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08-AFC-2

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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR
THE BEACON SOLAR ENERGY PROJECT**

DOCKET NO. 08-AFC-2

**BEACON SOLAR, LLC'S COMMENTS ON THE
PRESIDING MEMBER'S PROPOSED DECISION**

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BEACON SOLAR, LLC'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION

Beacon Solar, LLC (Beacon) appreciates the Committee's careful and diligent consideration of the Application for Certification (AFC) for the Beacon Solar Energy Project (BSEP or Project) and the evidence presented during the hearings in this proceeding. Beacon has reviewed the Presiding Member's Proposed Decision (PMPD) and presents these comments to the Committee and the California Energy Commission (Commission).

Beacon does not believe that its comments require the Committee to issue a revised PMPD.¹ Under the California Environmental Quality Act (CEQA) recirculation of an Environmental Impact Report (EIR) is only required when significant new information is added to the EIR.² New information is only considered to be significant new information when the EIR is "changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid" the effect is rejected by the project's proponents.³ CEQA regulations further define significant new information that requires recirculation to include:

- a new significant environmental impact that would result from a new mitigation measure,
- a substantial increase in the severity of an environmental impact would result unless new mitigation is adopted,
- a feasible alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project is rejected, or
- an EIR is fundamentally and basically inadequate and conclusory in nature such that meaningful public review and comment were precluded.⁴

Information that amplifies, clarifies or makes an insignificant modification in an adequate EIR does not require recirculation.⁵ Beacon believes the comments provided below serve only to

¹ Title 20 Cal. Code of Regs. §1753 allows the Committee to prepare and present a revised PMPD at their discretion.

² Cal. Publ. Res. Code §21092.1.

³ Title 14 Cal. Code of Regs. §15088.5.

⁴ *Id.*

⁵ *Id.*

correct minor factual errors, amplify the discussion or make insignificant modifications to conditions of certification.

I. SUGGESTED REVISIONS TO PMPD

Page 11

The last sentence in the first paragraph indicates that the Project will draw water from a “lower aquifer”. There were no data provided in the AFC or Final Staff Assessment (FSA) to suggest any segregation of the aquifer system in the Koehn Sub-basin. Therefore, the sentence should be revised as follows:

The wells draw water from the regionala-lower aquifer at a depth of approximately 600 feet below ground surface.

PAGE 13

Item 10 *Hazardous Waste Management* includes a statement at the end that the Applicant will have an approved Risk Management Plan in place to deal with the use and handling of hazardous waste. The Project is not required to have an RMP, and further an RMP does not deal with the handling of hazardous “wastes”. The statement should instead refer to a Hazardous Materials Business Plan and Spill Prevention Control and Countermeasure Plan (see pages 180-181 of the PMPD), which are required for the Project, and will be in place to deal with problems associated with the handling of HTF and other hazardous materials, as well as HTF-contaminated wastes.

10. Hazardous Waste Management

Several methods will be used to properly manage and dispose of hazardous wastes. Waste lubricating oil will be recovered and recycled by a waste oil recycling contractor. Chemicals will be stored in appropriate chemical storage facilities. Bulk chemicals will be stored in large storage tanks, while most other chemicals will be stored in smaller returnable delivery containers. All chemical storage areas will be designed to contain leaks and spills in concrete containment areas. The Applicant will have an approved Risk Management Plan Hazardous Materials Business Plan and Spill Prevention Control and Countermeasure Plan in place to deal with any potential problems related to the use and handling of hazardous waste.

PAGE 61

The verification to condition of certification STRUC-3 is not clearly set apart from the condition itself. Beacon proposes the following revision:

STRUC-3 The project owner shall submit to the CBO design changes to the final plans required by the 2007 CBC, including the revised drawings, specifications, calculations, and a complete description of, and supporting rationale for, the proposed changes, and shall give to the CBO prior notice of the intended filing (2007 CBC, Appendix Chapter 1, § 106.1, Submittal Documents; § 106.4, Amended Construction Documents; 2007 California Administrative Code, § 4-215, Changes in Approved Drawings and Specifications).

Verification: On a schedule suitable to the CBO, the project owner shall notify the CBO of the intended filing of design changes and shall submit the required number of sets of revised drawings and the required number of copies of the other abovementioned documents to the CBO, with a copy of the transmittal letter to the CPM. The project owner shall notify the CPM, via the monthly compliance report, when the CBO has approved the revised plans.

PAGE 84

To correct an erroneous date, Beacon proposes the following revision:

CURE also seeks to modify Condition of Certification **TSE-5** to ensure that the interconnection agreement allows for delivery of the full 250 MW of Beacon generation at all times when the Owens Gorge - Rinaldi line and Barren Ridge switching stations are in service under N-O conditions. (CURE Opening Brief pp. 97, 101.) Here, again, CURE's evidence responds to its expert's belief that the BSEP would be in operation in 2011 but the BR RTP would not be operational until 2013. (Ex. 616, p. 2; 3/22/10 RT 206:12-18 referring to Ex. 638.) However, since BSEP will take 25 months to complete and the certification hearing on the project will not even occur until late summer or fall of ~~2011~~2010, we again find that such a condition is unnecessary for mootness. Therefore, we find that CURE has not proven that such a modification is necessary.

PAGE 103

Item 3 indicates that construction will last about 24 months. The BSEP construction is expected to last about 25 months.

. . . Construction of the proposed project would last about ~~24~~25 months.

PAGE 106

At the top of the page, it is indicated that the Project will emit over 48,000 metric tonnes of CO₂-equivalent emissions. This number should be 4,800 tonnes (see **Greenhouse Gas Table 3** on the preceding page, total emissions estimated at 4,832.8 tonnes).

The proposed project would be permitted, on an annual basis, to emit over ~~48,000~~4,800 metric tonnes of CO₂-equivalent per year if operated at its maximum permitted level.

PAGE 114

Conclusion number 4 references “USEGS”. This conclusion should state: “

4. The SB 1368 EPS does not apply to ~~USEGS~~BSEP, but if it did BSEP GHG emissions will meet or exceed it.

PAGE 143

Condition **AQ-28** contains a typo, “long” leaks should be “log” leaks.

- AQ-28 The project owner shall establish an inspection and maintenance program to determine, repair, and ~~long~~log leaks in HTF piping network and expansion tanks. Inspection and maintenance program and documentation shall be available to District staff upon request. (Rule 210.1 BACT Requirements)

PAGE 175

Beacon has been working diligently with Kern County to arrive at a reasonable impact fee to compensate Kern County for impacts to public services caused by the project. The payment of this impact fee is required by condition of certification **WORKER SAFETY-8**. This condition as written in the PMPD does not reflect the final language as agreed upon by Beacon and Kern County, as documented in a July 2, 2010 letter from Kern County to Ken Celli (docket number 57446) and as reflected in the text on page 170 of the PMPD. Beacon therefore proposes to

revise condition of certification WORKER SAFETY-8 as follows to reflect the final language approved by the Kern County Board of Supervisors:

~~**WORKER SAFETY-8** Subject to a superseding agreement between the project owner and Kern County, the project owner shall fund its share of the ongoing capital and operational costs by making an annual payment of \$400,000 to Kern County for the support of the fire department's needs for capital, operations and maintenance commencing with the date of start of site mobilization and continuing annually thereafter on the anniversary until the final date of power plant decommissioning.~~

~~**Verification:** At least sixty (30) days prior to the start of site mobilization, the project owner shall provide to the CPM, documentation that the first annual payment of \$400,000 has been paid to the KCFD, and shall also provide a statement in the Annual Compliance Report that subsequent annual payments have been made. Otherwise, the project owner shall provide to the CPM a fully executed contract between the project owner and Kern County specifying different terms for funding capital and operational costs for these emergency services.~~

~~**WORKER SAFETY-8** The project owner shall make an annual payment to Kern County for the support of fire, sheriff patrol and investigation, County-wide public protection based upon the following fee schedule:~~

- ~~A. Twenty –five percent (25%) of the monetary factors (\$579.90 per 1,000 square feet) calculated in the Draft Public Facilities Fee Study (written May 18, 2009) associated with fire, sheriff patrol and investigation and countywide public protection services
A = \$144.90/100 square feet.~~
- ~~B. The area of land (per 1,000 square feet) directly underneath the solar collectors assemblies (assumed as horizontal) installed by April 30 of each calendar year.~~
- ~~C. 30-year Project Term~~

~~Calculation of the fee schedule shall be as defined as follows: **A***
B/C~~

The fee schedule shall remain fixed for the life of the project for a maximum total at build-out of \$258,074 per year. The amount will not be adjusted per year for inflation nor will any administrative fee apply.

Verification: During project construction the project owner shall provide to the CPM documentation in the May monthly compliance report showing the total number of square feet directly underneath installed collector assemblies (assumed as horizontal) as of April 30. The calculation of the fee amount due is based upon the formula in WORKER SAFETY-8 that has been paid to the Kern County Auditor-Controller for deposit in the identified account created to be used in the future for fire, sheriff and countywide public protection. Payment shall be remitted to the Kern County Auditor-Controller, with a copy of the transmittal to the Kern County Administrative Office, by April 30 of each calendar year that the BSEP remains in operation. The project owner shall provide to the CPM a statement in the Annual Compliance Report that subsequent annual payments have been made.

PAGE 184

The PMPD erroneously refers to natural gas on the project site. Because the project will use propane instead of natural gas, Beacon proposes the following revision:

FINDINGS OF FACT

Based on the uncontroverted evidence of record, the Commission makes the following findings and conclusions:

1. The Beacon Solar Energy Project will use hazardous materials during construction and operation, including propane and Therminol VP1.
2. The major public health and safety dangers associated with these hazardous materials include the accidental release of Therminol VP1 as well as fire and explosion from ~~natural gas~~ propane.
3. The risk of fire and explosion from propane will be reduced to insignificant levels through adherence to applicable codes and the implementation of effective safety management practices.
4. The project owner will submit an approved Safety Management Plan for handling propane and an approved Hazardous Materials Business Plan prior to delivery of any hazardous materials to the site.

5. Therminol is highly flammable and fires have occurred at other solar generating stations that use it.
6. The placement of additional isolation valves in the HTF pipe loops throughout the solar array will add significantly to the safety and operational integrity of the entire system by allowing a loop to be closed if a leak develops in a ball joint, flex-hose, or pipe.
7. Condition of Certification HAZ-7 requires the installation of a sufficient number of isolation valves that can be activated either manually or remotely.
8. Isolation valves will substantially reduce and mitigate HTF spills.
9. The containment, berming, and secondary containment of the existing design of the BSEP is sufficient to safeguard against off-site migration of hazardous materials.
10. The potential for accidents resulting in the release of hazardous materials is greatly reduced by the implementation of a Safety Management Program as required by Condition of Certification HAZ-3.

PAGES 186-188

Beacon proposes the following changes to HAZ-5 based on the final language agreed upon by Beacon and Staff, as documented in Staff's prehearing conference statement:

HAZ-5 The project owner shall prepare a site-specific Security Plan for the operational phase and shall be made available to the CPM for review and approval. The project owner shall implement site security measures addressing physical site security and hazardous materials storage. The level of security to be implemented shall not be less than that described below (as per NERC 2002).

The Operation Security Plan shall include the following:

1. Permanent full perimeter fence or wall, at least eight feet high around the Power Block and Solar Field;
2. Main entrance security gate, either hand operable or motorized;
3. Evacuation procedures;

4. Protocol for contacting law enforcement and the CPM in the event of suspicious activity or emergency;
5. Written standard procedures for employees, contractors and vendors when encountering suspicious objects or packages on-site or off-site;
6.
 - a. A statement (refer to sample, attachment "A") signed by the project owner certifying that background investigations have been conducted on all project personnel. Background investigations shall be restricted to ascertain the accuracy of employee identity and employment history, and shall be conducted in accordance with state and federal law regarding security and privacy;
 - b. A statement(s) (refer to sample, attachment "B") signed by the contractor or authorized representative(s) for any permanent contractors or other technical contractors (as determined by the CPM after consultation with the project owner) that are present at any time on the site to repair, maintain, investigate, or conduct any other technical duties involving critical components (as determined by the CPM after consultation with the project owner) certifying that background investigations have been conducted on contractor personnel that visit the project site.
7. Site access controls for employees, contractors, vendors, and visitors;
8. a statement(s) (refer to sample, **Attachment C**), signed by the owners or authorized representative of ~~hazardous materials transport~~ Liquefied Petroleum Gas (propane) vendors, certifying that they have prepared and implemented security plans in compliance with 49 CFR 172.802, and that they have conducted employee background investigations in accordance with 49 CFR Part 1572, subparts A and B;
9. Closed Circuit TV (CCTV) monitoring system, recordable, and viewable in the power plant control room and security station (if separate from the control room) capable of viewing, at a minimum, the main entrance gate; and the LPG storage tanks, and

10. Additional measures to ensure adequate perimeter security consisting of either:
- a. Security guard present 24 hours per day, seven days per week,
OR
 - b. Power plant personnel on-site 24 hours per day, seven days per week and **all one** of the following:
 - i) The CCTV monitoring system required in number 9 above shall include cameras that are able to pan, tilt, and zoom (PTZ), have low-light capability, are recordable, and are able to view 100% of the perimeter fence, the outside entrance to the control room, and the front gate from a monitor in the power plant control room; **AND OR**
 - ii) Perimeter breach detectors **or** on-site motion detectors.

The project owner shall fully implement the security plans and obtain CPM approval of any substantive modifications to the security plans. The CPM may authorize modifications to these measures, or may require additional measures, such as protective barriers for critical power plant components (e.g., transformers, gas lines, compressors, etc.) depending on circumstances unique to the facility or in response to industry-related standards, security concerns, or additional guidance provided by the U.S. Department of Homeland Security, the U.S. Department of Energy, or the North American Electrical Reliability Council, after consultation with appropriate law enforcement agencies and the applicant.

Verification: At least 30 days prior to the initial receipt of hazardous materials onsite, the project owner shall notify the CPM that a site-specific Operations Site Security Plan is available for review and approval. In the Annual Compliance Report, the project owner shall include a statement that all current project employee and appropriate contractor background investigations have been performed, and updated certification statements are appended to the Operations Security Plan. In the Annual Compliance Report, the project owner shall include a statement that the Operations Security Plan includes all current hazardous materials transport vendor certifications for security plans and employee background investigations.

PAGE 191

Appendix A to the Hazardous Materials Management section includes a comprehensive list of hazardous materials proposed for use by the Project. As noted in Beacon’s November 12, 2009 comments on Hazardous Materials Management, this list does not include hydraulic fluid, which will be present at the Project site. (See PMPD at 207; see also AFC Table 5.6-3.) Beacon proposes to add the following row to the table in Appendix A to note the presence of hydraulic fluid at the Project site:

Hazardous Material	Relative Toxicity and Hazard Class	Permissible Exposure Limit	Storage Description; Capacity	Storage Practices and Special Handling Precautions
<u>Hydraulic Fluid</u>	<u>Low to moderate toxicity; Hazard class – Class IIIB combustible fluid</u>	<u>TWA (oil mist); 5 mg/m³</u> <u>STEL: 10 mg/m³</u>	<u>Carbon steel tanks and sumps; 500 gallons in equipment, maintenance inventory of 110 gallons in 55-gallon steel drums</u>	<u>Found only in equipment with a small maintenance inventory. Maintenance inventory stored within secondary containment.</u>

PAGE 203

NextEra Energy Resources purchased the Solar Electric Generating Systems (SEGS) III through IX out of bankruptcy proceedings beginning in the 1990s. Therefore, the PMPD should be modified to read as follows:

The record shows that BSEP is owned by NextEra Energy Resources which ~~has~~ began operating the Luz Solar Electricity Generating System stations (SEGS) III through IX in San Bernardino County since 1989 VIII and IX in 1998 and SEGS III-VII in 2005.

PAGES 205-206

In order to ensure a complete record, Beacon suggests including a response to CURE’s concerns about groundwater monitoring at the land treatment unit. Beacon suggests the following addition:

The record establishes that spills of HTF at BSEP must be cleaned up at the point of origin within 48 hours, and the contaminated soil will be placed on plastic in the staging area of the LTU and covered with plastic sheeting. Samples of

excavated HTF contaminated soil will be collected in accordance with the United States Environmental Protection Agency's (USEPA) current version of the manual "Test Methods for Evaluating Solid Waste." The waste material will be characterized in accordance with State and Federal requirements and the results will be submitted to DTSC for a determination of the appropriate disposal method based on whether the waste is considered hazardous or non-hazardous. HTF contaminated soil will remain in the LTU staging area until the impacted soils are properly characterized using modified USEPA Method 8015. The method reports the concentration of purgeable and extractable hydrocarbons, such as gasoline and diesel range organics. Soil characterized as hazardous waste must be transported from the site by a licensed hazardous waste hauler for disposal at a Class I landfill. Soils characterized as non-hazardous will remain and be treated in the LTU. The project owner may petition DTSC, as described above, to eliminate the need for case by case determinations once a history of discharges has been established. (Ex. 203, pp. 8, 60, and Figure 7; Ex. 500, p. 4.13-10; 3/2210 RT 473:5-474:13.)

CURE argued in its testimony that the Project's analysis lacks adequate plans for groundwater monitoring at the Land Treatment Unit and at the evaporation ponds. (Ex. 625.) The Soil and Water Resources section of this Decision includes an entire appendix detailing the groundwater monitoring program for the three surface impoundments and the Land Treatment Unit (LTU). (See Soil and Water Resources Appendix H.) This appendix includes measures to ensure the HTF does not migrate past the five-foot vertical treatment zone underlying the LTU.

As we found in the **Hazardous Materials** section of this Decision, the record contains considerable evidence that HTF transfer technology has substantially evolved and improved over the last twenty years. (3/22/10 RT 459:20-461:13; 462:7-463:1). BSEP will benefit from these improvements and will pose a lesser risk of HTF spills than the SEGS facility based upon the Applicant's experience there. We are satisfied that all of the issues raised by CURE in its brief are adequately addressed in the record. Further, we find that the testing, handling, reporting and disposal of HTF, as described in the record and Conditions of Certification, dispel the need for the additional Conditions proposed by CURE. (CURE Opening Brief, p. 95.)

The record indicates that the treatment and disposal methods comply with the Requirements of Waste Discharge established by the Lahontan Regional Water Quality Control Board (LRWQCB) and presented in **Soil and Water Resources Appendices E, F, and H**. Condition of Certification **WASTE-7** addresses the Requirements of Waste Discharge and requires the

applicant to comply with the requirements for accidental discharges of HTF and ensures that hazardous concentrations of contaminated HTF-soil will not be treated in the LTU. (Ex. 500, p. 4.13-11). With the implementation of Condition of Certification **WASTE-7** we find there will be no significant impacts due to HTF spills during project operation.

PAGE 225

Although this section of the PMPD is talking about the desert tortoise, the 115 acres is intended to compensate for incidental take of and habitat impacts to both desert tortoise and Mohave ground squirrel, as described in BIO-11. (“To fully mitigate for habitat loss and potential take of desert tortoise and Mohave ground squirrel, the project owner shall acquire, in fee or in easement, no less than 115 acres of land suitable for these species and shall provide for the enhancement and long-term management of these compensation lands”). Therefore, for clarity, the second sentence of the first full paragraph should be revised as follows:

The Applicant will acquire and enhance 115 acres to compensate for the potential take of desert tortoises on the plant site and for impacts to 5.0 acres of Mojave creosote bush scrub. Fifteen of the 115 acres of compensatory mitigation is based on CDFG’s recommended 3:1 mitigation for impacts to desert tortoise and Mohave ground squirrel habitat.

PAGE 236

This page contains an error with regard to the timing of the preconstruction floristic surveys. Beacon proposes to remove the reference to year 2010 as follows:

Staff testified that potential impacts to native plant communities and drainages would be avoided or minimized through implementation of Conditions of Certification BIO-8, BIO-20 and BIO-21. These conditions include measures to establish and protect Joshua trees and drainages as Environmentally Sensitive Areas, recommendations to enhance revegetation success and measures to avoid spread of noxious weeds. Implementation of Condition of Certification BIO-18 and Soil&Water-5 would minimize impacts to water quality during construction within ephemeral drainages. No state- or federal-listed plant species will be affected by pipeline construction. Other special-status plant species are unlikely to occur within the construction footprint because construction is confined largely to the road or road shoulder and heavily disturbed areas. Preconstruction floristic surveys were required in spring ~~2010~~ in accordance with guidelines described in Condition of Certification BIO-20 to determine whether special-status plants occur within areas that might be directly or indirectly impacted by pipeline construction. In the unlikely event that special-status plant

species are detected during surveys, direct and indirect impacts to such occurrences will be avoided with the mitigation measures described in Conditions of Certification BIO-8, BIO-20 and BIO-21 including revegetation and weed abatement, thereby reducing potential construction impacts of the pipeline below significance. (Ex. 500, pp. 4.2-162 through 163.)

PAGE 246

In its discussion of cumulative biological impacts, the PMPD claims that “over the years the disturbed vegetation on the site will have continued to recover from historical disturbances and will eventually provide improved habitat for these species. The BSEP will prevent recovery of these disturbed agricultural lands and will contribute to fragmentation of native plant communities in the project area.” (PMPD at 246.) Beacon objects to this language because it is speculative and inconsistent with CEQA principles.

First, Beacon disagrees with the conclusion that the Project is somehow preventing recovery of habitat for special-status species. The entire Project site has been heavily disturbed in the past, and is mostly barren due to its previous use for agricultural purposes until as late as the mid-1980s. (Ex. 500 at 4.3-4.) Given that agricultural activities could resume at the Project site at any time, it is unrealistic to assume that the Project site will remain undeveloped in the absence of the Project. Moreover, the Beacon project has assumed, with Staff concurrence, that all project impacts to desert areas are permanent given the uncertainty and long timeframe associated with potential reestablishment of native vegetation in the desert following disturbance. The conclusion that the disturbed vegetation on the site would recover over time, absent the project, for purposes of the cumulative impacts analysis is inconsistent with that approach.

Second, even if it were true that the site will continue to recover in the absence of the Project, this information is irrelevant and inconsistent with CEQA principles. CEQA provides that “[a]n EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced.” (14 C.C.R. § 15125[a] [emphasis added].) Similarly, the Commission’s regulations require “a discussion of the existing site conditions....” (Appendix B to Article 1 of Chapter 5 of Title 20 of the California Code of Regulations at section [g][1] [emphasis added].) Therefore, whether or not the disturbed vegetation on the Project site will eventually provide habitat for certain species is irrelevant.

Beacon therefore requests the paragraph on page 246 to be revised as follows:

The BSEP plant site is highly disturbed by past agricultural activities and currently supports marginal wildlife habitat, with little potential to support resident populations of sensitive species such as desert tortoise and Mohave ground squirrel. However, transient individuals could occur in the vegetated portions of the site, and resident populations inhabit the area west of SR-14 where transmission line construction will occur. ~~Furthermore, over the years the disturbed vegetation on the site will have continued to recover from historical disturbances and will eventually provide improved habitat for these species. The BSEP will prevent recovery of these disturbed agricultural lands and will contribute to fragmentation of native plant communities in the project area.~~ BSEP may also contribute to the cumulative increase in ravens in the area, increasing predation pressures on desert tortoise. (Ex. 500, p. 4.2-45.)

PAGE 278-279

Condition of Certification BIO-14 is missing its verification language. Beacon proposes to add the verification as written in the Final Staff Assessment (FSA):

EVAPORATION POND NETTING AND MONITORING

BIO-14 The project owner shall cover the evaporation ponds prior to any discharge with 1.5-inch mesh netting designed to exclude birds and other wildlife from drinking or landing on the water of the ponds. Netting with mesh sizes other than 1.5-inches may be installed if approved by the CPM in consultation with CDFG and USFWS. The netted ponds shall be monitored regularly to verify that the netting remains intact, is fulfilling its function in excluding birds and other wildlife from the ponds, and does not pose an entanglement threat to birds and other wildlife. The ponds shall include a visual deterrent in addition to the netting, and the pond shall be designed such that the netting will never contact the water. Monitoring of the evaporation ponds shall include the following:

- The Designated Biologist or Biological Monitor shall regularly survey the ponds at least once per month starting with the first month of operation of the evaporation ponds. The purpose of the surveys shall be to determine if the netted ponds are effective in excluding birds, if the nets pose an entrapment hazard to birds and wildlife, and to assess the structural integrity of the nets. Surveys shall be of sufficient duration and intensity to provide an

accurate assessment of bird and wildlife use of the ponds during all seasons. Surveyors shall be experienced with bird identification and survey techniques. Operations staff at the BSEP site shall also report finding any dead birds or other wildlife at the evaporation ponds to the Designated Biologist within one day of the detection of the carcass. The Designated Biologists shall report any bird or other wildlife deaths or entanglements within two days of the discovery to the CPM, CDFG, and USFWS.

- If dead or entangled birds are detected, the Designated Biologist shall take immediate action to correct the source of mortality or entanglement. The Designated Biologist shall make immediate efforts to contact and consult the CPM, CDFG, and USFWS by phone and electronic communications prior to taking remedial action upon detection of the problem, but the inability to reach these parties shall not delay taking action that would, in the judgment of the Designated Biologist, prevent further mortality of birds or other wildlife at the evaporation ponds.
- If after 12 consecutive monthly site visits no bird or wildlife deaths or entanglements are detected by or reported to the Designated Biologist, monitoring can be reduced to quarterly visits.
- If after 12 consecutive quarterly site visits no bird or wildlife deaths or entanglements are detected by or reported to the Designated Biologist, and with approval from the CPM, USFWS and CDFG, future surveys can be reduced to two surveys per year, during the spring nesting season and during fall migration. If approved by the CPM, USFWS, and CDFG, monitoring outside the nesting season may be conducted by the Environmental Compliance Manager.
- Without respect to the above requirements the project owner, CDFG or USFWS may submit to the CPM a request for modifications to the evaporation pond monitoring program based on information acquired during monitoring, and may also suggest adaptive management measures to remedy any problems that are detected during monitoring or modifications if bird impacts are not observed. Modifications to the evaporation pond monitoring described above and implementation of adaptive management measures shall be made only after approval from the CPM, in consultation with USFWS and CDFG.

Verification: No less than 30 days prior to operation of the evaporation ponds the project owner shall provide to the CPM as-built drawings and photographs of the ponds indicating that the bird exclusion netting has been installed. The Designated Biologist shall submit annual monitoring reports to the CPM, CDFG, and USFWS describing the dates, durations and results of site visits conducted at the evaporation ponds. The annual reports shall fully describe any bird or wildlife death or entanglements detected during the site visits or at any other time, and shall describe actions taken to remedy these problems. The report shall be submitted to the CPM, CDFG, and USFWS no later than January 31st of every year for the life of the project.

PAGE 298

The PMPD in condition of certification BIO-11 requires Beacon obtain offsite compensation lands for impacts to listed species. BIO-11 contains the requirements for compensation land including that it be adjacent to or in close proximity to larger blocks of lands that are already protected. The California Legislature passed Senate Bill X8 34 that provides a mechanism for obtaining large blocks of land for conservation through the use of in lieu fees from a number of renewable projects. This in lieu fee program may provide the best mechanism for obtaining connectivity between blocks of land as required by BIO-11. Therefore, Beacon proposes the following addition to the Biological Resources conditions of certification to clarify that the project may avail itself of the in lieu fee mechanism for satisfying mitigation obligations under CEQA and the California Endangered Species Act, as authorized by Senate Bill X8 34:

BIO-22 The Project owner may choose to satisfy its mitigation obligations identified in this Decision by paying an in lieu fee instead of acquiring compensation lands, pursuant to Fish and Game code sections 2069 and 2099 or any other applicable in-lieu fee provision, to the extent the in-lieu fee provision is found by the Commission to be in compliance with CEQA and CESA requirements.

Verification: If electing to use this provision, the Project owner shall notify the Commission that it would like a determination that the Project's in-lieu fee proposal meets CEQA and CESA requirements.

PAGE 309

The PMPD explains the reasons why it need not include environmental analysis for the WWTF expansions, but it largely omits the evidence already in the record addressing the environmental impacts from these expansions. Beacon proposes to add the following language to page 309 of the PMPD:

Applying the second prong of *Laurel Heights I*, there is nothing in the record to suggest that BSEP's use of tertiary treated water from *any* source would change the scope or nature of the project. BSEP will remain a 250 MW solar energy power plant and is so constrained by such limiting factors as land use and transmission system interconnection capacity that the mere availability of larger quantities of tertiary treated water would not alter its scope or nature. Accordingly, under *Laurel Heights I*, the upgrades to the two WWTFs need not be considered in the environmental analysis of the BSEP. We find, therefore, that since the WWTFs are not a part of the BSEP, the environmental analysis will properly be performed by RCSD and California City as the appropriate lead agencies.

Nevertheless, the Committee took evidence on the environmental impacts from the WWTF expansions during the June 8, 2010 supplemental evidentiary hearing. With regard to the RCSD WWTF upgrades, the record reflects that the upgrades will occur over approximately eighteen months, and will be completed using normal earthmoving equipment including scrapers, excavators, and grading equipment. (Ex. 519.) The evidence demonstrates that the upgrades will occur within existing ponds, with the exception of a 20 acre area that is fenced within the existing RCSD WWTP site and is largely disturbed by existing activities. (Ex. 519.) Therefore, the expansion will not cause any significant impacts to biological resources. No cultural resources were discovered during construction of the existing facilities and ponds, and there is no reason to believe any such resources will be discovered during construction of the expansion. As fugitive dust would be the main air quality impact from the WWTF expansion, RCSD plans to use the water supplied by its existing 0.5 MGD tertiary treatment plant for dust suppression. (Ex. 519.) The expansion is not expected to significantly impact or lower traffic service levels.

The California City WWTF expansion will similarly occur in previously disturbed areas, within the existing WWTF site boundaries. (Ex. 341, p. 3.) A past expansion to the WWTF was addressed in a mitigated negative declaration, and California City expects to prepare another mitigated negative declaration for the proposed WWTF expansion. (Ex. 341, p. 3.) CURE has introduced no evidence indicating that either of the WWTF expansions has the potential to cause any significant adverse environmental impacts.

Because the California City and RCSD WWTF expansions are not expected to cause any significant adverse environmental impacts, and because these projects would be located at a distance of approximately 40 miles and 10 miles from the project site respectively, the WWTF expansions do not have the potential to cause or contribute to any significant cumulative impacts.

PAGE 342

Appendices E, F and G from the Soil and Water section of the FSA (Ex. 500) contain the basis and requirements for waste discharge and monitoring requested by the Lahontan Regional Water Quality Control Board staff. These appendices should be included in the PMPD and final decision. In addition, CURE submitted testimony arguing that the Project's plans for groundwater monitoring at the Land Treatment Unit and at the evaporation ponds are inadequate. (See Ex. 625.) To address CURE's claims, Beacon proposes to add FSA Soil & Water Appendix H to the PMPD. Therefore, the PMPD would include Appendices, E, F, G, H, I and J from the FSA with the agreed upon modifications to the PMPD (Modified Appendices I and J were previously included as part of the "errata" posted on July 30, 2010).⁶

PAGES 392-393

Beacon proposes the following changes based on the final language agreed upon by Beacon and Staff, as documented in Staff's prehearing conference statement:

- PAL-4** Prior to ground disturbance and for the duration of construction activities involving ground disturbance, the project owner and the PRS shall prepare and conduct weekly CPM-approved training for the following workers: project managers, construction supervisors, foremen, and general workers involved with or who operate ground-disturbing equipment or tools. Workers shall not excavate in sensitive units prior to receiving CPM-approved worker training. Worker training shall consist of an initial in-person PRS training, or may utilize a CPM-approved video or other presentation format, during the project kick off for those mentioned above. Following initial training, a CPM-approved video or other approved training presentation/materials, or in-person training may be used for new employees. The training program may be combined with other training programs prepared for cultural and biological resources, hazardous materials, or other areas of interest or concern. No ground disturbance shall occur prior to CPM approval of the Worker Environmental Awareness Program (WEAP), unless specifically approved by the CPM.

The WEAP shall address the possibility of encountering paleontological resources in the field, the sensitivity and importance

⁶ Since the Committee has already issued as errata the conditions of certification for Soil and Water and Cultural Resources as well as Appendices I and J to the soil and Water section, they are not included as specific errata in these comments.

of these resources, and legal obligations to preserve and protect those resources.

The training shall include:

1. A discussion of applicable laws and penalties under the law;
2. Good quality photographs or physical examples of vertebrate fossils for project sites containing units of high paleontological sensitivity;
3. Information that the PRS or PRM has the authority to halt or redirect construction in the event of a discovery or unanticipated impact to a paleontological resource;
4. Instruction that employees are to halt or redirect work in the vicinity of a find and to contact their supervisor and the PRS or PRM;
5. An informational brochure that identifies reporting procedures in the event of a discovery;
6. A WEAP certification of completion form signed by each worker indicating that he/she has received the training; and
7. A sticker that shall be placed on hard hats indicating that environmental training has been completed.

Verification:

1. At least 30 days prior to ground disturbance, the project owner shall submit the proposed WEAP, including the brochure, with the set of reporting procedures for workers to follow.
2. At least 30 days prior to ground disturbance, the project owner shall submit the ~~script and final video~~ training program presentation/materials to the CPM for approval if the project owner is planning to use a ~~video for interim presentation format other than an in-person trainer for~~ training.
3. If the owner requests an alternate paleontological trainer, the resume and qualifications of the trainer shall be submitted to the CPM for review and approval prior to installation of an alternate trainer. Alternate trainers shall not conduct training prior to CPM authorization.

4. In the monthly compliance report (MCR), the project owner shall provide copies of the WEAP certification of completion forms with the names of those trained and the trainer or type of training (in-person or ~~videe~~ other approved presentation format) offered that month. The MCR shall also include a running total of all persons who have completed the training to date.

PAGES 420-422

Beacon proposes the following changes based on the final language agreed upon by Beacon and Staff, as documented in Staff's prehearing conference statement:

- TRANS-2** Prior to start of construction of the pipeline site mobilization activities, the project owner shall prepare a mitigation plan for Neuralia Road and Mendiburu Road due to open cutting of the roadways for the installation of the tertiary water pipeline. The intent of this plan is to ensure that if these roadways are disturbed by project construction, they will be repaired and reconstructed to original or as near original condition as possible. This plan shall include:
- Documentation of the pre-construction condition of the following roadways:
 1. Neuralia Road from the project site south to Mendiburu Road and then east on Mendiburu Road where it reaches the California City waste water treatment plant.
 - Prior to the start of construction of the pipeline site mobilization, the project owner shall provide to the CPM photographs or videotape of water line routes discussed above.
 - Documentation of any portions of Neuralia Road and Mendiburu Road that may be inadequate to accommodate oversize or large construction vehicles and identification of necessary remediation measures;
 - Provision for appropriate bonding or other assurances to ensure that any damage to Neuralia Road, and Mendiburu Road due to construction activity will be remedied by the project owner; and

- Reconstruction of portions of Neuralia Road, and Mendiburu Road that are damaged by project construction due to oversize or overweight construction vehicles.

Verification: At least 90 days prior to the start of pipeline construction site mobilization, the project owner shall submit a mitigation plan focused on restoring Neuralia Road and Mendiburu Road to its pre-project condition to Kern County and California City Public Works and Planning Department for review and comment and to the CPM for review and approval. Within 90 days following the completion of construction, the project owner shall provide photo/videotape documentation to the Kern County and California City Public Works and Planning Department and the CPM that the damaged sections of Neuralia Road, and Mendiburu Road have been restored to their pre-project condition.

TRANS-3 Prior to start of construction of the pipeline site mobilization activities, the project owner shall prepare a mitigation plan for Rosamond Boulevard, Sierra Highway, Sopp Road, Lone Butte Road, California City Boulevard Avenue, and Neuralia Road, due to open cutting of the roadways for the installation of the tertiary water pipeline. The intent of this plan is to ensure that if these roadways are disturbed by project construction, they will be repaired and reconstructed to original or as near original condition as possible. This plan shall include:

- Documentation of the pre-construction condition of the following roadways:
 1. Rosamond Boulevard, Sierra Highway, Sopp Road, Lone Butte Road, California Boulevard, and Neuralia Road.
- Prior to the start of construction of the pipeline site mobilization, the project owner shall provide to the CPM photographs or videotape of water line routes discussed above.
- Documentation of any portions of Rosamond Boulevard, Sierra Highway, Sopp Road, Lone Butte Road, California City Boulevard and Neuralia Road that may be inadequate to accommodate oversize or large construction vehicles and identification of necessary remediation measures;
- Provision for appropriate bonding or other assurances to ensure that any damage to Rosamond Boulevard, Sierra Highway,

Sopp Road, Lone Butte Road, California City Boulevard and Neuralia Road due to construction activity will be remedied by the project owner; and

- Reconstruction of portions of Rosamond Boulevard, Sierra Highway, Sopp Road, Lone Butte Road, California City Boulevard , and Neuralia Road that are damaged by project construction due to oversized or overweight construction vehicles.

Verification: At least 90 days prior to the start of pipeline construction site mobilization, the project owner shall submit a mitigation plan focused on Rosamond Boulevard, Sierra Highway, Sopp Road, Lone Butte Road, California City Boulevard, and Neuralia Road to its pre-project condition to Kern County and California City Public Works and Planning Department for review and comment and to the CPM for review and approval. Within 90 days following the completion of construction, the project owner shall provide photo/videotape documentation to the Kern County and California City Public Works and Planning Department and the CPM that the damaged sections of Rosamond Boulevard, Sierra Highway, Sopp Road, Lone Butte Road, California City Boulevard, and Neuralia Road have been restored to their pre-project condition.

PAGES 429-430

The PMPD discusses public comment from Lorelei Oviatt, Planning Director for Kern County, but the discussion ends abruptly and does not explain the resolution of the issue. Beacon proposes to add the following text (largely deriving from page 171 of the PMPD) to complete the discussion:

4. Public Comment

Lorelei Oviatt, Acting Planning Director of the Kern County Planning Department and commenting on behalf of the Kern County Board of Supervisors requested at the evidentiary hearing “that the Commission put a condition of certification that requires the payment of a public services mitigation fee for the specific categories of countywide public protection, sheriff patrol and investigation and fire protection not to exceed \$1,060,439 a year.” (3/22/10 RT 386:4 – 11). Ms. Oviatt specifically requested that the “Commission consider allowing Staff to craft the language for this.” (3/22/10 RT 387:12 – 14). On July 2, 2010, the committee received a letter from Ms. Oviatt explaining that on June 29, 2010 the Kern County Board of Supervisors determined and approved a revised fee as mitigation for all impacts on public services from the BSEP which included the

language now adopted in Condition of Certification WORKER SAFETY-8. On July 9, 2010, Applicant's counsel confirmed BSEP's acceptance of the terms now contained in Condition of Certification WORKER SAFETY-8.

PAGE 458

The quoted testimony from Beacon's visual resources expert pertaining to KOP-6 mistakenly draws from testimony pertaining to KOP-2. Beacon proposes to revise this quoted testimony as follows:

Applicant's expert testified:

In my opinion, none of the State CEQA criteria for significant impact was met and the impact from ~~KOP-2~~KOP-6 is less than significant. I came to this conclusion based upon a comparison of the existing condition surrounding this KOP, which consists of multiple disturbances, with the form, meaning, and context of the Beacon Project as an appealing renewable energy resource. The overall shape of the project will not be unlike predominant elements of the existing project site and surrounding disturbed landscape. The Beacon Project will be low in profile in the landscape as compared to past, conventional energy generation and transmission structures. Initially, viewers will see the facility as a unique, renewable energy resource that replaces and contrasts with deteriorated ranch land and buildings. Over time, viewers at ~~KOP-2~~ KOP-6 will see the facility as a landmark and their expectations will be met by the form, meaning, and context of a sensitively designed solar field in an overall disturbed ~~and deteriorating~~ landscape, rather than in an otherwise natural scene. ~~The scene surrounding KOP-2~~ The majority of the scene from KOP-6 has not been natural for many decades. The nearest natural desert landscape is further south, ~~beyond to the right of~~ the project site. While this elevated view emphasizes the characteristics of the Project, it also emphasizes the level of disturbance and deterioration of the surrounding landscape. (Ex. 324, p. 4) ~~The Jawbone Canyon landscape has also been highly disturbed for several years by off-highway vehicles, as well as by historical mining activities and the aqueduct pipeline. (Ex. 324, p. 4.)~~

PAGES 469-470

Beacon proposes the following changes based on the final language agreed upon by Beacon and Staff, as documented in Staff's prehearing conference statement:

VIS-6 The project owner shall provide a comprehensive landscaping and irrigation plan for the project site in accordance with the requirements of Chapter 19.86 of the Kern County Zoning Ordinance. Landscaping shall be installed or bonded prior to the start of commercial operation.

An alternative, in whole or in part, to providing a comprehensive landscaping and irrigation plan for the project site, the project owner may provide to the CPM a copy of the receipt demonstrating payment of equivalent cost of the landscaping of the developed area of the project site excluding the solar field and power block to the Kern County Parks and Recreation District, a Kern County public school or other non-profit organization in the County of Kern prior to the start of commercial operation.

The project owner shall submit to the Director of the Kern County Planning Department for comment a comprehensive landscaping and irrigation plan, or shall discuss with the Director the alternative described above to a landscaping and irrigation plan.

The applicant shall allow the Director of the Kern County Planning Department up to ~~60~~45 calendar days to review the comprehensive landscaping and irrigation plan and provide written comments to the project owner. The project owner shall provide a copy of the Director of the Kern County Planning Department's written comments on the landscaping and irrigation plan or the alternative to the CPM for review and approval.

The project owner shall not implement the landscaping and irrigation plan until the project owner receives approval of the plan from the CPM. The planting ~~must be completed by the start of commercial operation, and the planting must~~ should occur during the optimal planting season, but if not, the owner will be responsible to replace landscaping that does not survive the first year.

Verification: Prior to commercial operation and at least 45 days prior to installing the landscaping, the project owner shall provide a copy of the landscaping and irrigation plan to the Director of the Kern County Planning Department for review.

The project owner shall provide to the CPM a copy of the transmittal letter submitted to the Director of the Kern County Planning Department requesting their review of the submitted landscaping and irrigation plan, or alternative.

The project owner shall notify the CPM within seven days after completing installation of the landscaping and irrigation that the landscaping and irrigation is ready for inspection.

In-lieu of the filing of a landscaping and irrigation plan, prior to the start of commercial operation, the property owner shall provide to the CPM a copy of the receipt demonstrating payment to the Kern County Parks and Recreation District, a Kern County public school or other non-profit organization in the County of Kern.

Respectfully Submitted,

DOWNEY BRAND, LLP

By: _____/s/_____
Jane E. Luckhardt
Attorneys for Beacon Solar Energy Project

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR THE BEACON
SOLAR ENERGY PROJECT**

DOCKET NO. 08-AFC-2

PROOF OF SERVICE
(Revised 2/8/10)

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Declaration of Service

I, Lois Navarrot, declare that on August 12, 2010, I served and filed copies of the attached **BEACON SOLAR, LLC'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION** . The original document, filed with the Docket Unit, is 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/beacon. The document has 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, in the following manner:

(check all that apply)

For Service to All Other Parties

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service List above to those addresses **NOT** marked "email preferred."

AND

For Filing with the Energy Commission

- sending an original paper copy and one electronic copy, mailed and e-mailed respectively, to the address below (**preferred method**);

OR

- _____ depositing in the mail an original and 12 paper copies as follow:

California Energy Commission
Attn: Docket No. 08-AFC-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

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

/s/

Lois Navarrot