT REMAIN WITH THE PROPOSED LEDPA AND NEW POTENTIALLY SIGNIFICANT IMPACTS TO DESERT WASHES**

#### **3.1 LOCATION OF SUNCATCHERS**

The LEDPA allows for the complete avoidance of ephemeral main-stem streams H, I, K, and C, as well as complete avoidance of the majority of stream G and the upper half of stream E. Under this alternative, the USACE proposes to remove 1,163 SunCatchers from waters of the U.S. and to reduce permanent impacts from 177.4 acres to 39.1 acres. We agree that this aspect of the LEDPA would reduce overall Project impacts, however the analyses that support the LEDPA underestimate Project impacts, and therefore the LEDPA fails to address significant impacts to jurisdictional waters. We strongly maintain that Applicant should be required to remove ALL SunCatchers from ephemeral washes and streams, since the SunCatchers remain a significant impact to those washes that have not been avoided.

The current level and type of analysis in the FEIS is insufficient to fully ascertain the impacts of the SunCatchers that would remain in the washes and stream channels. The LEDPA will result in significant impacts to the morphology of the desert washes and potential significant impacts to receiving waters downstream of the Project site. Additional surveys, data collection and analysis, relating to hydraulics, sediment transport, and scour, as described below, must be conducted in order to fully evaluate and minimize such impacts.

The sediment transport modeling must be revised with the appropriate inputs. The current level of analysis, using 1D modeling, underestimates potential impacts. Modeling assumptions inherent to a 1D model are not appropriate for this level of analysis because:

1. The flow and sediment transport field is only analyzed at each cross section and the spacing of the cross sections in the 1D model is sufficiently detailed to adequately represent these processes. A 2D model would represent these processes at a much finer spatially distributed scale.
2. Individual SunCatchers are not represented in the 1D model. Rather, they are represented as a roughness factor in the 1D model, whereas in a 2D model each of the SunCatchers could be represented as a flow blockage.
3. The cumulative degradation of the washes as a result of the SunCatchers in the washes is not represented accurately in the 1D model.

Instead, 2D sediment transport modeling should be undertaken for existing and Project conditions, to include all representative Project elements (i.e., BMP effectiveness, solar dish towers in the washes,

etc.). Absent this information, the conclusion that Project impacts have been reduced to a level that is less than significant is not justifiable.

Long-term changes in fluvial morphology should be assessed within and downstream of the Project site, both as a result of the Project and also as a result of climate change. Long-term hydrologic simulations may be required as short-term (or design flood) outcomes only provide a “snapshot” from the starting condition. Absent analysis of long-term degradation of the receiving waters downstream of the Project site, Project impacts cannot be fully ascertained.

### **3.2 REDUCED NUMBER OF ACCESS ROADS AND REMOVAL OF SPUR ROADS**

Based on the information provided in the FEIS, it is not clear how maintenance activities will be conducted as a result of a reduction in the number of access roads and the removal of spur roads. Presumably, where these roads do not exist, maintenance vehicles will simply “off road” access to the facilities. Our previous comments regarding the increase in impervious cover, compaction as a result of construction of access roads and spur roads, and the design of best management practices (BMPs) (cbec, 2010) should not be interpreted to suggest that maintenance roads should be removed without further measures to mitigate impacts to jurisdictional waters. Rather, and consistent with our previous comments, spur roads and access roads should be graded, and BMPs should be designed in such a way, that runoff to the washes and streams is minimized.

The potentially significant impacts that will occur as a result of the LEDPA due to the reduction in the number of access roads and removal of spur roads are:

1. Excessive damage to the desert pavement and cryptobiotic crusts as a result of unrestricted access to areas not demarcated by a formal road. Lack of formal access and spur roads will encourage maintenance vehicles to access SunCatchers using informal routes, and ultimately will lead to ad-hoc access routes with no BMPs or provisions to minimize erosion.
2. Excessive erosion of soils and sediment, and subsequent transport to the washes and streams as a result of the lack of BMPs. Roadside BMPs would be included if access and spur roads were present, which if designed correctly, would minimize sediment entering the washes and streams, as a result of truck tire erosion and runoff.

It is important to fully understand the existing conditions in order to be able to identify the potential impacts of the Project. The FEIS does not accurately determine the extent (and type) of desert pavement and distinct geomorphic surfaces across the Project site. These should be mapped since they control infiltration, runoff, and transmission losses under existing conditions (Wood et al., 2005; Miller et al., 2008; Young & Chen, 2009). Resilience (and self healing) of the desert pavement to minor anthropogenic disturbance is possible over centuries if the mature Av horizon (clay-rich eolian epipedon) remains intact

(Pelletier et al., 2007). Where desert pavement exists, particular care should be taken when designing access roads. This would also apply to spur roads if they had been included in the LEDPA. Depending on the desert pavement type and the level of disturbance to the leach zone, increased infiltration and transmission losses could drive soluble salts downward into the groundwater, thereby increasing groundwater salinity, or the readily available soluble salts could be delivered to the Salton Sea via increased runoff volumes, which would significantly impact the water quality of this already impaired water body by increasing salinity through direct delivery of soluble salts and reduced freshwater flows. Furthermore, disturbance of the desert pavement could have significant indirect impacts on neighboring pavement types and established vegetation, since vegetation is linked to pavement type, clast cover, and influenced by proximity to leached soluble salts (Wood et al., 2005).

## 4 INADEQUACY IN ANALYSIS OF IMPACTS

It is our opinion that the core analyses supporting the FEIS are still insufficient to adequately analyze the impacts and proposed mitigation value for the LEDPA. For more detailed analysis see May 12, 2010 memorandum. In summary:

- The hydrologic analysis used for project design is incorrect.
- The soil erosion and sediment yield estimates are insufficient and have not been improved based on the comments on the DEIS.
- The hydraulics and sediment transport analysis upon which the FEIS is based is still insufficient to correctly characterize the physical process occurring at the site. While the 1D methodology used is widely recognized as being well validated, it is inappropriate for an analysis with site conditions that exist here. A more appropriate analysis would involve 2D sediment transport modeling.

Therefore, it is our opinion that significant impacts still exist with the LEDPA, and in the case of the reduction of access roads and removal of spur roads, Project impacts have been exacerbated.

## 5 REFERENCES

We reviewed the following information to inform our assessment of the DEIS:

cbec, inc., eco engineering. 2010. DEIS Comments to the USACE on DEIS and Related Documents.  
Memorandum sent to Michelle Matson of the USACE on May 12, 2010.

Chen, Li, J. Yin, J. Miller, & M. Young. 2009. The role of the clast layer of desert pavement in rainfall-runoff processes. In World Environmental and Water Resources Congress 2009.

- Miller, J.J., T.G. Caldwell, M.H. Young, & G.K. Dalldorf. 2008. Verifying curve numbers in arid environments by combining detailed geomorphic mapping and pedotransfer functions. In World Environmental and Water Resources Congress 2008.
- Pelletier, J.D., M. Cline, & S.B. DeLong. 2007. Desert pavement dynamics: numerical modeling and field-based calibration. *Earth Surface Processes and Landforms* 32:1913-1927.
- Wood, Y.A., R.C. Graham, & S.G. Wells. 2005. Surface control of desert pavement pedologic process and landscape function, Cima Volcanic field, Mojave Desert, California. *Catena* 59:205-230.
- Young, M. & L. Chen. 2009. Soil Heterogeneity and Moisture Distribution Due to Rainfall Events in Vegetated Desert Areas: Potential Impact on Soil Recharge and Ecosystems, Annual Report 2009.

# EXHIBIT B



August 3, 2010

Mr. Christopher Meyer  
Project Manager  
Attn: Docket No. 08-AFC-5  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5512

Subject: Imperial Valley Solar (formerly Solar Two) (08-AFC-5)  
Applicant's Submittal of Estimated First Year Construction Water Use  
Summary.

Dear Mr. Meyer:

On behalf of Imperial Valley Solar (formerly Solar Two), LLC, URS Corporation Americas (URS) hereby submits Estimated First Year Construction Water Use Summary.

I certify under penalty of perjury that the foregoing is true, correct, and complete to the best of my knowledge. I also certify that I am authorized to submit on behalf of Imperial Valley Solar, LLC.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Leiba".

Angela Leiba  
Project Manager

AL: ml

**RMT Estimate of Water Demand for Construction - First Year  
Imperial Valley Solar**

<b>Use</b>	<b>gallons per day</b>	<b>acre feet per year</b>
Mobilization	256,724	0.79
Civil Infrastructure	5,612,000	17.22
Dust Control	7,392,000	22.69
SunCatcher Washing	40,320	0.12
General Construction	498,876	1.53
<b>Total Per Year</b>	<b>13,799,920</b>	<b>42.35</b>
<b>Average Per Day</b>	<b>44,231</b>	<b>0.14</b>



**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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DECLARATION OF SERVICE

I, Darin Neufeld, declare that on August 3, 2010, I served and filed copies of the attached, Applicant's Submittal of Estimated First Year Construction Water Use Summary. 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](mailto: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

# EXHIBIT C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105

DOCKET 08-APC-5
DATE AUG 30 2010
RECD. SEP 01 2010

AUG 30 2010

Jim Abbott, Acting State Director  
Bureau of Land Management  
California State Office  
2800 Cottage Way, Suite W-1623  
Sacramento, CA 95825

Subject: Final Environmental Impact Statement for the Imperial Valley Solar Project  
(formerly as SES Solar Two), Imperial County, California [CEQ# 20100272]

Dear Mr. Abbott:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for the Imperial Valley Solar Project (Project). Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act (CAA).

EPA reviewed the Joint Draft Environmental Impact Statement (DEIS) and Staff Assessment and provided comments to the California Energy Commission (CEC) and the Bureau of Land Management (BLM) on May 27, 2010. We rated the DEIS as *Environmental Objections – Insufficient Information* (EO-2), primarily due to concerns over potential impacts to waters of the United States and the alternative water supply, as well as impacts to biological resources, threatened and endangered species, air quality, and cultural resources. We asked for additional information on cumulative impacts from future actions, justification for the Project purpose and need, and evaluation of alternatives.

Previously, on November 18, 2008, EPA provided extensive formal scoping comments for the proposed Project. Also, on May 12<sup>th</sup> and June 7<sup>th</sup>, 2010, we submitted comments to the Army Corps of Engineers (Corps) on the March 15, 2010 Public Notice (Application for Permit) which highlighted our recommendations for compliance with section 404(b)(1) of the Clean Water Act Guidelines. EPA has continued to work with the Corps, fellow resource and regulatory agencies, and the applicant toward the goal of arriving at a permissible Project that protects natural resources.

We appreciate the efforts of BLM, the applicant, and its consultants to discuss and respond to our DEIS comments. We note that the preferred agency alternative identified in the FEIS addresses many of our comments and includes project design modifications that have reduced the proposed Project's total generating capacity from 750 megawatts (MW) to 709 MW by removing 1,163 SunCatchers, and increasing the use of non-standard configurations to avoid ephemeral main-stem streams. We support the reduction in the roadways on the Project site, decreased roadway widths, use of Arizona crossings, removal of culverts across main access roads, elimination of sediment basins and retention ponds, and the relocation of the Main

Services Complex. While some of these modifications are only discussed as part of the 709 MW alternative in the Draft Section 404(b)(1) Alternatives Analysis (Appendix H) and not in the FEIS, we expect all of them to be incorporated into the Record of Decision. Combined, these modifications would reduce the direct impacts to waters of the United States from 177.4 to 38.2 acres. We note that construction of a single 300 MW plant, which BLM has indicated would meet the Purpose and Need for the Project, would reduce the direct impacts to waters of the United States even further, and may be a practicable alternative that is less environmentally damaging. We request that the Record of Decision and the response to comments on the FEIS clarify the feasibility of the 300 MW alternative as a stand-alone project.

We were pleased to note additional information in the FEIS on compensatory mitigation for impacts to flat-tailed horned lizard habitat, and note that most of our suggested air quality comments were incorporated.

EPA continues to have concerns about impacts to aquatic resources, including waters of the United States, and the alternative water supply for the Project. We request additional information, clarification, and analysis of impacts to biological and cultural resources and air quality. Our primary concerns and recommendations are attached. We recommend that BLM address these issues prior to making a final decision on the proposed Project.

We are available to discuss all recommendations provided. Please send two hard copies and one CD ROM copy of the responses to FEIS comments and the Record of Decision to us when they are filed with our Washington D.C. office. If you have any questions, please contact me at 415-972-3843; or contact Tom Plenys, the lead reviewer for this Project. Tom can be reached at 415-972-3238 or [plenys.thomas@epa.gov](mailto:plenys.thomas@epa.gov).

Sincerely,



Enrique Manzanilla, Director  
Communities and Ecosystems Division

Enclosures: EPA Detailed Comments

cc: Jim Stobaugh, Program Manager, Bureau of Land Management  
Tom Pogacnik, Deputy State Director, Bureau of Land Management  
Colonel Mark Toy, U.S. Army Corps of Engineers  
Michael Picker, California Governor's Office  
Chris Meyer, California Energy Commission  
Michelle Matson, U.S. Army Corps of Engineers  
Felicia Sirchia, U. S. Fish and Wildlife Service  
Becky Jones, California Department of Fish and Game

***Aquatic Resources and Clean Water Act Section 404***

Clean Water Act Section 404 prohibits avoidable discharges of dredged or fill material to waters of the United States (WUS). Among other requirements, 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). What is "practicable" is evaluated by the U.S. Army Corps of Engineers based on cost, logistical, and technological factors that impact the applicant's ability to achieve the project purpose.

We understand that the applicant has a Power Purchase Agreement with San Diego Gas and Electric (SDG&E) to provide 300 megawatts (MW) of power once on-line. In light of the contingency of Phase II of the Project upon the Sunrise Powerlink Transmission Line (SPTL), it appears that the 300 MW alternative may have been considered by the applicant or SDG&E to have independent utility. We again request clarification of the implications to the proposed Project if the SPTL is not built, and whether Phase I could be funded as a stand-alone project. This information should be provided in the response to comments on the FEIS and addressed in the ROD. We note that the 300 MW alternative would reduce temporary and permanent impacts to WUS due to a 60% reduction in Project acreage. In that case, a single 300 MW plant, which BLM has indicated would meet the Purpose and Need for the Project (at pg. 2-7), may be a practicable alternative that is less environmentally damaging and could be the LEDPA.

The Draft Section 404(b)(1) Alternatives Analysis (AA), included as Appendix H of the FEIS, describes design modifications to maximize avoidance and minimization of impacts to WUS (Appendix H at pg. 23). These modifications and updated calculations of impacts to WUS appear to have been incorporated into the 709 MW alternative (Alternative 3 in the 404(b)(1) AA), but not the other alternatives analyzed as part of the Draft Section 404(b)(1) AA. The Final 404(b)(1) AA and ROD should incorporate these modifications into all alternatives for which they are practicable, to ensure an accurate comparison of potential impacts.

Although the 404(b)(1) AA presented in the FEIS is still in draft form and certain environmental studies have not been completed nor fully incorporated into the FEIS (for example, the vegetation removal plan), we note a number of discrepancies and unconfirmed design features in the FEIS and appendices. We strongly recommend that the ROD and Final 404(b)(1) AA consistently incorporate all final project design features and mitigation measures to demonstrate avoidance and minimization of impacts to WUS. For example, we note a discrepancy in the FEIS with respect to sediment transport and sediment basins. The Draft 404(b)(1) AA indicates sediment basins were removed, which reduced the impact to sediment transfer through the Project area and decreased permanent impacts to WUS by 3.3 acres (Appendix H at pg. 25). This information conflicts with the FEIS (at pg. 4.17-19) as well as the

Responses to Comments (Appendix D at pg. 335) which indicate that sediment basins will be used and could be overwhelmed by much larger sediment transport volume of larger flows. This could result in increased sediment deposition downstream if sediment transport from the SunCatcher fields has been increased through vegetation clearing and grading of surface irregularities (at pg. 4.17-19). The Draft 404 (b)(1) AA also indicates the waterline which extends to the Seeley Waste Water Treatment Facility (SWWTF) has been co-located beneath a site arterial and maintenance road and will either be horizontally drilled or constructed to span WUS, resulting in a reduction of impacts from over 2 acres to zero. While we note that a Frac-Out Contingency Plan for horizontal drilling is mentioned in BIO-7, neither the FEIS nor the Draft 404 (b)(1) AA confirms the final design nor the technical method that will be used to eliminate these impacts.

Lastly, Appendix D (Responses to Comments) indicates that “when conditions are not conducive to the use of the metal fin-pipe foundation (for hydraulic SunCatcher pedestal installation), the foundation would consist of rebar-reinforced concrete constructed below grade” (Appendix D at pg. D-335). The 5,150 SunCatchers to be placed in flood hazard areas are subject to scour, and could also become unstable if the scour undermines their structural foundation, resulting in collapse and potentially damaging and polluting the ground surface with mirror fragments and other debris. EPA remains concerned about the increased erosion, migration of channels, local scour, and potential destabilization and damage that could result. As stated in our DEIS comments, the final project design should fully use the inherent flexibility of the SunCatcher technology to maximize avoidance of WUS and high risk flood hazard areas.

*Recommendations:*

- In the response to comments on the FEIS and in the ROD, clarify the implications to the proposed Project if the SPTL is not built, and discuss the practicability of the 300 MW Phase I as a stand-alone project.
- Integrate design modifications consistently across all alternatives evaluated in the FEIS and the Draft Section 404(b)(1) Alternatives Analysis to assist in alternative selection and identification of the LEDPA.
- The ROD and responses to comments on the FEIS should discuss why the selected alternative could be the LEDPA.
- The ROD and responses to comments should include a robust discussion of all avoidance and minimization measures proposed for the Project and include the final details and requirements of a compensatory mitigation plan. BIO-17 should be updated to reflect these final determinations.
- In responses to FEIS comments and in the ROD, confirm removal of sediment basins and demonstrate that downstream flows will not be disrupted due to proposed changes to natural washes, excavation of sediment or increased sedimentation due to increased vegetation clearing and grading of surface irregularities.
- Confirm and incorporate final design criteria and installation methods into the ROD for locating the waterline to the SWWTF that eliminate impacts to WUS.
- Integrate fencing design into the ROD to ensure unimpeded hydrologic flow and sediment transport through the site.

- Incorporate vegetation removal and re-establishment conditions for construction into the ROD that minimize vegetation removal in drainages, avoid impacts to drainage bank contours and require restoration using low lying native species, as appropriate, that would not require trimming or impede SunCatcher operation.
- Incorporate into the ROD the applicant's commitment to not mow, trim, or otherwise disturb vegetation, nor place SunCatchers, within streams I, K, C, H, and the areas of streams E and G south of the transmission line corridor (Appendix H at pg. 80).
- Responses to FEIS comments should fully discuss how many SunCatchers will be installed using rebar-reinforced concrete constructed below grade. Impacts from such construction to WUS should be quantified. All analyses should be updated to include a full evaluation of impacts to waters, sedimentation, scouring, etc. from locating SunCatchers in flood hazard areas.

### *Alternative Water Supply*

The FEIS indicates in numerous places that the Project will rely on up to 40 acre-feet per year (afy) of withdrawals from State Well No. 16S.9E-36G4 (Boyer Well) within the Ocotillo-Coyote Wells Groundwater Basin (OCWGB) until water is made available from the upgraded Seeley Waste Water Treatment Facility (SWWTF). However, sections in the FEIS still indicate (see Appendix D, at pg. 334 and 509) that 50 afy will be needed for the Project. Thus, there is a discrepancy in the FEIS between the amount of water needed and the amount of water available. In addition, a question remains concerning how long the Boyer Well will be needed. The "Will Serve Letter" references a six-to-eleven month period, but the FEIS indicates up to 3 years. Unanticipated delays in the upgrade of the SWWTF could occur. The FEIS indicates that the proposed Project will not affect nearby residential/private wells, but it is still unclear whether the FEIS analysis factored in up to 67 afy of withdrawals for the Coyote Wells (CW) project in the same area. Thus, there is still some uncertainty whether nearby wells would be affected.

### *Recommendations:*

- Resolve the 40 versus 50 afy discrepancy in the ROD and provide documentation (e.g., a letter from Imperial County or a copy of the permit for State Well No. 16S.9E-36G4) that Imperial County supports 40 afy (or whatever amount is determined to be correct) in withdrawals from the Boyer Well.
- Indicate whether other renewable energy projects and the CW project will, cumulatively, affect nearby residential/private wells, and, if so, describe the impact.
- Incorporate into the ROD an enforceable monitoring program to determine whether neighboring wells are affected by the use of Boyer Well. The ROD should describe the effectiveness of, and commitments to, proposed mitigation and monitoring plans.
- Integrate into the ROD a monitoring program to be initiated upon commencement of the use of water from the SWWTF to monitor for any indirect effects to wetlands in the New River.

## ***Biological Resources***

Detailed compensatory mitigation measures are determined on a project-specific basis, and must be contained in each project's environmental analyses and decision documents. The ROD should describe the final biological resources mitigation commitments and how they would be funded and implemented. The FEIS specifies the applicant shall contribute to the National Fish and Wildlife Foundation (NFWF) Account to compensate for loss of flat-tailed horned lizard (FTHL) habitat. For each species requiring compensatory mitigation, the ROD should state whether and how the Project applicant would use the NFWF Account, an in-lieu fee strategy, or an applicant-directed implementation strategy.

We also understand the Biological Opinion and Conferencing Opinion for peninsular bighorn sheep and the FTHL, respectively, have not been finalized (at pg. 4.3-22). As the FEIS indicates, the Conferencing Opinion for the FTHL would be converted to a Biological Opinion upon Federal listing of the FTHL. These final Biological Opinions will play an important role in informing the decision on which alternative to approve and what commitments, terms, and conditions must accompany that approval. Lastly, while additional botanical surveys were completed in Spring of 2010, it is unclear from the Responses to Comments (Appendix D at pg. D-493) whether any additional avoidance or mitigation measures were incorporated as a result of the new findings.

### ***Recommendations:***

- Incorporate final information on the compensatory mitigation proposals (including quantification of acreages, estimates of species protected, costs to acquire compensatory lands, etc.) for unavoidable impacts to Waters of the State and biological resources such as peninsular bighorn sheep and FTHL.
- If the applicant is to acquire compensation lands, the location(s) and management plans for these lands should be fully disclosed in the ROD.
- Fully incorporate mitigation measures from the Conference Opinion on FTHL into BIO-9 through BIO-11 in the ROD as contingency measures in anticipation of a Federal listing of the species.
- Provide additional supporting documentation in the responses to FEIS comments for the final acreage identified as foraging habitat for the peninsular bighorn sheep on the Project site. Update BIO-17 as appropriate.
- Include the provisions or mechanism(s) in the ROD that will ensure that habitat selected for compensatory mitigation will be protected in perpetuity.
- Fully incorporate into the ROD any mitigation measures for avoidance of rare plants during Project construction and operation that result from recent or pending botanical surveys.
- All mitigation commitments should be included in the ROD.



## *Air Quality*

The Responses to Comments did not respond to our cumulative impact comments on air quality. The scope of the cumulative impact analysis in the FEIS remains geographically limited to focus on 'localized' cumulative impacts. Determination of the affected environment should not be based on a predetermined geographic area, but rather on perception of meaningful impacts for each resource at issue. EPA disagrees that there is never overlap for sources separated by six miles. This would depend on the emissions, size of the source, and release height, among other criteria. For example, in our air permitting process, we require modeling of the significant impact area plus 50 kilometers out. In an area classified as nonattainment for ozone, the cumulative effects study area could be the entire air basin because ozone precursors are reactive over hundreds of miles.

Additionally, we understand, based on information provided at the July 22, 2010 Renewable Energy Policy Group meeting, that the Project may now require diesel powered equipment for at least some period of the Project construction, which was not previously analyzed in the DEIS. EPA strongly recommends that this new information and the direct, indirect, and cumulative impacts associated with the use of diesel be fully analyzed and disclosed in responses to comments on the FEIS and in the ROD.

### *Recommendations:*

- The response to comments on the FEIS should provide the rationale for limiting the scope of the cumulative impacts analysis to the specified local area. If the Project would affect the ability of other foreseeable projects to be permitted, the ROD and responses to comments on the FEIS should discuss this.
- The ROD and responses to FEIS comments should thoroughly evaluate the additional use of diesel powered equipment for Project construction and incorporate appropriate mitigation measures to reduce impacts. (Please see our May 27, 2010 DEIS comment letter for additional construction mitigation recommendations for mobile and stationary sources.) The evaluation in the ROD and responses to comments should include consideration of the feasibility and impacts of avoiding the need for diesel power by altering the construction schedule.
- At a minimum, any additional nonroad, diesel-powered engines should comply with federal requirements, as applicable, for 40 CFR Part 89.
- For those engines that will be sited and operated for 12-months or more, federal applicable requirements should be identified for, at a minimum, air quality permitting, hazardous air pollutants (40 CFR Part 63, Subpart ZZZZ), and new source performance standards (40 CFR Part 60, Subpart IIII).
- The ROD and responses to FEIS comments should discuss and address whether the diesel equipment would require a permit from the Imperial County Air Pollution Control District.

## ***Cultural Resources***

Responses to FEIS comments should provide the latest update on how any outstanding concerns raised by Tribes were addressed and resolved, provide an update on the status of the Programmatic Agreement and Tribal consultation, and indicate whether the Tribes are in agreement that the Programmatic Agreement will reduce impacts to prehistoric and sacred sites to less than significant.

## ***Alternatives Analysis***

The purpose and need statement in an EIS should be broad enough for analysis and consideration of a full range of reasonable alternatives (including off-site locations and environmentally preferable on-site alternatives) to address the underlying need. In the subject FEIS, alternatives not on BLM-managed lands are not evaluated, nor does the FEIS consider other projects under evaluation for nearby sites to be viable alternatives to the proposed Project (Appendix D at pg. 61). BLM should address conformance with the Council on Environmental Quality's guidance regarding consideration of alternatives outside the jurisdiction of the lead agency (Council on Environmental Quality's (CEQ) Forty Questions<sup>1</sup>, #2a and #2b). While off-site alternatives are evaluated in the Draft 404(b)(1) AA (Appendix H), we continue to recommend that off-site alternatives be given full consideration under NEPA.

### ***Recommendation:***

- The ROD should reflect a full evaluation of reasonable alternatives, including off-site locations and other environmentally preferable on-site alternatives.

## ***Adequacy of Responses to Comments in the FEIS***

The format and, in some cases, cursory responses to comments in the FEIS may have resulted in unsatisfactory responses to some stakeholder comments. The FEIS grouped lengthy, substantive comments from stakeholders into 16 common response categories. Unfortunately, many of the responses in these sections seem unduly brief given the volume, substantiveness, and diversity of comments, concerns, and recommendations. The FEIS did not include responses to portions of our comments on cumulative impacts (F2-34), effects of fencing (F2-23), the alternative water supply (F2-26) and sensitive plant species and vegetation (F2-30). If the lead agency decides not to respond to a comment, it must cite the sources, authorities, or reasons that support its position (40 CFR 1503.4(a),(b)).

### ***Recommendation:***

- Responses to comments on the FEIS should more thoroughly address substantive comments received.

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<sup>1</sup>Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 40 CFR Parts 1500-1508, Federal Register, Vol. 46, No. 55, March 23, 1981.