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September 20, 2010

**DOCKET**

**09-AFC-8**

DATE SEP 20 2010

RECD. SEP 20 2010

California Energy Commission  
Attn: Docket No. 09-AFC-8  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

Re: Genesis Solar Energy Project; 09-AFC-8

Dear Docket Clerk:

Enclosed are an original and one copy of the following:

- (1) California Unions for Reliable Energy's Comments on the Presiding Member's Proposed Decision, with attachments;
- (2) California Unions for Reliable Energy's Proposed Changes to the Presiding Member's Proposed Decision;
- (3) Letter from Rachael E. Koss to Commissioner Boyd, Commissioner Weisenmiller and Hearing Officer Celli re: Comments on the Presiding Member's Proposed Decision for the Genesis Solar Energy Project (09-AFC-8);
- (4) An email letter from William Greer of the Bureau of Reclamation to William Bruninga of the Bureau of Reclamation, dated April 9, 2010, which discusses the Applicant's unsupported conclusions regarding the Genesis Solar Energy Project's use of Colorado River water; and
- (5) An email string from the desk of Steven Hvinden of the Bureau of Reclamation, which provides a discussion of the applicability of the United States Supreme Court Consolidated Decree *Arizona v. California* 547 U.S. 150 to the Genesis Solar Energy Project.

Please docket the originals, conform the copies and return the copies in the envelope provided.

2364-134d

California Energy Commission  
September 20, 2010  
Page 2

Thank you for your assistance.

Sincerely,

*/s/*

Rachael E. Koss

REK:cnh  
Enclosures

**From:** Greer, William (Bill)  
**To:** Bruninga, William M;  
**cc:** Scott, Joshua M;  
**Subject:** Review of "Groundwater Resources Investigation, Genesis Solar Energy Project, Riverside County, California" by WorleyParsons  
**Date:** Friday, April 09, 2010 5:26:00 PM

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Here are my review comments regarding the WorleyParsons investigation:

1. The project description, including the discussion of water demand, was clear and thorough, as were the hydrogeologic characterization and the presentation of water budget data . The selection of MODFLOW and the technique of superposition modeling was appropriate for the assessment of project pumping impacts.
  
2. The groundwater model may have a conceptual flaw which may render it incapable of accurately predicting changes in water table. The model represents the aquifer with 13 horizontal layers, with each layer homogeneous in its hydraulic properties. Layers 3 through 9 compose a continuous low-conductivity confining unit about 300 feet thick above the lower Bouse and fanglomerate, the proposed pumping zone. The continuous confining unit virtually guarantees that the model will predict very little, if any, drawdown of the water table after 33 years of pumping. This characterization may not be valid. While clay or other low-conductivity materials exist in most of the existing logged boreholes, they seem to occur at significantly different depths (see Figures 7 and 8), which suggests they may not be laterally continuous. Indeed, the log of at least one well (#14) does not show any confining bed material above the pumping zone. Further, assuming Figures 10 and 11 show contours of the water table, the water table dropped some 20 feet in the prison area, apparently due to pumping at about 3000 gpm over the 12 year period from 1981 to 1992 (Table 3-4). Assuming the wells that accomplished this pumping were screened in the lower Bouse and below (as at least wells #35, #37 and #38 were), this magnitude of drawdown seems unlikely, if there is a laterally continuous confining bed. If the laterally continuous confining unit is not present in the aquifer, as this evidence suggests, then the model's predictions of insignificant drawdown of the water table over the life of the project may be erroneous.
  
3. The calibration of the model may be inadequate. The model was calibrated by adjusting its hydraulic properties so that it would replicate, as closely as possible, the drawdowns which occurred over about a 10-day period in observation wells close to a single pumping well. This calibration shows only that the model will somewhat accurately predict the response of the aquifer to pumping very close to the pumped well over a very short pumping period. The calibration seems inadequate to provide confidence that the model will predict reliable drawdowns at remote locations (such as Palen Lake and other pumping wells in the general area) or even closer locations over a long period of time (33 years).
  
4. The sentence beginning "The Accounting Surface is defined by..." at the top of page 8 seems unclear and could be misleading. It could be revised to the following: "The Accounting Surface is defined by groundwater levels that would occur beyond the flood plain in the aquifer that is hydraulically connected to the Colorado River, if the river were the only source of water for the aquifer."
  
5. The statement beginning at the bottom of page 66 and continuing on the top of page 67 is incorrect and the conclusion drawn (that "the Project would not have an impact on flows ... or require a future entitlement") is unjustified. The depletion study (Wiele and others, 2008) was not intended to be "An alternative to the Accounting Surface method." Rather, it's purpose was to "further understand temporal effects of pumping wells on the Colorado River" and to "assess timing over which wells at great distance would deplete water in the Colorado River."

Bill Greer  
 Hydrologist  
 Yuma Area Office  
 Bureau of Reclamation  
 7301 Calle Agua Salada  
 Yuma, AZ 85364  
 Phone 928-343-8283  
 Fax 928-343-8320

**Hvinden, Steven C**

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**From:** Gray, Lorri J  
**Sent:** Monday, January 18, 2010 5:52 AM  
**To:** Hvinden, Steven C  
**Subject:** RE: Genesis solar project question

Thanks Steve

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**From:** Hvinden, Steven C  
**Sent:** Friday, January 15, 2010 12:15 PM  
**To:** Gray, Lorri J  
**Subject:** RE: Genesis solar project question

Lorri,

I think that the Consolidated Decree provides a possible approach that stands by itself, without a rule.

Under Article III of the Consolidated Decree, "The States of Arizona, California, and Nevada and...., and all other users of water from the mainstream in said States... are enjoined...from diverting or purporting to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for use in the respective States." (underlining added from emphasis)

The Decree also indicates that consumptive use includes not only use of water from the Mainstream but also includes water withdrawn from the mainstream by underground pumping.

Therefore, under the Decree, someone who diverts water from the Mainstream by underground pumping without authorization from the United States could be viewed as being in contempt of the Supreme Court, and that may provide a legal avenue to pursue termination of such pumping.

-----Original Message-----

**From:** Gray, Lorri J  
**Sent:** Tuesday, January 12, 2010 4:09 PM  
**To:** Hvinden, Steven C  
**Subject:** FW: Genesis solar project question

Steve - Give me your thoughts and I will get back to them.

Thanks

-----Original Message-----

**From:** Jerry Zimmerman [mailto:grzimmerman@crb.ca.gov]  
**Sent:** Monday, January 11, 2010 2:21 PM  
**To:** 'Robin Mayer'  
**Cc:** Gray, Lorri J  
**Subject:** RE: Genesis solar project question

Although I have my opinion, this question would best be answered by the "water master" and regulator for the Colorado River, Reclamation.

Thanks,  
Jerry

Gerald R. Zimmerman  
Executive Director  
Colorado River Board of California  
770 Fairmont Ave., Suite 100  
Glendale, CA 91203

Phone: (818) 500-1625 ext. 308  
Facsimile: (818) 543-4685  
Mobile: (818) 400-8988

-----Original Message-----

From: Robin Mayer [mailto:rmayer@energy.state.ca.us]  
Sent: Monday, January 11, 2010 10:09 AM  
To: grzimmerman@crb.ca.gov  
Subject: RE: Genesis solar project question

Thank you Jerry. I have one other important question, and please re-direct me if necessary, about the accounting surface regulation. Without such a regulation, does the BOR still have authority to cut off water use if pumping reaches CO River water? I had assumed the Law of the River would still apply and perhaps limit that use, even without a regulation. Many thanks for your input. Best, Robin

Robin Mayer  
Staff Counsel  
California Energy Commission  
(o) (916) 651-2921  
(c) (415) 505-5908

>>> "Jerry Zimmerman" <gzimmerman@crb.ca.gov> 1/11/2010 9:51 AM >>>  
I believe that a more correct statement would be that if the water surface level were to dip below Reclamation's accounting surface, a contract to use Colorado River would be required. Without such a contract, the wells providing the water supply for the Project could be shut down by Reclamation.

I hope that this is helpful. If you have further questions, please contact me.

Thanks,  
Jerry

-----Original Message-----

From: Robin Mayer [mailto:rmayer@energy.state.ca.us]  
Sent: Thursday, January 07, 2010 12:42 PM  
To: gzimmerman@crb.ca.gov  
Subject: Genesis solar project question

Dear Gerry, I am staff counsel for the Energy Commission, working on the Genesis solar project. I just wanted to confirm your statement in our conference call on November 20 that pumping for that project (projected at 1644 afy) would likely result in dipping into CO River water over the life of the project (30 years) and perhaps trigger a shutdown of the project.

We are responding to an applicant motion requesting how the accounting surface's impact on the project will be considered, also about their determination of cumulative impacts.

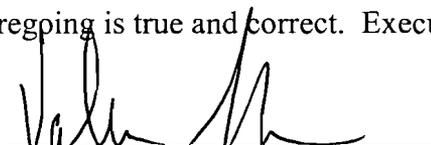
Thanks for your help. Best, Robin

Robin Mayer  
Staff Counsel  
California Energy Commission  
(o) (916) 651-2921  
(c) (415) 505-5908

PROOF OF SERVICE

I, Valerie Stevenson, declare that on September 20, 2010 I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY'S: (1) LETTER FROM RACHAEL E. KOSS TO COMMISSIONER BOYD, COMMISSIONER WEISENMILLER AND HEARING OFFICER CELLI RE: COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION FOR THE GENESIS SOLAR ENERGY PROJECT (09-AFC-8); (2) EMAIL LETTER FROM WILLIAM GREER OF THE BUREAU OF RECLAMATION TO WILLIAM BRUNINGA OF THE BUREAU OF RECLAMATION, DATED APRIL 9, 2010, WHICH DISCUSSES THE APPLICANT'S UNSUPPORTED CONCLUSIONS REGARDING THE GENESIS SOLAR ENERGY PROJECT'S USE OF COLORADO RIVER WATER; AND (3) EMAIL STRING FROM THE DESK OF STEVEN HVINDEN OF THE BUREAU OF RECLAMATION, WHICH PROVIDES A DISCUSSION OF THE APPLICABILITY OF THE UNITED STATES SUPREME COURT CONSOLIDATED DECREE ARIZONA V. CALIFORNIA 547 U.S. 150 TO THE GENESIS SOLAR ENERGY PROJECT.** 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 [www.energy.ca.gov/sitingcases/genesis](http://www.energy.ca.gov/sitingcases/genesis). These 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 electronically to all email addresses on the Proof of Service list and by either depositing in the U.S. Mail at South San Francisco, CA with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked "email preferred," via personal service or via overnight mail as indicated.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on September 20, 2010.



Valerie Stevenson

<p>CALIFORNIA ENERGY COMMISSION                  Attn: Docket No. 09-AFC-8                  1516 Ninth Street MS 4                  Sacramento, CA 95814-5512  <a href="mailto:docket@energy.state.ca.us">docket@energy.state.ca.us</a></p>	<p>Ryan O'Keefe, Vice President  <a href="mailto:Ryan.okeefe@nexteraenergy.com">Ryan.okeefe@nexteraenergy.com</a>  <b>EMAIL ONLY</b></p>	<p>Scott Busa/Project Director                  Meg Russell/Project Mgr                  Duane McCloud/Lead Engr                  NextEra Energy                  700 Universe Boulevard                  Juno Beach, FL 33408  <a href="mailto:Scott.bus@nexteraenergy.com">Scott.bus@nexteraenergy.com</a>  <a href="mailto:Meg.Russell@nexteraenergy.com">Meg.Russell@nexteraenergy.com</a>  <a href="mailto:Daune.mccloud@nexteraenergy.com">Daune.mccloud@nexteraenergy.com</a></p> <p>Matt Handel/Vice Pres.  <a href="mailto:Matt.Handel@nexteraenergy.com">Matt.Handel@nexteraenergy.com</a>  <b>VIA EMAIL ONLY</b></p> <p>Kenny Stein, Environmental                  Srvs Mgr  <a href="mailto:Kenneth.Stein@nexteraenergy.com">Kenneth.Stein@nexteraenergy.com</a>  <b>VIA EMAIL ONLY</b></p>
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