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DOCKET	
08-AFC-13	
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June 26, 2010

California Energy Commission
Attn: Docket No. 08-AFC-13
1516 Ninth Street, MS-14
Sacramento, California 95814-5512
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 am submitting my comments on the Bureau of Land Management's Draft Environmental Impact Statement for the Calico Solar Project.

I certify under penalty of perjury that all of the comments 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
DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE CALICO SOLAR PROJECT**

June 26, 2010

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INTRODUCTION

The Bureau of Land Management (BLM) and the California Energy Commission (CEC) docketed the Staff Assessment/Draft Environmental Impact Statement Calico Solar Project Application for Certification (08-AFC-13) on March 30, 2010.

The comment period for the Staff Assessment (SA) ended on June 4, 2010.

The comment period for the Draft Environmental Impact Statement (DEIS) ends on June 30, 2010. The following comments are timely as they are being docketed prior to June 30, 2010.

As currently proposed, the proposed Calico Solar Project will encompass 6,215 acres¹ of public lands managed by the BLM and an unspecified amount of private land to be used in conjunction with the Project.

The SA/DEIS must comply with NEPA requirements. The SA/DEIS states:

Because the proposed project is located on public lands managed by the BLM, [the] BLM is the lead federal agency for evaluating environmental impacts of the proposed right-of-way under the National Environmental Policy Act (NEPA). The DEIS is the BLM's environmental evaluation of the potential impacts that could result from the authorization of the requested right-of-way.²

The SA/DEIS further states:

The principal land use plan affecting this proposed project is the U.S. Bureau of Land Management's California Desert Conservation (CDCA) Plan of 1980, as amended. In the CDCA Plan, the location of the proposed Calico Solar Facility includes land that is classified as Multiple-Use Class L (Limited Use.) The Plan states that solar power facilities may be allowed within Limited Use area after NEPA requirements are met. This DEIS acts as the mechanism for complying with those NEPA requirements.³ [Emphasis added]

The following comments are relevant and material.

¹ Applicant's Alternative #2 Project Layout Total Project 6215 Acres, June 2, 2010.

² SA/DEIS, p. A-1.

³ SA/DEIS, p. A-5.

COMMENTS

I. The Draft Environmental Impact Statement (DEIS) for the Calico Solar Project (Project) does not comply with Section 1500.1 of the National Environmental Policy Act (NEPA) as the DEIS does not contain sufficient information on Hector Road, a designated open route under the CDCA, or indicate if Hector Road will be closed by the proposed Project.

1. Sec. 1500.1, Purpose of the National Environmental Policy Act, states:

- (a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.
- (b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.
- (c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose. [Emphasis added]

2. The analyses contained in the DEIS is to be:

. . . based upon information from the: 1) Application for Certification (AFC), 2) responses to data requests, 3) supplementary information from local, state, and federal agencies; interested organizations; and individuals, 4) existing documents and publications, 5) independent research, and 6) comments at workshops.⁴

⁴ SA/DEIS, p. A-2.

3. Hector Road is a designated open route under the West Mojave Plan amendment to the CDCA.⁵

4. The SA/DEIS states:

Currently, open Bureau of Land Management (BLM) routes traverse the project area. Those routes would be closed if any of the action alternatives or California Desert Conservation Area (CDCA) Plan amendments are approved.⁶

5. The DEIS does not state if Hector Road will be closed.

6. The closure of Hector Road and the other designated open routes that traverse the Project will have a significant environmental impact on the nearby privately owned lands.

7. The DEIS is deficient as it does not address the environmental impact of closing the designated open routes near the proposed Project.

II. The Draft Environmental Impact Statement (DEIS) for the Calico Solar Project does not comply with Section 102 [42 USC § 4332] of the National Environmental Policy Act (NEPA) which requires the BLM to comply with Section 552 of Title 5, United States Code (Freedom of Information Act (FOIA)), and the BLM is not complying with the FOIA.

8. Title 42, Chapter 55, § 4332(2)(C)(i) states, in pertinent part:

The Congress authorizes and directs that, to the fullest extent possible:

(2) all agencies of the Federal Government shall -

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of human environment, a detailed statement by the responsible official on -

(i) the environmental impact on the proposed action.

⁵ CDCA, West Mojave Plan, Map 55 - Hector, Sleeping Beauty, West Mojave Route Designation Program.

⁶ SA/DEIS, p. C.11-1.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes.⁷ [Emphasis added]

9. The Freedom of Information Act is codified at Section 552 of Title 5, United States Code.

10. In December 2009, I requested the BLM provide “all records the Bureau of Land Management has on Hector Road” under the Freedom of Information Act (FOIA).⁸

11. The records were requested under FOIA as the BLM refused to docket its response to my September 5, 2009 and October 25, 2009 letters regarding Hector Road as required by Section 1712(c) of Title 20, California Code of Regulations. I requested the BLM docket its responses⁹ and the BLM responded,

The BLM does not ‘docket’ responses to the public; however, these decisions are available to the public under FOIA. The BLM is a Federal agency and except under special circumstances as determined by the BLM, the California Code does not apply.”¹⁰

12. The BLM’s refusal to docket its response was arbitrary and capricious as:

- (a) I was an Intervenor at the time of the denial.
- (b) As a Party to the Application For Certification, the BLM is required to comply with Section 1712(c) of Title 20, California Code of Regulations.
- (c) The BLM is withholding records requested under FOIA.

13. Records on Hector Road are not protected from release under the nine BLM exemptions.¹¹

⁷ 42 USC § 4332.

⁸ Patrick C. Jackson December 13, 2009 letter to Rich Rotte/BLM.

⁹ Patrick C. Jackson November 7, 2009 e-mail to Jim Stobaugh and Rich Rotte.

¹⁰ Rich Rotte November 9, 2009 e-mail to Patrick C. Jackson.

¹¹ <http://www.blm.gov/ca/st/en/info/iac/foia.html>, accessed April 17, 2010.

14. In January, February and April 2010, the BLM provided various documents on Hector Road.^{12 13 14}
15. The BLM did not provide all the records it has on Hector Road and was notified of this fact in April, 2010.¹⁵
16. On May 3, 2010, William Quillman of the BLM notified me through my attorney the BLM was not going to provide the requested documents, confirming Roxie C. Trost's March 18, 2010 declaration the BLM considered the matter closed.^{16 17}
17. On May 5, 2010, I notified Jim Stobaugh, Rich Rotte, Alan Stein, Roxie C. Trost and William Quillman (BLM personnel involved in the AFC) I intended to file a FOIA appeal.¹⁸
18. On May 8, 2010, I filed a Freedom of Information Act Appeal with the FOIA Appeals Office, Department of the Interior, Office of the Solicitor.
19. The appeal is ongoing.
20. The DEIS does not meet NEPA requirements as the BLM is withholding relevant and material information on Hector Road requested under FOIA.
21. NEPA requires the BLM to provide information requested under FOIA.

Enacted in 1970, NEPA is a fundamental tool used to harmonize our economic, environmental, and social aspirations and is a cornerstone of our Nation's efforts to protect the environment. NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before acting. Additionally NEPA emphasizes public involvement in government actions affecting the environment by requiring that the benefits and risks

¹² Roxie C. Trost January 22, 2010 letter to Patrick C. Jackson with enclosures.
¹³ Roxie C. Trost February 24, 2010 letter to Patrick C. Jackson with enclosures.
¹⁴ Roxie C. Trost March 24, 2010 letter to Shawn R. Jackson with enclosures
¹⁵ Shawn R. Jackson April 22, 2010 e-mail to Roxie C. Trost with April 18, 2010 letter.
¹⁶ William Quillman May 3, 2010 e-mail to Shawn R. Jackson.
¹⁷ Roxie C. Trost March 18, 2010 e-mail to Shawn R. Jackson.
¹⁸ Patrick C. Jackson May 5, 2010 e-mail to BLM personnel involved with AFC.

associated with proposed actions be assessed and publicly disclosed.¹⁹ [Emphasis added]

22. The DEIS and FEIS will not comply with NEPA until the BLM provides records requested under the Freedom of Information Act.

III. The Draft Environmental Impact Statement (DEIS) for the Calico Solar Project does not comply with Section 102 of NEPA which requires the BLM to comply with the FOIA and the BLM is not complying with the FOIA.

23. In December 2009, I requested the BLM provide all records the Bureau of Land Management has on the following projects:²⁰

Project Number	Description	Geographic Location	Date Initiated
DOI-BLM-CA-680-2009-0003	Stirling Existing Water Well Quantity Testing CACA-50393	Hector Quad: T9N, R5E, Sec 32 SWNW SBBM	10/14/2008
CA-680-08-47	SES Solar One 1-2 Water Wells for Testing Depth/Quantity of Groundwater; CX: 516 DM 11.9 E(19)	T8N, R5E, Sec 10 & T8N, R6E, Sec 7, SBBM—Hector 7.5 Min USGS Quad	5/12/2008

24. Water well records are not protected from release under the nine BLM exemptions.²¹

25. The BLM did not acknowledge my December 2009 FOIA request and I requested the records a second time.²²

26. In April 2010, the BLM provided various water well documents.²³

¹⁹ Federal Register, Vol. 75, No. 35, February 23, 2010, p. 8046.

²⁰ Patrick C. Jackson December 13, 2009 letter to Rich Rotte/BLM.

²¹ <http://www.blm.gov/ca/st/en/info/iac/foia.html>, accessed April 17, 2010.

²² Patrick C. Jackson January 23, 2010 letter to Roxie C. Trost.

²³ Roxie C. Trost March 24, 2010 letter to Shawn R. Jackson with enclosures

27. The BLM did not provide all the records it has on the water well testing and water well sites and was notified of this fact in April, 2010.²⁴
28. On May 3, 2010, William Quillman of the BLM notified me through my attorney the BLM was not going to provide the requested documents confirming Roxie C. Trost's March 18, 2010 declaration the BLM considered the matter closed.^{25 26}
29. The existing water well in T9N, R5E, Section 32 is known as the Crows Nest Well.
30. Public access to records on the Crows Nest Well is relevant, material and necessary to determine the Project's environmental impact on underlying groundwater and the Lavic Valley Groundwater Basin.
31. Only the BLM and the Applicant have the records on the water well quantity testing performed on the Crows Nest Well.
32. I asked the Applicant to provide information of the water well quantity testing performed on the Crows Nest Well at the April 16, 2010, Energy Commission Staff Workshop on the Staff Assessment/ Draft Environmental Impact Statement for the Calico Solar Project.
33. On May 4, 2010, the Applicant docketed the Applicant's Submittal of Additional Information. The docketed letter states in pertinent part:
- Information on Crow's Nest Well:** The Applicant, as part of initial site assessments, did evaluate the Crow's Nest Well, however, it was found to be dry, possibly obstructed, and approximately 133 feet deep. The Applicant recorded photographs of the well and those are provided as Attachment C. [Emphasis in text]
34. The nearby private property owners have information and belief the Crows Nest Well was not "found to be dry." In part:

²⁴ Shawn R. Jackson April 22, 2010 e-mail to Roxie C. Trost with April 18, 2010 letter.
²⁵ William Quillman May 3, 2010 e-mail to Shawn R. Jackson.
²⁶ Roxie C. Trost March 18, 2010 e-mail to Shawn R. Jackson.

- (a) The Applicant's May 4, 2010 response contradicts the Applicant's 2009 response to Data Adequacy Request 49, which states, in pertinent part:

The two groundwater wells present within the immediate site vicinity include: one in the central portion of the site in an area of private land; and another (the 'Crow Nest Well') about 1.5 miles north of the westernmost point of the project. Both wells are shown in attachment WR-1. According to the BLM, the Crow Nest Well was approximately 170 feet deep and historically used to support the grazing of livestock. It was associated with two 4,500-gallon above ground water tanks (Personal communication with Rich Rotte, 2008). URS measured depth to water in this well to be about 130 feet and the total well depth to be approximately 138 feet.²⁷ [Emphasis added]

- (b) The Applicant April 2009 response to Data Adequacy Request 49 is almost identical to the Applicant's response to Data Request 69.²⁸

35. Information of water tests performed at the Crows Nest Well is relevant and material to determine existing groundwater conditions and the impact the proposed Project will have on groundwater, the Lavic Valley Groundwater Basin, and the Pisgah Fault, a designated Alquist-Priolo Earthquake Fault Zone which traverses the southern part of the Project.

36. The DEIS does not meet NEPA requirements as the BLM is withholding relevant and material records on water well tests requested under the Freedom of Information Act.

37. The DEIS and FEIS will not comply with NEPA until the BLM provides all records requested under the Freedom of Information Act.

IV. The DEIS does not comply with NEPA as the BLM's withholding of records prevents the public to be involved in the decision-making process.

38. The Council of Environmental Quality for NEPA:

. . . wants to develop more effective and accessible tools for citizen involvement

²⁷ *SES Solar One Supplemental Information In Response to CEC Data Adequacy Requests Application for Certification (08-AFC-13)* April 2009, Water-4.

²⁸ *SES Solar One, In Response to CEC and BLM data Requests 49-70, 74, 75, 80, 82-84, and 86-91, Application for Certification (08-AFC-13)* July 2009, p. WM-1.

in government decision-making. These actions are designed to provide carefully-tailored new assessment and reporting requirements, facilitate agency compliance with NEPA, and enhance the quality of public involvement in governmental decisions relating to the environment.²⁹ [Emphasis added]

V. The DEIS and FEIS will not comply with NEPA until the BLM provides records requested under FOIA and the records are circulated for public review and comment.

39. To date, the BLM has not provided relevant and material information in order for the DEIS to comply with NEPA. The Memorandum of Understanding Between the U.S. Department of Interior, Bureau of Land Management California Desert District and the California Energy Commission Staff Concerning Joint Environmental Review For Solar Thermal Power Plant Projects states, in pertinent part:

The assessments provided by the Parties must be sufficient to meet all federal and state requirements for NEPA and CEQA and shall be included as part of the joint Preliminary Staff Assessment/Draft Environmental Impact Statement and the joint Final Staff Assessment/Final Environmental Impact Statement.

40. The DEIS is deficient and must be revised to comply with NEPA and circulated for public review and comment.

41. I certify under penalty of perjury that all of the preceding comments are true, correct and complete to the best of my knowledge and belief.

June 26, 2010

Date



Patrick C. Jackson

²⁹ Federal Register, Vol. 75, No. 35, February 23, 2010, p. 8046.

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 **June 26, 2010**, I served and filed copies of the attached **Patrick C. Jackson's Comments on the Draft Environmental Impact Statement for the Calico Solar Project**. 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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I declare under penalty of perjury that the foregoing is true and correct.

June 26, 2010

Date



Patrick C. Jackson



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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APPLICATION FOR CERTIFICATION
For the CALICO SOLAR (Formerly SES Solar One)

Docket No. 08-AFC-13

PROOF OF SERVICE

(Revised 6/14/10)

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