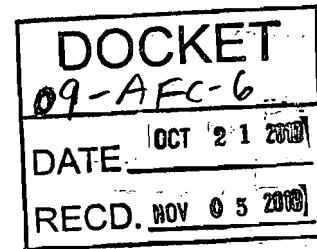


COLORADO RIVER BOARD OF CALIFORNIA

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October 21, 2010

Ms. Alice L. Harron
Senior Director, Development and Permitting
Solar Millennium, LLC
1111 Broadway, 5th Floor
Oakland, CA 94607

Solar Millennium's September 20, 2010 Letter

Dear Ms. Harron:

The Colorado River Board of California (Board) is in receipt of your letter dated September 20, 2010, in response to the Board's September 14th letter to the California Energy Commission (CEC). The purpose of this letter is to reiterate the factual statements and Board's position included in the Board's letter to the CEC. In sum, while the Board continues to support solar energy projects, it remains concerned that the groundwater pumping by the proposed Blythe Solar Project may adversely impact Colorado River supplies and may constitute an unauthorized diversion under existing federal law and authority regardless of whether any final regulation or accounting surface rule is ever promulgated. In the absence of any compelling contrary technical studies or groundwater data, other than those conducted by the U.S. Geological Survey (USGS), the Board is obligated to raise its concerns.

First, the Board would like to reemphasize its full support of solar energy projects as one tool being utilized to achieve our nation's renewable energy goals. Having said this though, the Board remains concerned about the long-term impacts that current and future solar energy projects may have on our limited and finite water supplies in the Lower Colorado River basin.

As you are aware, the Board is charged with safeguarding and protecting California's rights and interests in the water and power resources of the Colorado River. One of the primary goals of the Board is to work with agencies holding lawful Colorado River water entitlements to maximize the efficient use of Colorado River water while remaining within California's basic mainstream apportionment of 4.4 million acre-feet annually when required by the U.S. Bureau of Reclamation (Reclamation). As you point out in your letter, the Board is aware that it does not have regulatory authority with respect to granting, and contracting for, entitlements to the use of Colorado River water in California, nor did it presume to imply that it did. That responsibility and authority is vested in the Secretary of the Department of the Interior (Secretary).

Existing federal law and authority prohibit the unauthorized use of water drawn from the Colorado River mainstream by underground pumping in California regardless of whether any final procedural regulation is promulgated. Under existing federal law, to lawfully use water from the mainstream of the lower Colorado River, a person or entity must have:

- (a) a decreed right as described in the Consolidated Decree entered by the United States Supreme Court in *Arizona v. California*, 547 U.S. 150 (2006) (Supreme Court Decree),
- (b) a contract with the Secretary, or
- (c) a Secretarial Reservation of Colorado River water.

The prohibition on unauthorized diversion of Colorado River supplies is set forth in the 1928 Boulder Canyon Project Act (P.L.70-642) (BCPA), that provides that no water shall be delivered from storage or used by any water user without a valid contract between the Secretary and the water user for such use, i.e., through a BCPA Section 5 contract. These principles were confirmed by the United States Supreme Court in 1964 as most recently stated in the Consolidated Decree in *Arizona v. California, et al.*, (547 U.S. 150, 2006). The Decree states that the consumptive use of water means “diversion from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation” and consumptive use “includes all consumptive uses of water of the mainstream, including water drawn from the mainstream by underground pumping.”

By promulgating a rule, *Regulating the Use of Lower Colorado River Water Without an Entitlement*, Reclamation proposed to address and eliminate the use of Colorado River water from the mainstream in the lower Colorado River basin (Lower Basin) without an entitlement. At Reclamation’s request, USGS developed a method to identify wells that pump water that is replaced by water drawn from the lower Colorado River. The USGS method identifies a River Aquifer and a theoretical accounting surface within the River Aquifer. The River Aquifer extends outward from the Colorado River until encountering a geologic barrier to groundwater flow and encompasses the water bearing materials from which water can move to and from the lower Colorado River. The accounting surface was developed with a groundwater model and represents the elevation and extent of the river aquifer that is in hydraulic connection with the lower Colorado River. The accounting surface extends outward from the exterior boundary of the Colorado River floodplain to the exterior limit of the River Aquifer.

Through the proposed rule, Reclamation sought to establish procedures that it would follow in making determinations of unlawful use of lower Colorado River water based on the technical studies conducted by USGS regarding the reach of the Colorado River or what constitutes “water drawn from the mainstream by underground pumping.” USGS’s technical studies, set forth in USGS Water Resources Investigations Reports No. 94-4005 and No. 00-4085, were extensively reviewed through the USGS peer review and report publishing process. The timing of depletions from wells distant from the lower Colorado River has been addressed cooperatively by Reclamation and the USGS using numerical modeling techniques. The USGS released a Scientific Investigations Report 2008-5113, “Update of the Accounting Surface Along the Lower Colorado River” concerning this matter in 2008.

Since July 1994, the accounting surface methodology has been the primary tool Reclamation utilizes to determine if the use of a well does, or does not, result in a consumptive use of mainstream water from the lower Colorado River. Whether or not any final rule is issued,

USGS's methodologies continue to define those areas that could be deemed to be either pumping Colorado River water, or water replaced by Colorado River water unless the static water elevation in a well is above the elevation of the accounting surface in the area of the well. Absent any compelling contrary technical data, until stated otherwise by Reclamation, a valid BCPA Section 5 Contract is required for use of groundwater that USGS and Reclamation determine to be water drawn from the mainstream by underground pumping. The CEC staff asserts that a hydraulic connection exists between local groundwater and the Colorado River, therefore suggesting that groundwater withdrawals from the Palo Verde Mesa Groundwater Basin (PVMGB) are largely balanced by recharge (inflow) from the river via the Palo Verde Valley Groundwater Basin. The CEC in its Final Commission Decision stated:

“The evidence indicates that proposed groundwater used during project construction (approximately 820 acre-feet per year (afy) and operation (600 afy) could place the groundwater basin into overdraft (defined as the condition of a groundwater basin in which the amount of water withdrawn by pumping exceeds the amount of water that recharges the basin over a period of years during which water supply conditions approximate average conditions).

Based on the described connection between the PVMGB and the Colorado River, Staff asserts that wells drawing groundwater from the PVMGB might be considered as withdrawing water from the river.”

As has been indicated in previous discussions with your staff, and in correspondence to you as well as the CEC, the Board and the agencies represented on the Board have developed an alternative that can provide long-term assurance that an adequate and lawful water supply can be obtained and utilized in support of proposed solar energy projects located near the Colorado River that could be affected by Reclamation's future determinations. This alternative involves obtaining water through an existing BCPA Section 5 contract holder, The Metropolitan Water District of Southern California. Although other options may be available, it is still the Board's assessment that they could not be implemented in a timely manner.

At a minimum, the Board is hopeful that by implementing the Soil and Water Resources Conditions of Certification stated in Appendix G of the U.S. Bureau of Land Management's Plan Amendment/Final Environmental Impact Statement for the Blythe Solar Power Project, you will be able to demonstrate that the Blythe Solar Project is not adversely affecting the Colorado River. It is the Board's position that Reclamation approval of all water supply offset measures will be required. As a potentially affected public agency, the Board requests that it be copied on and included in the process of reviewing all groundwater and hydrogeological monitoring and reporting related to local groundwater and Colorado River resources and proposed water supply offset measures.

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It should be mentioned again that the content of the Board's September 14th letter to the CEC remains factually correct. If you have any questions or require further information, please feel free to contact me at (818) 500-1625.

Sincerely,



Gerald R. Zimmerman
Acting Executive Director

cc: Ms. Lorri Gray-Lee, Regional Director, U.S. Bureau of Reclamation
Ms. Holly Roberts, Associate Field Manager, Palm Springs-South Coast Field Office, BLM
Ms. Eileen Allen, California Energy Commission
Mr. Allan H. Solomon, California Energy Commission
Mr. William J. Hasencamp, The Metropolitan Water District of Southern California