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June 16, 2010

DOCKET	
09-AFC-6	
DATE	<u>JUN 16 2010</u>
RECD.	<u>JUN 16 2010</u>

California Energy Commission
Attn: Docket No. 09AFC6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: 09-AFC-6 Blythe Solar Power Plant Project

Dear Docket Clerk:

Enclosed are an original and one copy of **REBUTTAL TESTIMONY OF T'SHAKA TOURE ON BEHALF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY FOR THE BLYTHE SOLAR POWER PROJECT**. Please process the document and provide us with a conformed copy in the envelope provided.

Thank you.

Sincerely,

/s/

Elizabeth Klebaner

EK:bh
Enclosures

STATE OF CALIFORNIA

California Energy Commission

In the Matter of:

The Application for Certification for the
Blythe Solar Power Project

Docket No. 09-AFC-6

**REBUTTAL TESTIMONY OF T'SHAKA TOURE
ON BEHALF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY
FOR THE BLYTHE SOLAR POWER PROJECT**

June 15, 2010

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Attorneys for CALIFORNIA UNIONS FOR
RELIABLE ENERGY

I. Introduction

I have been working for the California Unions for Reliable Energy (“CURE”) as a consultant on the Application for Certification (“AFC”) for the Blythe Solar Power Project (“Project” or “BSPP”) since the data adequacy phase. I have reviewed the Applicant’s submittals regarding impacts to waters of the State, the Staff Assessment/Draft Environmental Impact Statement (“SA/DEIS”), the Revised Staff Assessment, and the Applicant’s Opening Testimony regarding biological resources, submitted on June 11, 2010. I have also conducted my own literature research and analyses regarding the Project’s potential environmental impacts and alternatives.

My testimony addresses the Applicant’s Opening Testimony regarding impacts to waters of the State, and is based on the activities described above and the knowledge and experience I have acquired during the more than 19 years of working in the field of natural resources management planning. A summary of my education and experience was included with my Opening Testimony.

II. Swales are State Jurisdictional Features

In opening testimony the Applicant states “swales occurring in desert regions do not and cannot conduct season surface flow.”¹ This statement is untrue and contradicts statements made by the Applicant in the Jurisdictional Delineation Report prepared for the Blythe Solar Power Project (“Project”) proceeding.² Specifically, the Applicant’s Jurisdictional Delineation Report provides,

The vegetated swales within the survey area appear to convey surface or subsurface water from a roughly northwest-to-southeast direction across the site. It is unlikely that these swales convey runoff every year, but there is evidence, through vegetative and hydrological indicators, that they move surface water across the landscape.³

The Applicant’s Jurisdictional Delineation Report further provides that,

In areas where evidence of distinct shelving and/or scour were absent, but some indication of past surface waterflow could be observed, it was ascertained that these features were either swales (that support low volume and duration surface flow

¹ Opening Testimony of Bill Graham et al, June 11, 2010, p. 5.

² Galati and Blek. 2009a. Blythe Solar Power Project Jurisdictional Delineation Report.

³ Galati and Blek. 2009a. Blythe Solar Power Project Jurisdictional Delineation Report (Revised October 2009 and November 2009) at p. 28.

and/or were low lying undefined relatively linear features in the landscape that are unvegetated or primarily populated exclusively by Sonoran creosote bush scrub) or eroded relictual washes (that support sheetflow) during rain events.⁴

Additionally, based upon my field experience in desert regions, swales serve as an important ecological resource to aquatic and terrestrial species. Furthermore, regardless of how the section is titled for the “Creosote Bush Big Galleta Grass Community,” functional swales (just as wetlands) do in fact occur in upland habitats. The creosote bush-big galleta community occurs in the wash understory and continues along the vegetated swales throughout the Project survey area.⁵

The U.S. Army Corps of Engineers can only take jurisdiction over three-parameter wetlands; however, CDFG has the authority to take jurisdiction over one- or two-parameter wetlands. As such, based on CDFG criteria for establishing wetlands, swales have been determined by CDFG staff as jurisdictional features. Based on my review of the existing information, CDFG appears to have considered the swales as two-parameter wetlands (providing vegetative and hydrological indicators) and therefore jurisdictional features of the State. The swales are capable of providing similar functions as a wetland and/or marsh habitat and therefore provide beneficial uses to both aquatic and terrestrial wildlife species.^{6,7} To disregard the functional values of swales and the biochemical and biological resources they provide would substantially understate the Project’s significant impacts to biological resources and waters of the State.

As stated in my opening testimony, swales serve to trap particulate pollutants (suspended solids and trace metals), promote infiltration, and reduce the flow velocity of stormwater runoff.⁸ Therefore, in my professional opinion it is prudent and sound judgment by the CDFG and California Energy Commission Staff to require the Applicant to mitigate for impacts to vegetated swales.

⁴ Ibid., p 26

⁵ Ibid., p. 7

⁶ Conserving Natural Areas and Wildlife in Your Community. Chapter 10: Stormwater Management for People and Wildlife.

http://www.dec.ny.gov/docs/remediation_hudson_pdf/hrebch10.pdf

⁷ Stormwater Management: Swales. Sustainable Cities Institute.

http://www.sustainablecitiesinstitute.org/view/page.basic/class/feature.class/Lesson_Swales_Overview

⁸ Testimony Of T’shaka Toure on Behalf Of California Unions For Reliable Energy for the Blythe Solar Power Project, June 11, 2010, pp. 7-8; *see also* U.S. Environmental Protection Agency. Storm Water Technology Fact Sheet. Vegetated Swales. 832-F-99-006. September 1999.

**Declaration of T'Shaka Toure
Blythe Solar Power Project
Docket 09-AFC-6**

I, T'Shaka Toure, declare as follows:

- 1) I am an independent biological resources consultant. I have been operating my own consulting business for the past 1.5 years. Prior to starting my own business I was employed as a biological and regulatory consultant.
- 2) I hold a Master of Science degree in Biology with an emphasis in Ecology. My relevant professional qualifications and experience are set forth in the attached testimony and are incorporated herein by reference.
- 3) I prepared testimony attached hereto and incorporated herein by reference, relating to impacts to waters of the State due to the Blythe Solar Power Project.
- 5) It is my professional opinion that the attached testimony is true and accurate with respect to the issues that it addresses.
- 6) I am personally familiar with the facts and conclusions described within the attached testimony, and if called as a witness, I could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 15, 2010

Signed: _____



At: 11:30 am

DECLARATION OF SERVICE
Blythe Solar Power Plant Project

Docket No. 09-AFC-6

I, Bonnie Heeley, declare that on June 16, 2010, I served and filed copies of the attached **REBUTTAL TESTIMONY OF T'SHAKA TOURE ON BEHALF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY FOR THE BLYTHE SOLAR POWER PROJECT**. The original document, filed with the Docket Office, 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/solar_millennium_blythe/index.html.

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 Office via email and U.S. mail as addressed below:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-6
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.
Executed at South San Francisco, California on June 16, 2010.

/s/

Bonnie Heeley

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