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**DOCKET**

**08-AFC-13**

DATE MAY 27 2010

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May 27, 2010

California Energy Commission  
Attn: Docket No. 08-AFC-13  
1516 Ninth Street, MS-14  
Sacramento, California 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

[US Mail & E-mail]

Re: Docket No. 08-AFC-13, Application for Certification for the  
Calico Solar Project (Formerly SES Solar One)

Dear Docket Clerk:

Pursuant to the California Energy Commission's CEQA-equivalent process and the Bureau of Land Management's NEPA process to participate and consult in the scoping of the environmental analysis of the proposed Calico Solar Project, I hereby submit the second part of my comments on the Staff Assessment and Draft Environmental Impact Statement for the Calico Solar Project Application For Certification (08-AFC-13).

I certify under penalty of perjury that the statements contained in the following report are true, correct and complete to the best of my knowledge and belief.

Respectfully submitted,



Patrick C. Jackson, Intervenor

Enclosure

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

In the Matter of:

Application for Certification  
for the Calico Solar Project  
(Formerly SES Solar One)

Docket No. 08-AFC-13

**PATRICK C. JACKSON'S COMMENTS**  
**ON THE**  
**STAFF ASSESSMENT AND DRAFT ENVIRONMENTAL IMPACT STATEMENT**  
**FOR THE**  
**CALICO SOLAR PROJECT**  
**APPLICATION FOR CERTIFICATION (08-AFC-13)**  
**SAN BERNARDINO COUNTY**  
**PART 2**

May 27, 2010

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The Staff Assessment/Draft Environmental Impact Statement (SA/DEIS) for the Calico Solar (formerly SES Solar One) Project (08-AFC-13) is deficient in that the SA/DEIS does not comply with all applicable laws, ordinances, regulations and standards (LORS).

## I

The SA/DEIS is deficient in that it does contain sufficient information for the Presiding Member's Proposed Decision (PMPD) with respect to controlling population levels and land use development on adjacent privately owned lands.

Section 1752(d) of *Regulations Pertaining to the Rules of Practice and Procedure Power Plant Site Certification and Designation of Transmission Corridor Zones* (Title 20, California Code of Regulations) current as of July 2008 states, in pertinent part:

The presiding member's proposed decision shall contain the presiding member's recommendation on whether the application should be approved, and proposed findings and conclusions on each of the following: . . .

- (d) With respect to controlling population density in areas surrounding the proposed facilities, proposed findings on each of the following:
  - (1) Whether existing governmental land use restrictions are of a type necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facilities which will ensure the public health and safety; . . .
  - (3) Whether the commission should require as a condition of certification that the applicant acquire, by grant or contract, the right to prohibit development of privately owned lands in the area surrounding the facilities in order to control population densities and to protect health and safety.

The Project is adjacent to three sections of privately owned lands. "Although not part of the project, three adjacent tracts of private land are each surrounded on three sides by the proposed project."<sup>1</sup>

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<sup>1</sup> *Staff Assessment and Draft Environmental Impact Statement Calico Solar Project Application For Certification (08-AFC-13) San Bernardino County, (SA/DEIS) p. C.13-4.*

These tracts of land are Sections 1 and 13, Township 8 North, Range 5 East and Section 36, Township 9 North, Range 5 East.

The privately owned lands adjacent to the Project are under the jurisdiction of the County of San Bernardino (County) in a RC (Resource Conservation) zoning district.

The RC (Resource Conservation) land use zoning district provides for open space and recreational activities, single-family homes on very large parcels and similar and compatible use.<sup>2</sup>

Single-family dwellings are allowed in the RC zoning district with a minimum lot area of 40 acres.<sup>3</sup>

The County-governed land adjacent to the Project is of sufficient acreage and zoning to allow for a significant population.

The owners of the privately owned land adjacent to the Project have the right to develop their lands in accordance with the *County of San Bernardino 2007 Development Code* amended March 25, 2010 (County's Development Code).

Chapter 84.29 of the County's Development Code allows renewable energy generation facilities in the RC zoning district.

The proposed Project will have an impact on the public health and safety of the population, employees and visitors to the privately owned lands adjacent to the Project in terms of primary and emergency access; flood control; the Project's 34,000 SunCatchers and other permanent improvements and associated construction equipment. Of utmost importance is the Project's hydrogen supply system which "may cause partial demolition of houses and can result in serious injuries to any population present within the area of impact" reported to be 0.06 and 0.04 miles under offsite consequence Scenarios 2 and 3, respectively.<sup>4</sup> [Emphasis added]

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<sup>2</sup> *County of San Bernardino 2007 Development Code* amended March 25, 2010, p. 2-6.

<sup>3</sup> *Ibid.*, Table 82-4, p. 2-20.

<sup>4</sup> *Applicant's Supplement to the Calico Solar (formerly Solar One) Application for Certification, Application for Certification (08-AFC-13), May 2010*, pp. 2-44 - 2-50.

A hydrogen gas explosion could result in injuries to the population on the adjacent lands and those commuting through the Project to access the privately owned lands.

The existing land use restrictions on the privately owned lands are not “of the type necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facility which will insure the public health and safety.”<sup>5</sup>

The Presiding Member’s Proposed Decision must address proposed development of the adjacent privately owned lands.

## II

The SA/DEIS does not comply with Section 25528 of the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code Section 25000 et seq.) in that it does not provide sufficient information for the Commission to determine if the Applicant must acquire the development rights of the privately owned lands adjacent to the Project. Section 25528(a) of the Warren-Alquist Act (Act) states:

The commission shall require as a condition of certification of any site and related facility, that the applicant acquire, by grant or contract, the right to prohibit development of privately owned lands in the area of the proposed site which result in population densities in excess of the maximum population densities which the commission determines, as to the factors considered by the commission pursuant to Section 25511, are necessary to protect public health and safety.

The existing land use restrictions on the adjacent privately owned lands are such the commission can not “waive the requirements of the acquisition of development rights by the applicant.”<sup>6</sup>

The Applicant can not acquire the development rights of the adjacent privately owned lands without paying just compensation.<sup>7</sup>

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<sup>5</sup> California Code of Regulations (Title 20) and Warren-Alquist Act, § 25528(c).

<sup>6</sup> Ibid., § 25528(c).

<sup>7</sup> Ibid., § 25528(e).

III

The SA/DEIS does not comply with the National Environmental Policy Act (NEPA) in that it does not address the impact the Project will have on the sensitive, scenic, natural, scenic, ecological, cultural and biological resources of the adjacent privately owned lands, some of which the Applicant has acquired or intends to acquire for use in conjunction with the Project.

The Applicant currently owns 130.05 acres of privately owned lands adjacent to the Project. These parcels are:

**Table 1. Applicant's Privately Owned Lands.**

Assessor Parcel No.	Grant Deed Dated	Acres
0530-241-26-0000	September 4, 2008	10.00
0529-281-18-0000	November 18, 2008	80.05
0530-241-14-0000	March 11, 2010	40.00
Total		130.05

The Applicant's Supplement to the Calico Solar (formerly Solar One) Application for Certification (08-AFC-13) May 2010 (Applicant's Supplement) indicates the Applicant intends to acquire another 25 acres of privately owned lands. These parcels are:

**Table 2. Privately Owned Lands Under Contract**

Assessor Parcel No.	Owner/Seller	Acres
0529-281-28-0000	Kenneth & Shirley Deans	10.00
0529-281-34-0000	Kenneth & Shirley Deans	5.00
0529-281-23-0000	Ross John & Marilyn Gorgone	10.00
Total		25.00

The Applicant's Supplement indicates the Applicant has permission to conduct water well testing on a 40-acre privately owned parcel identified as assessor parcel number 0530-241-39-0000.

Of utmost importance, the SA/DEIS does not address the impact the Project will have on the endangered desert tortoises on the adjacent privately owned lands.

The SA/DEIS is deficient in that it does not determine the visual impact the Project will have on the adjacent privately owned lands. The SA/DEIS does not provide Key Observation Points (KOPs) from the privately owned lands.

To comply with NEPA, the SA/DEIS must be supplemented to address the impact the Project will have on the sensitive, scenic, natural, ecological, cultural and biological resources on all the adjacent privately owned lands.

#### IV

The SA/DEIS does not comply with the California Environmental Quality Act (CEQA) Guidelines (CCR 2006) in that it does not indicate if the Project:

. . . substantially depletes groundwater supplies or interferes substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support land uses or planned uses for which permits have been granted.<sup>8</sup>

The SA/DEIS indicates the Project's proposed water supply would be the Cadiz Burlington Northern Santa Fe (BNSF) well located approximately 64 miles from the Calico Solar Project site.

The Applicant's Supplement "describes a change in the primary water supply to groundwater from a well located adjacent to the Project site."<sup>9</sup>

The Applicant's Supplement states, "pumping of the well at the prescribed rates will have no significant impact to water levels in the area, as the ZOI is relatively small and will not affect wells that may be present in the basin that are approximately 10 miles away."<sup>10</sup> The Applicant's Supplement does not quantify "significant" or described if "pumping of the well" will deplete

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<sup>8</sup> SA/DEIS, p. C.7-3.

<sup>9</sup> Applicant's Supplement, p. 1-1.

<sup>10</sup> Applicant's Supplement, Appendix B, *Well Installation, Sampling and Aquifer Testing Calico Solar Project, San Bernardino County, California*, p. 6-1.

groundwater supplies or interfere with the groundwater recharge beneath the adjacent privately owned lands.

V

The SA/DEIS for the Calico Solar Project is deficient in that it does not comply with all applicable laws, ordinances, regulations and standards (LORS). The Supplemental Staff Assessment/Final Environmental Impact Statement (SSA/FEIS) must address the:

1. Presiding Member's Proposed Decision (PMPD) and the Warren-Alquist Act as they pertain to development and the health and safety of the population on the adjacent privately owned lands.
2. impact the Project will have on the sensitive, scenic, natural, ecological, cultural and biological resources of the adjacent privately owned lands.
3. impact the Project's water well(s) will have on groundwater supplies and groundwater recharge.

May 27, 2010

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Date



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Patrick C. Jackson



STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission

In the Matter of:

Application for Certification  
for the Calico Solar Project  
(Formerly SES Solar One)

Docket No. 08-AFC-13

**DECLARATION OF SERVICE**

I, **Patrick C. Jackson**, declare that on **May 27, 2010**, I served and filed copies of the attached **Patrick C. Jackson's Comments on the Staff Assessment and Draft Environmental Impact Statement for the Calico Solar Project Application For Certification (08-AFC-13) San Bernardino County Part 2**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent *Proof of Service* located on the web page for this project at:

<http://www.energy.ca.gov/sitingcases/calicosolar/>

The document has been sent to the Commission, as well as all parties in this proceeding as shown on the *Proof of Service*, in the following manner:

**FOR SERVICE TO THE APPLICANT AND ALL OTHER PARTIES:**

- XX sent electronically to all e-mail addresses on the Proof of Service list and  
XX by depositing in the United States mail at **San Dimas, California**, with first-class postage thereon fully prepaid and addressed as provided on the attached *Proof of Service* to the mailing addresses shown on the Proof of Service NOT marked "E-mail Service Preferred."

**AND**

**FOR FILING WITH THE ENERGY COMMISSION:**

- XX sending the original signed document and one electronic copy, mailed and e-mailed respectively, to the address below:

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. **08-AFC-13**  
1516 Ninth Street, MS-4  
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[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**I declare under penalty of perjury that the foregoing is true and correct.**

May 27, 2010

\_\_\_\_\_  
Date



\_\_\_\_\_  
Patrick C. Jackson



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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1516 NINTH STREET, SACRAMENTO, CA 95814  
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**APPLICATION FOR CERTIFICATION**  
*For the CALICO SOLAR (Formerly SES Solar One)*

**Docket No. 08-AFC-13**

**PROOF OF SERVICE**  
*(Revised 5/11/10)*

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