DOCKET
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From: Christine Hammond
To: 'allanori@comcast.net'; 'almamaghani@aol.com'; 'Angela_Leiba@urscorp.c...
CC: Debra Dabney; Muoi-Lynn Tran
Date: 9/28/2010 12:04 PM
Subject: Re: IVS BIO-10 REVISIONS POST 9/20 HEARING

Hearing Officer Renaud,

This email will respond to your two questions sent to all parties by separate emails this morning.

The REAT agencies do not "approve" the conditions of certification, in a regulatory sense, so there is no decision or order that documents the joint efforts of the REAT agencies and their staff. As required by law and regulation and the REAT Executive Order and related memoranda of agreement/understanding, the REAT agencies have been working together very closely to jointly analyze the projects, identify appropriate mitigation measures, and draft conditions. (*See, e.g.,* 7/27/10 RT 199:9-201:10 ("... ultimately we try to ... stay linked up with the other agencies because we want to have certain key things in agreement in the commission decision and in the BLM record of decision.").) Having REAT representatives testify and speak at the evidentiary hearings in this proceeding attests to this joint effort and development of conditions by the agencies.

In this case, BIO-10, BIO-17, and BIO-19 as presented in *Staff's Rebuttal Testimony and Errata* is, like the wildlife and plant compensatory mitigation conditions for the other ARRA projects, based on the Blythe Project's BIO-17 and BIO-19. One reason the Blythe conditions evolved as they did was precisely because the four REAT agencies jointly drafted the conditions and each agency's staff by turns requested that elements be added to the conditions or else made modifications to the conditions. Because Blythe's was the first of the concentrated release of RSAs for the ARRA projects, Staff used Blythe's BIO-17 and BIO-19 as foundations that contained all identified elements necessary for compensatory mitigation and tailored them to the specific biological considerations for this case. Staff notes that some of the same staff members of the REAT agencies participated in the development of both the Blythe and Imperial biological conditions.

The REAT agencies did <u>not</u> work collaboratively on BIO-22 (phasing) because the Applicant requested a condition for phasing well after the publication of the RSA, and Staff, in the interest of facilitating progress in this proceeding, crafted a condition for phasing that did not disrupt the compensatory mitigation conditions that required months of work by the REAT agencies.

As stated yesterday, **Staff urges the Commission to adopt BIO-10 as presented in Staff's Reply Brief, along with BIO-22 as presented in *Staff's Comments on the Presiding Member's Proposed Decision*.** Should the Commission decide to adopt the Applicant's version of BIO-10, then Staff recommends the redlines/strikethroughs to BIO-10 as presented in *Staff's Comments on the Presiding Member's Proposed Decision* <u>in addition to</u> BIO-22 as presented by Staff be adopted in the Final Decision.

Finally, Staff notes that uniformity in the biological resources conditions of certification will aid the Compliance Project Managers, which in turn should aid the applicant with an efficient compliance process.

--Christine Hammond

>>> Raoul Renaud 9/28/2010 8:48 AM >>>
Question from the Committee for Ms. Hammond: Have the REAT partners approved the versions of BIO-10, 17, and 19 as set forth in Staff's Reply Brief and BIO-22 as set forth in Staff's Comments on the

PMPD? If so, what documentation is there of that approval?

Raoul A. Renaud
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>>> Christine Hammond 9/27/2010 5:51 PM >>>

As directed by Hearing Officer Renaud, Staff hereby submits its comments on the Applicant's suggested revisions to BIO-10 in the Imperial Valley Solar Project AFC proceeding's PMPD.

The PMPD appears to have incorporated for the most part the Applicants presentation of Biological Resources Conditions of Certification BIO-10, BIO-17, and BIO-19, and rejected Staffs presentations of those conditions and of Condition of Certification BIO-22. Staffs Conditions of Certification (as set forth in the Reply Brief of Energy Commission Staff) are the result of an extraordinary effort by the Renewable Energy Action Team and staff members from at least four agencies the CEC, California Department of Fish and Game, Bureau of Land Management, and the United States Fish and Wildlife Service. (See RT 7/27/10 128:1-11.) It would be unfortunate if these critical REAT partners were not involved in the review of and coordination on the Final Decision's biological resources Conditions of Certification. Staff urges the Commission to adopt without change Staffs Conditions of Certification BIO-10, BIO-17, and BIO-19 as presented in its Reply Brief, as well as Staffs version of BIO-22 as presented in Staffs Comments on the Presiding Members Proposed Decision.

Should the Commission decide to adopt the Applicants version of BIO-10, however, Staff requests that the following substantive additions or changes be included in BIO-10. These additions and changes have been incorporated into the PMPDs BIO-10 by redline and strikeout on pp. 25-42 of Staffs Comments on the Presiding Members Proposed Decision.

<u>Substantive Requirements/Elements Missing from Applicants Version (September 22, 2010) of BIO-10:</u>
The Verification holds the project owner responsible for the acquisition of mitigation land based on the amount of habitat disturbed during Project construction. The Condition of Certification does not, however, define habitat disturbed during Project construction. The Final Decision should define Project Disturbance Area as set forth in Staffs proposed BIO-22: Project Disturbance Area or ground disturbance area means all areas that would be temporarily or permanently disturbed during construction or operation of the Project, including all linear facilities, or which would be subject to any project-related ground, habitat, or species disturbing action. As BLM will not be acquiring the land on behalf of the project owner, all references to this option should be removed from the Final Decision. The PMPDs BIO-10 appears to suggest that the project owner can fulfill acquisition requirements by allowing the CPM to release all or portions of the security as acquisition and associated costs are incurred. Staff suggests the Commission look to the Final Decision for the Ivanpah Solar Electric Generating System for precedent. The Commission in other recent solar thermal AFC proceedings did not require the CPM to respond to the project owners acquisition or other proposal. If the Commission decides to include this requirement in BIO-10, as the CPM will be conferring with his/her counterparts at other state and federal agencies, the CPM should be afforded at least 45 days to respond to the applicants acquisition or other proposal. The Final Decision should expressly limit fencing to construction and ground disturbance areas as delineated by the CPMs Notices to Proceed.The Final Decision should expressly prohibit the project owner from causing ground-disturbance to any location outside of the area that has been approved for construction

according to the phasing plan identified in this condition. The Final Decision should expressly recognize that the project owners security requirements shall be based on the REAT agencies most up-to-date figures at the time security should be posted. As Staff and the REAT agencies has repeated in this proceeding, the figures in the REAT Compensation Table are only best estimates, and project owners should be required to pay all actual costs. The project owner is ultimately responsible for all actualcosts, not reasonable expenses, as the PMPDs BIO-10 currently states. BIO-10 expressly requires the project owner to acquire and transfer mitigation lands within 18 months of the Final Decision. Neither BIO-10 nor its Verification, however, requires that the project owner pay (and demonstrate fulfillment of payment of), as appropriate, costs associated with the acquisition and transfer or with the initial clean up and long-term management and maintenance of the land; and neither requires the project owner demonstrate, as appropriate, fulfillment of initial clean-up, establishment of a satisfactory non-wasting account, and compensatory mitigation land improvements. The Final Decision should expressly require these, as the Committee and all parties intended. The Final Decision should state the number of days prior to ground disturbance the project owner must provide Security. The Commission is not empowered to impose requirements on non-applicants, such as third-party entities that will be managing compensation lands. Accordingly, the Final Decision should require only the project owner to fund the development of a Management Plan for the compensation lands for the entity that will be managing the lands.

>>> Raoul Renaud 9/24/2010 3:42 PM >>>
Please submit any response to Applicant's suggested revisions to BIO-10 as soon as possible, and in no event later than Monday, September 27.

Raoul A. Renaud
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>>> "Larson, Doug" <doug.larson@bingham.com> 9/24/2010 2:48 PM >>>
Sent on behalf of Ella Foley Gannon:

In response to the Committee's request at the September 20 hearing, we have provided a revised version of BIO-10 with updated acreage and compensation values. The redline shows the changes as compared to the PMPD. We made no other changes discussed at Monday's hearing.

Doug Larson
Paralegal

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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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APPLICATION FOR CERTIFICATION FOR THE
IMPERIAL VALLEY SOLAR PROJECT
(formerly known as SES Solar Two Project)
IMPERIAL VALLEY SOLAR, LLC

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

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*indicates change

DECLARATION OF SERVICE

I, Rhea Moyer, declare that on **September 28, 2010**, I served and filed copies of the attached **Docket 08-AFC-5: Email Responses of Staff to Hearing Officer Renault Dated September 27 and 28, 2010 Re. IVS BIO-10 Revisions Post 9/20 Hearing**, dated **September 28, 2010**. 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].**

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;

__X__ 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:

__X__ sending an original paper copy and one electronic copy, hand delivered and emailed respectively, to the address below (***preferred method***);

OR

_____ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-5
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Rhea Moyer

*indicates change