

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

rkoss@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

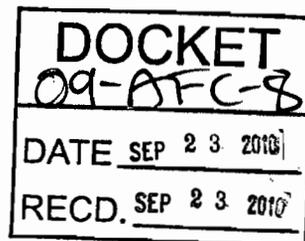
TEL: (916) 444-6201

FAX: (916) 444-6209

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
JASON W. HOLDER
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

September 23, 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: **CALIFORNIA UNIONS FOR RELIABLE ENERGY'S REPLY TO STAFF'S AND GENESIS SOLAR LLC'S RESPONSES TO COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION.** Please docket the original, conform the copy and return the copy in the envelope provided.

Thank you for your assistance.

Sincerely,

/s/

Rachael E. Koss

REK:cnh
Enclosure

STATE OF CALIFORNIA
California Energy Commission

In the Matter of:

The Application for Certification
for the GENESIS SOLAR ENERGY
PROJECT

Docket No. 09-AFC-8

**CALIFORNIA UNIONS FOR RELIABLE ENERGY'S
REPLY TO STAFF'S AND GENESIS SOLAR LLC'S RESPONSES TO
COMMENTS ON THE
PRESIDING MEMBER'S PROPOSED DECISION**

September 23, 2010

Rachael E. Koss
Tanya A. Gulesserian
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Voice
(650) 589-5062 Facsimile
rkoss@adamsbroadwell.com
tgulesserian@adamsbroadwell.com

Attorneys for the CALIFORNIA
UNIONS FOR RELIABLE ENERGY

California Unions for Reliable Energy (“CURE”) filed comments on, and recommended changes to, the Presiding Member’s Proposed Decision (“PMPD”) for the Genesis Solar Energy Project (“Project” or “Genesis Project”) on September 20, 2010. Today, Genesis Solar, LLC (“Applicant”) and Commission Staff filed responses to CURE’s comments. CURE writes to clarify inaccuracies in those responses.

I. CURE’S REPLY TO THE APPLICANT’S RESPONSES

First, the Applicant objects to CURE’s request that the Commission comply with the California Environmental Quality Act (“CEQA”) by responding to CURE’s comments on the PMPD. The Applicant appears to argue that because CURE is a party to the Energy Commission proceeding for the Project, the Commission need not respond to CURE’s comments pursuant to CEQA. The Applicant’s argument is absurd. As CURE explained in its comments on the PMPD, the Commission is not exempt from CEQA’s requirements to provide a 30-day public comment period on a draft environmental review document and to respond to comments. The Commission has not yet satisfied these requirements. CURE’s party status is irrelevant to the Commission’s CEQA obligations.

Second, the Applicant argues that the Commission should not respond to CURE’s comments because CURE’s comments do not raise any new issues and therefore CURE’s comments were already addressed during the proceeding. In fact, just the opposite occurred. CURE presented a considerable amount of evidence and briefing on several important issues that should have been considered by the Commission and included in the PMPD, but were not. For example, the majority of evidence in the record regarding the Project’s use of Colorado River water was not included in the PMPD and CURE’s explanation that *Arizona v. California* prohibits consumptive use of Colorado River water without an entitlement, which includes water withdrawn from the mainstream by underground pumping, was not addressed. Accordingly, CURE’s comments on the PMPD again described the overwhelming evidence that the Project would induce water from the Colorado River and explained that the Commission must find that *Arizona v. California* requires the Applicant to obtain an entitlement to use that water.

Similarly, the record contains extensive expert testimony by Staff and CURE regarding the Project’s impacts on human burials. Yet, the PMPD failed to refer to any of the evidence or mention human burials at all. Therefore, in our comments, CURE appropriately pointed out the PMPD’s deficiencies and urged the Commission to consider and respond to the evidence in the record.

Third, the Applicant raises a myriad of objections to CURE informing the Commission about the Bureau of Reclamation’s opinion on the factual and legal

issues presented in this proceeding.¹ The Applicant's objections are baseless. Pursuant to CEQA, "any alleged grounds for noncompliance with CEQA provisions may be raised by any person prior to the close of the public hearing on the project before the issuance of the notice of determination."² The emails attached to CURE's comments (which were submitted prior to any decision on the Project) are public records that were provided to CURE by the Bureau of Reclamation on September 2, 2010 in response to a Freedom of Information Act request. The records are directly applicable to the Project's entitlement to Colorado River water. Specifically, the records discuss the Applicant's unsupported conclusion that the Project would not require an entitlement to Colorado River and describe the applicability of the United States Supreme Court Consolidated Decree *Arizona v. California* 547 U.S. 150 to the Genesis Project. These documents are anything but "out of context" or "irrelevant."³ Certainly, the Commission should consider the opinion of the Bureau of Reclamation, the water master for the Colorado River.

Finally, the Applicant asserts that the Commission should assume that the Bureau of Land Management's ("BLM") conclusions in its FEIS - that all groundwater pumped by the Project would be considered Colorado River water and that the United States Supreme Court's Consolidated Decree *Arizona v. California* (2006) 547 U.S. 150 is applicable to the Project - are erroneous simply because the Applicant says so. The Commission should not base its decision on whether or not the Applicant is "confident" that the BLM will change its conclusions *after* release of its FEIS. Rather, the Commission should consider the record before it which shows that all groundwater pumped by the Project would be considered Colorado River water and that *Arizona v. California*, 547 U.S. 150 is applicable to the Project.

II. CURE'S REPLY TO STAFF'S RESPONSES

First, Staff misleadingly states that Staff "indicated that pumping groundwater within the CVGB and PVMGB could be considered withdrawing water from the Colorado River Aquifer, not the River." Tellingly, Staff failed to mention that it concluded the following:

- (1) proposed Project groundwater pumping would result in a significant impact to the Colorado River because "the reduction in outflow from the CVGB to the PVMGB" that results from Project groundwater use "will be made up at least in part by inflow from the Colorado River;"⁴ and

¹ Genesis Solar, LLC's Response to Parties Comments on the Presiding Member's Proposed Decision, pp. 6-7.

² *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1121.

³ Genesis Solar, LLC's Response to Parties Comments on the Presiding Member's Proposed Decision, p. 7.

⁴ Exh. 402, p. 31 (emphasis added).

(2) “all groundwater production at the site would be considered Colorado River water.”⁵

Second, Staff asserts that “detailed treatment of human remains is outlined in Staff’s Model Cultural Resources Monitoring and Mitigation Plan (CRMMP). For the Genesis project, preparation and implementation of the CRMMP is a requirement of **CUL-5**.”⁶ Staff’s assertion is baseless. There is no “Model CRMMP” in the record for this proceeding. Furthermore, CUL-5 does not mention human burials at all. Simply put, Staff and the Commission have not addressed the Project’s impacts on human burials.

Third, Staff agrees with CURE that the PMPD should clarify that Staff only analyzed the impacts of benzene “in the air”, but does not agree that the PMPD’s conclusion should be similarly corrected. If Staff only analyzed impacts from benzene “in the air” (in accordance with the record), then the PMPD cannot conclude that Staff did more. In other words, the Commission cannot conclude that Staff adequately analyzed impacts from benzene contained in HTF in soil or groundwater.

Thank you for your attention to these clarifications.

Dated: September 23, 2010

Respectfully submitted,

_____/s/_____
Rachael E. Koss
Tanya A. Gulesserian
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Voice
(650) 589-5062 Fax
rkoss@adamsbroadwell.com
tgulesserian@adamsbroadwell.com

Attorneys for the CALIFORNIA UNIONS
FOR RELIABLE ENERGY

⁵ Exh. 400, p. C.9-68 (emphasis added).

⁶ Staff’s Responses to Suggested Edits on the Presiding Member’s Proposed Decision, p. 2.

PROOF OF SERVICE

I, Valerie Stevenson, declare that on September 23, 2010 I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY’S REPLY TO STAFF’S AND GENESIS SOLAR LLC’S RESPONSES TO COMMENTS ON THE PRESIDING MEMBER’S PROPOSED DECISION**. 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. 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 23, 2010.

Valerie Stevenson

<p>CALIFORNIA ENERGY COMMISSION Attn: Docket No. 09-AFC-8 1516 Ninth Street MS 4 Sacramento, CA 95814-5512 docket@energy.state.ca.us</p>	<p>Ryan O’Keefe, Vice President Ryan.okeefe@nexteraenergy.com EMAIL ONLY</p>	<p>Scott Busa/Project Director Meg Russell/Project Mgr Duane McCloud/Lead Engr NextEra Energy 700 Universe Boulevard Juno Beach, FL 33408 Scott.busa@nexteraenergy.com Meg.Russell@nexteraenergy.com Daune.mccloud@nexteraenergy.com</p> <p>Matt Handel/Vice Pres. Matt.Handel@nexteraenergy.com VIA EMAIL ONLY</p> <p>Kenny Stein, Environmental Srvs Mgr Kenneth.Stein@nexteraenergy.com VIA EMAIL ONLY</p>
<p>Mike Pappalardo Permitting Manager 3368 Videra Drive Eugene, OR 97405 Mike.pappalardo@nexteraenergy.com</p>	<p>James Kimura, Project Engineer Worley Parsons 2330 East Bidwell St., #150 Folsom, CA 95630 James.Kimura@WorleyParsons.com</p>	<p>Tricia Bernhardt/Project Manager Tetra Tech, EC 143 Union Blvd, Suite 1010 Lakewood, CO 80228 Tricia.bernhardt@tteci.com</p>

<p>Kerry Hattevik, Director West Region Regulatory Affairs 829 Arlington Boulevard El Cerrito, CA 94530 Kerry.hattevik@nexteraenergy.com</p>	<p>Scott Galati/Marie Mills Galati & Blek, LLP 455 Capitol Mall, Suite 350 Sacramento, CA 95814 sgalati@gb-llp.com mmills@gb-llp.com</p>	<p>California ISO e-recipient@caiso.com VIA EMAIL ONLY</p>
--	---	--

<p>Allison Shaffer/Project Mgr. Bureau of Land Management Palm Springs South Coast Field Office 1201 Bird Center Drive Palm Springs, CA 92262 Allison_Shaffer@blm.gov</p>	<p>James D. Boyd Commissioner/Presiding Member California Energy Commission 1516 Ninth Street Sacramento, CA 95814 jboyd@energy.state.ca.us</p>	<p>Robert Weisenmiller Commissioner/Associate Member California Energy Commission 1516 Ninth Street Sacramento, CA 95814 rweisenm@energy.state.ca.us</p>
<p>Kenneth Celli, Hearing Officer California Energy Commission 1516 Ninth Street Sacramento, CA 95814 kcelli@energy.state.ca.us</p>	<p>Mike Monasmith Siting Project Manager California Energy Commission 1516 Ninth Street Sacramento, CA 95814 mmonasmi@energy.state.ca.us</p>	<p>Caryn Holmes, Staff Counsel California Energy Commission 1516 Ninth Street Sacramento, CA 95814 cholmes@energy.state.ca.us</p>
<p>Jared Babula, Staff Counsel California Energy Commission 1516 Ninth Street Sacramento, CA 95814 jbabula@energy.state.ca.us</p>	<p>Jennifer Jennings VIA EMAIL publicadviser@energy.state.ca.us</p>	<p>Tanya A. Gulesserian Marc D. Joseph Rachael E. Koss Adams Broadwell Joseph & Cardozo 601 Gateway Boulevard, Suite 1000 South San Francisco, CA 94080 tgulesserian@adamsbroadwell.com rkoss@adamsbroadwell.com</p>
<p>Michael E. Boyd, President Californians for Renewable Energy, Inc. (CARE) 5439 Soquel Drive Soquel, CA 95073-2659 michaelboyd@sbcglobal.net</p>	<p>Alfredo Figueroa 424 North Carlton Blythe, CA 92225 lacunadeaztlan@aol.com</p>	<p>Tom Budlong 3216 Mandeville Cyn Rd. Los Angeles, CA 90049-1016 tombudlong@roadrunner.com</p>
<p>Larry Silver VIA EMAIL ONLY larrysilver@celproject.net</p>	<p>Lisa T. Belenky, Sr. Attorney Center for Biological Diversity 351 California St. #600 San Francisco, CA 94104 lbelenky@biologicaldiversity.org</p>	<p>Ileene Anderson Public Lands Desert Director Center for Biological Diversity PMB 447, 8033 sunset Blvd. Los Angeles, CA ianderson@biologicaldiversity.org</p>
<p>Robin Mayer Staff Counsel California Energy Commission 1516 Ninth Street Sacramento, CA 95814-5512 rmayer@energy.state.ca.us</p>		