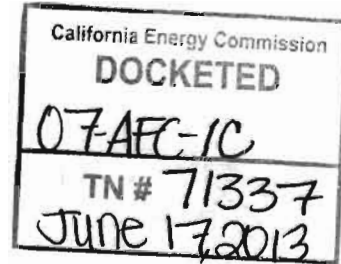


June 15, 2013

Mary Dyas
Compliance Project Manager
California Energy Commission
Dockets Unit, MS-4
Docket No. 07-AFC-1C
1516 Ninth Street
Sacramento, CA 95814-5512



Re: Request for revocation of certification and associated civil penalties for the Victorville 2 Power Plant Project

Dear Compliance Project Manager Dyas:

I respectfully request that the California Energy Commission revoke and apply associated civil penalties in accordance with section 25534(a) and (b) of the California Resources Code which states, "the commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:

- (1) Any material false statement set forth in the application, presented in proceedings of the commission, or included in supplemental documentation provided by the applicant.
- (2) Any significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision.
- (3) A violation of this division or any regulation or order issued by the commission under this division.

(b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty shall be imposed in accordance with Section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars. (\$50,000)"

The City of Victorville states in its petition for extension of the construction deadline, "The Project will continue to comply with all applicable Laws, Ordinances, Regulations and Standards (LORS)." Not True, the City of Victorville has a history of not complying with applicable Laws, Ordinances, Regulations and Standards (LORS) in the attempted development of Victorville 2.

FACTUAL BACKGROUND

My family members and I have owned a 5-acre parcel of land in the County of San Bernardino for over 50 years. (APN 0460-242-05) Our names are listed as owners with the San Bernardino County Assessor. None of us reside in San Bernardino County.

The City of Victorville, the Southern California Logistics Airport Authority, the City Council/Board Members and especially their Attorney's firm know that litigation is very expensive, time-consuming and stressful for property owners in eminent domain cases. The City of Victorville has a long-standing policy to negotiate with property owners prior to taking property by eminent domain.

City Attorney Andre de Bortnowsky is a partner in the law firm of Green, de Bortnowsky & Quintanilla, LLP and the firm advertises expertise in the Brown Act and Eminent Domain law.

Shortly after April 30, 2008, my brother Charles Landwehr received a notice of appraisal from Norris Realty Advisors, who were retained by Mr. de Bortnowsky's law firm that stated, "*Your property is located within this area and **may be** acquired for the project, however **no decision to acquire any property has yet been made.***"

Prior to this Norris Realty Advisors' letter, our family's last correspondence concerning our 5-acre SCLA parcel was from Inland Energy, Inc. on November 20, 2006. That letter from Inland Energy, Inc. referenced a prior Norris Realty Advisors appraisal of our property at **.23 per square foot or \$10,000 per acre** in January of 2006.

Shortly after June 24, 2008, my brother Charles received a voluntary purchase offer from Epic Land Solutions, Inc., hired by the City of Victorville. Included with this purchase offer of **1.20 per square foot or \$52,200 per acre** was for the first time information concerning our eminent domain rights. It stated, "*It is the policy of the CITY to acquire property that is in private ownership only when it is necessary to do so and through voluntary purchase if possible.*" The document also quoted section 1263.025 of the Code of Civil Procedure offering our family the opportunity to obtain an independent appraisal of our property at the City's expense.

The following week in the beginning of July, my brother Charles received a letter from Mr. de Bortnowsky's law firm informing him of a notice of intent to adopt a resolution of necessity

concerning our family's property. The letter stated, *"If you wish to appear and be heard, you must file a written request to do so within 10 days after this notice was mailed to you."* The letter was signed by Deputy City Attorney Joan Stevens Smyth.

I appeared at the July 15th, 2008 hearing. Prior to speaking to the Victorville City Council and Southern California Logistics Airport Authority Board (Terry Caldwell, Mike Rothschild, Rudy Cabriales, Bob Hunter, JoAnn Almond), I personally handed each Council/Board Member and City Attorney Andre de Bortnowsky, a 29-page packet that contained eminent domain laws, including section 1245.235(b) of the Code of Civil Procedure that mandates a written **"15-day"** notice for the resolution of necessity hearing. Also included were documents referenced above. I objected to the taking and gave testimony of material facts that were not true as written in the Resolution of Necessity as well as not true as stated by City Attorney Andre de Bortnowsky at the hearing. I also gave testimony of an allegation of misconduct involving Deputy City Attorney Heidi Von Tongeln involving my then 85-year old aunt, Frances Landwehr, and the strong-arm tactics used by the City and Bill Johns from Inland Energy, Inc. in the taking of her property in 2007. (APN 0460-242-004)

No one from Inland Energy, Inc. was present at the hearing. There were no maps, drawings, pictures, etc. about the project or information presented on how the project site for the Victorville 2 power plant was determined. The Resolution of Necessity only identified the project site as *"a Project site of approximately 250 acres of land."* City Manager Jon Roberts informed the Council *"All the necessary components, which are quite extensive in order to facilitate the construction of this plant, have been put in place. The final component would be the acquisition of the remaining portion of the property."* 34 properties were identified as remaining.

On July 16, 2008, the day following the passage of this sham resolution of necessity hearing – **and only 14 business days after my brother received the voluntary purchase offer**, the City of Victorville filed suit against our family and moved for the immediate taking of our property. On October 29, 2008, the court granted the City of Victorville possession of our property under a hardship claim in order for Victorville to obtain financing for the \$127 million GE contract debt so as to avoid a significant termination charge.

Our family has been steadfast against the taking and on **June 27, 2011**, the court granted our motion for the return of our family property.

A timeline of events uncovered during those three years of litigation:

- On March 11, 2005, the City of Victorville agreed to a multi-million dollar contract with Inland Energy, Inc. to develop the Victorville 2 hybrid power plant. The agreement included a unique and generous 5% on-going operating profit for Buck Johns' company. That contract was signed by Mayor Mike Rothschild in September of 2005.
- In January of 2006, Norris Realty Advisors prepared an appraisal report for Tom Barnett of Inland Energy, Inc. The appraisal was for 720.87 acres of land with a total value conclusion of \$6,489,300.00. Our family parcel was included in this appraisal report.
- In 2006, the City purchased 32 parcels of land toward the development of Victorville 2. Each purchase agreement was approved by a Deputy City Attorney from Mr. de Bortnowsky's law firm. In fiscal year 2005/2006 the City issued \$2,312,940.00 in SCLA bonds for the Victorville 2 project. The City also conducted a survey on our family's property for the desert tortoise without our knowledge or permission.
- On February 27, 2007, the City of Victorville pursuant to the provisions of Title 22, California Code of Regulation filed an Application for Certification (AFC) with the California Energy Commission (CEC). The application identified APN Parcel #'s 0460-242-004 & 0460-242-005 for land use of the Victorville 2 power plant. The AFC, filed on behalf of the City of Victorville, acknowledges the CEC as having jurisdiction on the licensing of Victorville 2. The application is signed under the penalty of perjury by City Manager Jon Roberts.

[Despite being property owners/stake holders of the proposed Victorville 2 power plant site, the Landwehrs were not on the CEC's mailing list nor did they individually receive personal notice as required by section 625(a)(1)(A) of the Public Utilities Code.]

- On April 18, 2007, the Victorville Daily Press reported that City Manager Jon Roberts received a 21+% raise bringing his an annual income to nearly \$295,000. Roberts reportedly agreed to stay on with Victorville until July of 2010.
- On July 23, 2007, the City of Victorville responded to the CEC concerning our 5-acre parcel stating, ***"For the remaining (approximately) 52 acres, the city has either been unable to locate the owners or the owners remain unwilling to sell at the reasonable terms the City is currently offering. The City is prepared to initiate condemnation proceeding early in 2008 against any needed property that has not been secured by then. The City's goal is to acquire such acreage by condemnation immediately following issuance of the certification by the CEC."***

[Following a statement that the public entity may take property by eminent domain triggers the property owner be given notice of an independent appraisal at the public entity's expense pursuant to Section 1263.025(b)(3) of the Code of Civil Procedure.]

- On September 18, 2007, the City of Victorville purchased the 5-acre Massey property (APN 0460-242-21) for \$375,000.
- On November 20, 2007, City Attorney de Bortnowsky announced that the City Council (Terry Caldwell, Rudy Cabriaes & Mike Rothschild) had taken action in closed session to authorize the acquisition of the GE power island.
[The item was not on the agenda in violation of the Brown Act, Government Code Sections 54950-54959]
- On November 26, 2007, SCLAA Secretary Carolee Bates submitted an agenda item for the SCLAA Meeting of December 4, 2007 to ratify Resolution No. SCLAA07-008 (GE Contract) which was adopted and reported out of the closed session on November 20, 2007. The document reflects **no** fiscal impact.
- On November 27, 2007, Tatiana Prophet from the *Victorville Daily Press* quoted Tom Barnett, executive vice president of Inland Energy, the City's consultant partner in the Victorville 2 project, *"We have the ability to cancel, and there are....termination fees. Because the equipment itself is so valuable, there's a long line of people who want this stuff, and the termination fees are relatively small."*
- On November 29, 2007, Yvonne Hestor, Director of Public Information for the City of Victorville wrote in a press release announcing the \$173 million GE contract, *"The contract is the culmination of more than 15 months of negotiations between Victorville and GE with City's consultant Inland Energy, and a team of experts playing a major advisory role."*
- On December 5, 2007, Mayor Terry Caldwell signed the GE contract.
- On December 18, 2007, Board Members Bob Hunter and JoAnn Almond ratified the GE contract.
- In 2007, the City purchased 10 parcels of land towards the development of Victorville 2 power plant. Each purchase agreement was approved by a Deputy City Attorney from

Mr. de Bortnowskys's law firm. In fiscal year 2006/2007 the City issued \$6,025.032.00 in SCLA bonds for the Victorville 2 power plant project.

- In April of 2008, the City of Victorville again conducted a survey for the desert tortoise on our family's property without our knowledge or permission.
- On May 8, 2008, City Attorney Andre de Bortnowsky presented a staff report for City Council's approval of a Limited Notice to Proceed (LNTP) with Kiewit Power Constructors Company, a Delaware Corporation. \$380,193,000 was the total price proposed by Kiewit Power Constructors for construction of Victorville 2. This first LNTP stated, "General Contractor shall complete all of the Preliminary Work by not later than July 1, 2008." And was for \$2 million. It was later updated to \$3 million. City Manager Jon Roberts was formerly employed by Kiewit Power Constructors Company.
- On June 17, 2008, Attorney Michael Carroll on behalf of the City of Victorville told the CEC, "We have a couple of holdouts. Other people that we cannot find. Or people that we have found that have not agreed to sell their property and so the City is proceeding with eminent domain proceedings to acquire these holdout parcels." **"But with the eminent domain law we are not allowed to proceed with the eminent domain until we have the decision in place."**

*[A public utility that offers competitive services may not condemn any property for the purpose of competing with another entity in the offering of those competitive services, unless the commission finds that such an action would serve the public interest, pursuant to a petition or complaint filed by the public utility, **personal notice of which has been served on the owners of the property to be condemned, and an adjudication hearing in accordance with Chapter 9 (commencing with Section 1701), including an opportunity for the public to participate. Section 625(a)(1)(A) of the Public Utilities Code]***

- Also on June 17, 2008, the City Council/Board Members approved Resolution No. R-08-007, which authorized the sale of SCLA land to Dr. Pepper/Snapple at **\$4.00 per square foot or \$174,240 per acre.**
- As of June 20, 2008 for fiscal year 2007/2008 the City issued \$52,816,079.00 in SCLA bonds for the Victorville 2 power plant project.

- Shortly after June 24, 2008, my brother Charles Landwehr received a voluntary purchase offer from Epic Land Solutions, Inc., hired by the City of Victorville. Included with the offer is information concerning property owner's eminent domain rights and the right to an independent appraisal paid by the City of Victorville.
- On July 1, 2008, Deputy City Attorney Joan Stevens Smyth mailed out the bogus 10-day notice letter for the resolution of necessity hearing.
- On July 7, 2008, City Attorney Andre de Bortnowsky submitted an agenda item to the City Council to approve Resolution No. 08-117 which states, "*Whereas, the City has made every reasonable effort to acquire the Properties by negotiation but has been unsuccessful.*" "*That offer has been rejected and despite every reasonable good faith effort, the City has been unable to acquire the Property by negotiation.*"

[Section 7267.1(a) Government Code states, "The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation."]

- On July 8, 2008, Deputy City Attorney Joan Stevens Smyth drafted the Landwehr eminent domain complaints and billed for her services.

[Section 7267.5 of the Government Code states, "In no event shall the public entity either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property."]

- On July 9, 2008, Deputy City Attorney Heidi Von Tongeln billed the City for reviewing an e-mail that I sent her. Deputy City Attorney Roger Rees also billed the City for the same. Rebecca E. Ellis billed the City for reviewing various correspondences she had received from Ms. Von Tongeln regarding this same e-mail.
- On July 15, 2008, Deputy City Attorney Roger Rees signed the Landwehr eminent domain complaint and motion for prejudgment possession in Calabasas, California.

In the evening, **the Sham Resolution of Necessity Hearing was held in Victorville.**

[Section 1245.235(a) of the Code of Civil Procedure establishes the requirement that public entities must give notice to persons whose property is sought to be acquired by eminent domain and afford them a reasonable opportunity to appear and be heard.]

In Redevelopment v. Norm's Slauson (1985) 173 Cal.App.3d1121 the court noted that by the time the hearing to determine the necessity for the proposed taking was held, the redevelopment agency by virtue of its contract with a developer and issuance of revenue bonds, irrevocably committed itself to take the subject property, regardless of any evidence that might be presented at the hearing. The court opined that the redevelopment agency's hearing was affected not by just gross abuse of discretion but by the prior elimination of any discretion whatsoever.

- On July 16, 2008, the City of Victorville filed suit against our family (CIVVS 804132).
- For July, 2008, City Attorney Andre de Bortnowsky's law firm billed fees and expenses for the Inland Energy Power Plant and Eminent Domain at \$134,160.04
- For August, 2008, City Attorney Andre de Bortnowsky's law firm billed fees and expenses for the Inland Energy Power Plant and Eminent Domain at \$94,971.22
- September 29, 2008, our family's first court appearance.

MR. LANDWEHR "...My family has a right at the hearing to be heard, and they weren't given the right as required by law.

THE COURT Well, actually, you went to the hearing and you were heard. But here's what we're going to do today. One, I am going to put this hearing over 30 days, and I expect something from the city more specifically as to the exigency than just the statement. And two, a statement of what the plans are for this property, and we'll address it again.

As for your family, if the city is going take this, whether it is now or later, for a power plant, they can do that.

MR. LANDWEHR I understand that.

THE COURT You need to get over the emotional attachment and move on the fight over how much.

MR. LANDWEHR I recognize that, your Honor. The only purpose, I think, here is we're getting steamrolled.

THE COURT Well –

MR. LANDWEHR If we were given proper notice, and we don't want to address that in this process, which I think is very important –

THE COURT Well, I'm solving your proper notice thing by giving you more time."

- For September, 2008, City Attorney Andre de Bortnowsky's law firm billed fees and expenses for the Inland Energy Power Plant and Eminent Domain at \$104,163.55
- On October 17, 2008, Employees from Kiewit Power Constructors had installed black silt screening throughout our property without our permission. This black silt screening was installed throughout the entire Victorville 2 project site. The installation of the screening was in violation of the Desert Tortoise Translocation Plan authorized by the CEC. Our family's property marker stakes were in place on this date. The miles of silt screening was later removed with the sandbag fill being left behind. (Photos available)
- On October 29, 2008 the Honorable Judge Larry Allen granted the City of Victorville possession of our family's property stating, *"Thank you, gentlemen. Court will grant the motion for possession. It appears the City needs to attain the property to acquire financing for the debt incurred in connection with the plant and avoid significant termination charge if it's a public purpose. I think that would be the same whether the City sells the power plant or not. So that will be the Court's ruling."*
- For October, 2008, City Attorney Andre de Bortnowsky's law firm billed fees and expenses for the Inland Energy Power Plant and Eminent Domain at \$113,504.85
- From July through October, 2008 City Attorney Andre de Bortnowsky's law firm also billed fees and expenses for the EB-5 Visa Program at \$52,390.27
- On November 1, 2008, an article was published in the Victorville Daily Press about a political action committee called "Progress Victorville" that spent roughly \$150,000 over the past two years promoting incumbents Rudy Cabriales, Bob Hunter and Mike Rothschild. The single largest donor was Inland Energy, Inc. Fundraising was held in August and October of 2008. Those fundraisers were organized by Terry Caldwell according to an invitation sent by Buck Johns from Inland Energy, Inc.

Also donating \$5,000 to Progress Victorville was Venable LLP, a Washington based law firm the city has used for its power projects and its EB-5 investor program. Venable's \$5,000 donation is the same amount the city pays the firm each month, according to the agenda wherein the attorney's contract was approved. Michael Carroll, the attorney for the Victorville 2 Power Project, also donated \$5,000.

- On December 11, 2008, I received a response to a Records Request from Finance Director John Sullivan that the City's payment to GE in the amount of \$122,615,844.00 pursuant to the GE contract was not paid by the due date of November 7, 2008.
- In 2008, the City of Victorville paid Tom Barnett \$346,250 for working an average of 29 hours per week.
- On April 1, 2010, our family filed a Motion for Summary Judgment.
- On April 22, 2010, Deputy City Attorney Joel Schackelford filed a Notice of Change in Statement of Valuation Data on our family's property. At the request of City Attorney Andre de Bortnowsky, Steve Norris from Norris Realty Advisors re-re-appraised our family's property and was able to determine on December 3, 2009 that the value of our family's property on July 17, 2008 was actually \$250,000.00 and not the \$261,000 deposited with the State Treasury Officer on the same date of July 17, 2008.
- On June 30, 2010, under the penalty of perjury, Deputy City Attorney Joan Stevens Smyth wrote, *"All of the Defendants' arguments contained in their Motion for Summary Judgment have been previously raised and argued by Defendants. All these arguments were adjudicated in the City's favor at the hearing on the Motion for Possession, and Defendants provide no evidence or undisputed material facts which support their position that was already defeated at the October 29, 2008 hearing where the City was granted possession of the Subject Property."*

Not true. Our second argument stated, "Eminent Domain Law requires that the local governing entity identify a 'project' with a public purpose before it undertakes to condemn private property. The project site must be described in the resolution of necessity, which is the fundamental predicate to the entire condemnation process [Section 1240.010 and 1240.030 of the Code of Civil Procedure; City of Stockton v. Marina Towers LLC (2009) 171 Cal.App.4th 93, 107, 88 Cal. Rptr. 3d 909]."

"A project site of approximately 250 acres of land" is too vague.

- On July 22, 2010, Deputy City Attorneys Joan Stevens Smyth and Nicholas Hermsen appeared at the Summary Judgment motion on behalf of the City of Victorville. Deputy City Attorney Nicholas Hermsen argued that the entire Victorville Project site was in the

Resolution of Necessity 08-117 stating, *“Our understanding was all of the acreage was there.”*

Not true but the court ruled in agreement with Deputy City Attorneys Smyth and Hermesen finding in part, *“The resolution of necessity specifically incorporates the exact legal descriptions of all of the requisite properties for the project.”*

- In August of 2010, the City of Victorville published a Request for Proposals for the Victorville Solar Array Project. Proposals were due September 1, 2010. The Solar Array Project incorporated the vast majority of the same footprint as the Victorville 2 power plant project absent our family parcel.
- Shortly after September 22, 2010 each of my family members and I received sets of interrogatories and demands for productions of documents from Deputy City Attorney Joan Stevens Smyth. The responses were due to Mr. de Bortnowsky’s law firm on October 18, 2010.
- On October 13, 2010, our family members began to receive a Notice of Abandonment filed by the City of Victorville.
- On June 27, 2011 the court returned our property. At the same hearing, Deputy City Attorney Randall Nakashima argued that our family’s attorney fee *“was too high and unreasonable on its face”* and should be stricken. Mr. Nakashima mistakenly believed the fee was at \$1,500.00 for the one day court appearance on September 29, 2008. Deputy City Attorney Roger Rees, who appeared on September 29, 2008 on behalf of the City, billed the City of Victorville \$1,599.00 for his work. Mr. Nakashima billed \$1,552.50 for his work on June 27, 2011.

Since 2006, the City of Victorville has purchased and/or condemned properties completely encircling our family’s parcel. Despite Senior Engineer John McGlade’s claim that a city-hired contractor had removed brush, trash, litter and refuse from the Victorville 2 project site – no such removal occurred except for hundreds of discarded vehicle tires that were collected by City staff. The area of now abandoned homes, cabins and open desert has become an unregulated commercial dump site whose debris fields are so large they can be readily seen from a Google satellite search of the area. The aerial photograph published in the RFP for the Victorville Solar Array Project was an outdated photograph of the area as it once looked prior to Victorville’s purchases and condemnations.

CONCLUSION

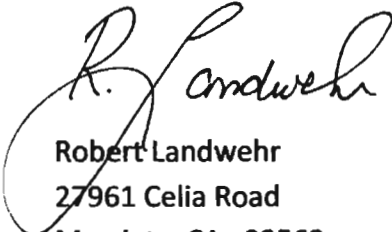
The City of Victorville, the Southern California Logistics Airport Authority, their Council/Board Members, their Attorney and their agents have acted in blatant disregard to the rule of law and ignored their own policies in the taking of our family property.

The deceptive behavior continues in their recent petition to extend the construction deadline. The City again fails to notice property owners. The City keeps the Project site map along with the list of affected property owners secret while at the same time implying that the Project is at a "build ready" state. The statement is made despite knowing that they have failed to obtain the necessary control of the required parcels within the Project site.

The above described history of violations establishes the requisite elements of both section 25534(a) and (b) of the California Resources Code. The City's repeated failure to honor property owners' due process rights combined with the City's arrogant denial of the facts warrant both revocation and the associated civil penalties.

I respectfully request the California Energy Commission to hold the City of Victorville accountable for their egregious behavior.

Sincerely,



Robert Landwehr
27961 Celia Road
Murrieta, CA 92563