

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (650) 589-1660
FAX: (650) 589-5062

tgulesserian@adamsbroadwell.com

SACRAMENTO OFFICE

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

TEL: (916) 444-6201
FAX: (916) 444-6209

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

FELLOW
AARON G. EZROJ

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

August 19, 2010

DOCKET
08-AFC-2

DATE AUG 19 2010

RECD. AUG 19 2010

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

Re: 08AFC2 Beacon Solar Energy Project

Dear Docket Clerk:

Enclosed are an original and one copy of: California Unions for Reliable Energy's Comments on the Presiding Member's Proposed Decision. Please process this document and return a conformed copy in the envelope provided.

Thank you.

Sincerely,

/s/

Tanya A. Gulesserian

TAG:bh
Enclosures

STATE OF CALIFORNIA
California Energy Commission

In the Matter of:

The Application for Certification
for the BEACON SOLAR ENERGY
PROJECT

Docket No. 08-AFC-2

**CALIFORNIA UNIONS FOR RELIABLE ENERGY'S
COMMENTS ON THE
PRESIDING MEMBER'S PROPOSED DECISION**

August 19, 2010

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

Attorneys for the CALIFORNIA
UNIONS FOR RELIABLE ENERGY

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I. INTRODUCTION

California Unions for Reliable Energy (“CURE”) has reviewed the Presiding Member’s Proposed Decision (“PMPD”) for the Beacon Solar Energy Project (“Project” or “Beacon Project”). The PMPD concludes that the Project will, as mitigated, have no significant impacts on the environment and complies with all applicable laws, ordinances, regulations and standards (“LORS”). The purpose of CURE’s comments is to urge the Committee to make minor corrections to the PMPD to ensure, at least, a legally consistent document and to avoid setting a bad precedent for future siting cases.¹

The PMPD is legally inconsistent. The Decision concludes that the wastewater treatment facility (“WWTF”) upgrades are not part of the Beacon Project, but also concludes that the WWTFs will not result in significant impacts. The Decision must be revised either to analyze the WWTFs as part of the Project, or to allow the relevant agencies to properly analyze those expansions under the California Environmental Quality Act (“CEQA”).

CEQA requires the Commission to analyze the WWTF upgrades and expansion as part of the Beacon Project. The upgrades are more than reasonably foreseeable consequences of the power plant since there has been no commitment, until now, to proceed with those projects. At least one WWTF upgrade is also a crucial element of the power plant project because without a WWTF upgrade to provide tertiary treated water, the Beacon Project could not operate. There is no good reason why the Commission should not analyze the whole of the project, including the WWTF upgrade, since a decision on the Beacon Project is not time sensitive. The Project does not have a power purchase agreement nor an interconnection agreement and, thus, cannot proceed to construction in the near future.

However, if the Committee concludes that the WWTFs are not part of the Project, the Decision cannot draw conclusions regarding whether the WWTFs will or will not result in significant impacts. The WWTFs’ expansions have not been finalized by their respective agencies and remain undefined in the PMPD. The PMPD’s finding regarding the Beacon Project’s growth inducing impacts as a result of recycled water use is overbroad, because it improperly reaches conclusions regarding the significant impacts from the WWTFs’ expansions. The Decision should be revised to address whether the *Beacon Project* will or will not result in

¹ CURE also incorporates herein CURE’s post hearing Opening Brief, Reply Brief, Response of CURE to Staff’s Motion to Reopen the Record and Brief of CURE in Response to Committee Order for Limited Re-Opening of the Record in order to ensure a complete record regarding CURE’s comments on the Project and the Commission’s environmental review document – whatever that may be – under CEQA.

significant impacts. Otherwise, CEQA and sound public policy require the Commission to notify the public – now – that the Commission is reaching decisions regarding expansions of WWTFs in their communities. As proposed, the PMPD claims that the Commission is not analyzing the WWTFs as part of the Project.

The Committee should reject the Applicant’s proposal to add even more unsupported and overbroad findings of fact regarding significant environmental impacts from the WWTFs. The Applicant’s proposed changes are inconsistent with the record. If the Committee makes the Applicant’s proposed changes, the PMPD must be recirculated to the public.

If the Committee identifies local agencies as the appropriate CEQA lead agencies to conduct environmental review of the WWTF upgrades and expansions, the Commission should allow those agencies to complete environmental review of the proposed recycled water pipelines under CEQA. This would be the wise course, since Commission Staff failed to set forth the environmental setting for purposes of evaluating biological and cultural resources along both alternatives of the 23-mile segment of pipeline to Rosamond and a 3-mile segment of pipeline to California City. One segment through Edwards Air Force Base never underwent any CEQA review whatsoever. These pipeline segments were also never included in the applications to the wildlife agencies and, thus, no analysis was performed by those agencies regarding the Project’s compliance with the state and federal endangered species acts. In sum, the work performed to support these aspects of the Beacon application for certification is wholly deficient under both CEQA and the Commission’s regulations. If the Commission wishes to approve the Beacon Project now, it should not also attempt to approve parts of the WWTF upgrades and expansions that it did not fully analyze.

Finally, the Applicant’s 11th hour proposed condition allowing an in lieu fee for compensation lands requires changes to ensure consistency with Senate Bill x8 34.

Also, CURE proposes other corrections to the PMPD’s discussion, findings of fact and conditions to ensure consistency with the record in this proceeding.

II. THE PMPD IS LEGALLY INCONSISTENT

The PMPD concludes that the wastewater treatment plant upgrades are not part of the Project and need not be considered in the environmental analysis of the Project. Instead, review of the upgrades will properly be performed by the Rosamond Communities Services District (“RCSD”) and California City as the appropriate lead agencies. (PMPD, p. 309.) The PMPD’s analysis is, at times, careful to focus on the Beacon Project’s proportional share of larger undefined expansions of the wastewater treatment facility and sewer system expansions and

upgrades (“WWTFs”) as justification for finding less than significant impacts. However, the PMPD then concludes that both the Beacon Project’s share and RCSD’s and California City’s expanded WWTFs will not result in significant growth inducing impacts. This conclusion is overbroad and inconsistent with the remainder of the PMPD. Therefore, the Decision should be corrected to conclude whether the *Beacon Project* will or will not result in significant growth inducing impacts.

CURE urges the Committee to be consistent in its analyses and conclusions. The Committee should either analyze the WWTFs as part of the Project and recirculate a revised PMPD to the public, as CURE believes is required by law, or not draw conclusions regarding potentially significant impacts from those facilities’ expansions. The larger expansions are yet to be clearly defined, and the PMPD focuses on Beacon’s proportional share. Thus, instead of concluding whether the WWTFs will or will not result in potentially significant growth inducing impacts, the Committee should only conclude whether the *Beacon Project* will or will not result in significant growth inducing impacts.

A. The PMPD Must Be Revised Either To Analyze the WWTFs as Part of the Project Or To Allow the Relevant Agencies to Properly Analyze Those Expansions

1. CEQA requires the Commission to analyze the whole of the project which includes an expansion and upgrades to at least one wastewater treatment facility.

The PMPD concludes that the WWTFs are not part of the Project and need not be considered in the environmental analysis of the Project, which will properly be performed by RCSD and California City as the appropriate lead agencies. (PMPD, p. 309.) The PMPD relied solely on the California Supreme Court’s two-prong test in *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376 (“*Laurel Heights I*”) for determining whether an analysis of the environmental impacts of a future expansion or other action must be considered in the analysis of a project. The PMPD did not acknowledge numerous cases interpreting the definition of a project and other CEQA principles in the ensuing 20 years, which are applicable to defining the scope of the Project that must be analyzed.

The Supreme Court in *Laurel Heights I*² set forth a two-pronged test for determining whether reasonably foreseeable future activities must be analyzed as part of the Project:

² *Laurel Heights Improvement Assn. v. Regents of the University of California* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 390.

[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

The PMPD states that the word “consequence” in the Supreme Court’s test means “result.” (PMPD, p. 308.)

The Legislature subsequently amended CEQA to define “project” broadly as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (14 Cal. Code Regs. § 15378(a); *see also* Pub. Res. Code § 21065.) Under CEQA, “the term ‘project’ refers to the underlying activity and not the governmental approval process.” (*California Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Cal.App.4th 1225, 1241, (quoting *Orinda Assn. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171-72; *see* 14 Cal. Code Regs. § 15378(c) (“The term ‘project’ does not mean each separate governmental approval.”).) This ensures “that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences.” (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.) The question of which acts constitute the “whole of an action” for purposes of CEQA is “one of law” which a court “reviews de novo based on the undisputed facts in the record.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 98 (“*CBE v Richmond*”), citing *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1224 (“*Tuolumne County*”).)

Recent decisions by several courts of appeals have concluded a future action is part of a proposed project if the future action is a crucial functional element of the proposed project such that, ***without it, the project could not proceed.*** In *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713 (“*San Joaquin Raptor*”), the court concluded the description of a residential development project in an EIR was inadequate because it failed to include expansion of the sewer system, even though the developer recognized sewer expansion would be necessary for the project to proceed. (*Id.* at pp. 729-731.) The Court analogized the facts to those in *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818. There, the Court held that an EIR on a proposed mining operation was inadequate because it failed to include “a description of the facilities that will have to be constructed to deliver water to the mining operation” which “is undoubtedly one of the significant environmental effects of the project.” (*Id.* at p. 829.) The Court in *San Joaquin Raptor* found that the “[c]onstruction of additional sewer capacity is directly analogous to construction

of additional water delivery facilities. Both are crucial elements without which the proposed projects cannot go forward.” (*San Joaquin Raptor*, 27 Cal.App.4th at pp. 731-732.) The court stated that “[o]nly through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental costs....” (*Id.* at p. 734.) Thus, the EIR’s failure to consider the expansion of the wastewater treatment plant as part of the project resulted in an inaccurate project description and incomplete identification and analysis of the environmental effects of the development project. (*Id.*)

In *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214, the court held that a proposed Lowe’s home improvement center and a planned realignment of an adjacent road were improperly segmented as two separate projects in light of the dispositive fact that the road realignment was included by the City of Sonora as a condition of approval for the Lowe’s project. (*Id.* at p. 1220.) The Court reasoned that the two actions were part of a single “project” for purposes of CEQA review, *even though the City had historically recognized the advantages of realigning the road* and both activities could be achieved independently of each other. “Their independence was brought to an end when the road realignment was added as a condition to the approval of the home improvement center project.” (*Id.* at 1231.)

For cases that did not find illegal piecemealing, see *CBE v. Richmond* (2010) 184 Cal.App.4th 70, 88 (“[b]ecause Chevron’s efforts to process a larger percentage of California fuel at the Refinery does not ‘depend on’ construction of the hydrogen pipeline, the City’s treatment of the hydrogen pipeline as a separate project does not constitute illegal piecemealing”); *National Parks & Conservation Assn. v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1519 (EIR for a landfill was not inadequate for failing to discuss impacts from materials recovery facilities needed to process solid waste before transport to the landfill because the MRFs were not “crucial elements” without which the landfill project cannot go forward); *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1362 (EIR for an airport development plan properly excluded consideration of long-range plans for potential runway expansions, because the airport plan did not “depend on a new runway and would be built whether or not runway capacity is ever expanded.”)

The factual bases for the PMPD’s conclusion that an upgrade of RCSD’s WWTF is not part of the Beacon Project are 1) a contradictory and unsupported statement by the Assistant General Manager of RCSD that an upgrade to the treatment plant will happen with or without the Beacon Project; and 2) RCSD’s discussion over the last ten years about a future upgrade. (PMPD, p. 308.) Similarly, the bases for the PMPD’s conclusion that an upgrade of California City’s WWTF is not part of the Beacon Project is 1) a contradictory and unsupported statement by the Director of Public Works that the City’s WWTF will proceed with or without the Beacon Project and 2) the City’s discussion of its infrastructure needs

over the last eight years. (PMPD, p. 308.) The PMPD concludes that the upgrades are not part of the Project “because they pre-date” the Beacon project and, therefore, “the impetus for the WWTFs is completely unrelated to the existence of BSEP which is simply a potential customer.” (PMPD, p. 309.) The PMPD also concludes that the Project’s use of recycled water does not change the scope and nature of the project. (PMPD, p. 309.) There are five legal flaws in these findings.

First, the statements of RCSD and California City that upgrades and expansions to the WWTFs will happen with or without the Beacon Project are contradicted by the very same witnesses, unsupported and merely optimistic. California City wrote that it would be “expanding our Recycled Water production to meet the needs of the Beacon Solar Project.” (Exh. 506: August 13, 2010 California City Email, p. 1.) Until California City’s new sewer system and expanded WWTF is approved, it is impossible to say whether it *will* happen, only that the City hopes it will happen. When Mr. LaMoreaux of RCSD was asked whether the District has plans to upgrade its WWTF if Beacon does not select Rosamond as its recycled water alternative, Mr. LaMoreaux answered “*no*.” (3/22/10 RT, p. 141.) There is no evidence in the record that either RCSD or California City has submitted any applications for these projects.

Second, the fact that upgrades and/or expansions to the WWTFs have been discussed for years does not mean that the projects are occurring. It is undisputed that RCSD’s potential upgrade to treat 1.3 MGD of wastewater to tertiary levels was not addressed in even the most recent July 2008 Recycled Water Facilities Plan Final Report or in the Negative Declaration for the report. (Exh. 355, pp. 3-7, 5-9.) In fact, the 2008 Recycled Facilities Plan only states that RCSD’s WWTF is designed for tertiary treatment of 0.5 MGD to be constructed in 2009 with provisions for expansion to **1.0 MGD** by 2018. (Exh. 355, pp. 1-2, 3-1.) Similarly, it is undisputed that California City’s recently approved General Plan 2009-2028 does not include any provision to expand the City’s wastewater treatment facility to 3.0 MGD. (Exh. 345, p. 5-32.)

Third, the PMPD’s concept that historical discussions about a project mean that they are already occurring is inconsistent with CEQA cases which find that historical discussions about a project do not mean those projects will occur. (See *Mount Sutro Defense Committee v. Regents of the University of California* (1978) 77 Cal.App.3d 20, pp. 28-29 (a long-range development plan (“LRDP”) used for planning purposes only was intended to ensure consideration is given to long-term trends; “inclusion of a particular project in the LRDP does not constitute a commitment by the University to proceed with that project.”) In *Pala Band of Mission Indians v. County of San Diego* (4th Dist. 1998) 68 Cal.App.4th 556, 575-576, the Court held that because an integrated waste management plan made no “commitment” to develop any landfill, but merely identified potential sites for the landfill, the county’s action approving the plan did not make any particular project

“reasonably foreseeable.” On the other hand, the Court found that when the County actually reserves a location, a “commitment” to develop a site will be made and an EIR would be required. (*Id.* at 569-570, 576.)

Like *Pala Band of Mission Indians*, historical discussions about potential expansions of WWTFs are not commitments to build such expansions or evidence that expansions are already underway. Unlike *Pala Band of Mission Indians*, both RCSD and California City, during this proceeding, provided a written notice of intent to provide a particular amount of recycled water to the Beacon Project and, now, a “commitment” has been made. The PMPD’s reliance on the concept that historical discussions mean the WWTFs are already and separately occurring combined with the recent commitments of RCSD and California City to actually provide recycled water **belies** CURE’s argument that the two projects are being considered now and must be evaluated together in one environmental review document.

Fourth, the PMPD does not determine whether the WWTFs upgrades – the future actions at issue here – change the scope and nature of the Beacon Project. The Beacon Project’s proposal to use recycled water requires upgrades to the WWTFs. By definition, these upgrades change the scope of the power plant project, since there is currently no such recycled water. (*See, Santiago County Water Dist. v. County of Orange* (1st Dist. 1981) 118 Cal.App.3d 818, 829 (holding an EIR on a proposed mining operation was inadequate because it failed to include “a description of the facilities that will have to be constructed to deliver water to the mining operation” which “is undoubtedly one of the significant environmental effects of the project”).) In order to develop the required water, construction must occur at one WWTF and, if California City is selected, it must construct a new sewer system.

The facts in this proceeding present a similar scenario to those considered in *San Joaquin Raptor v. County of Stanislaus* (1994) 27 Cal.App.4th 713 and *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214. Like the sewer system in *San Joaquin Raptor*, since the power plant cannot operate without the sewer expansion and WWTF upgrade in California City or the WWTF upgrade in Rosamond, the “total project” includes both the power plant and the WWTF upgrades necessary to serve it. It is undisputed that the Project would be dependent upon upgrades to either the Rosamond or California City WWTFs, neither of which currently exist, if the Project is required to use recycled water for power plant cooling. It is undisputed upgrades to one of these facilities are a necessary, condition-precedent for the Project to operate. The PMPD’s conditions of certification Soil&Water-1 and -18 prohibit operation of the Project without documentation that either California City or Rosamond will provide disinfected tertiary recycled water to meet the Project’s operational cooling water requirements.

Also, like the home improvement center and road alignment in *Tuolumne County*, even though Rosamond and California City may have “historically recognized the advantages of” expanding and upgrading their WWTF, because the power plant cannot operate without them, the projects must be considered together. (*Tuolumne County, supra*, 155 Cal.App.4th at 1227-1228 (rejecting the argument that a CEQA project excludes a planned activity that was not necessitated by the project under consideration or “if the need for that activity was not fully attributable to the project as originally proposed”).) In addition, like *Tuolumne County*, because approval of the power plant is conditioned upon a signed agreement with a recycled water purveyor to provide disinfected tertiary recycled water to meet the Project’s operational cooling water requirements and these options are clearly identified in the FSA, the two actions are part of a single “project” for purposes of CEQA review. “Their independence was brought to an end” when an executed Recycled Water Purchase Agreement “was added as a condition to the approval” of the Project. (*Tuolumne County Citizens for Responsible Growth v. City of Sonora*, 155 Cal.App.4th at 1231.)

Finally, reliance on a separate environmental review process and document would constitute illegal piecemealing under CEQA. (See, *CBE v. Richmond* (2010) 184 Cal.App.4th 70, 88; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1358.) Whether or not environmental review could occur by another agency is irrelevant to the Commission’s responsibility to analyze the whole of the power plant project under CEQA.

Construction at one of the WWTFs is part of the Beacon Project under CEQA since construction at one of the WWTFs is a crucial functional element of the Beacon project such that, without it, the Beacon Project could not proceed. CEQA requires the Commission to adequately define the project being considered in the environmental review document and to analyze potentially significant impacts from the whole of that project. As the Second District stated, “[t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to *finish* . . .³ Clearly, the Beacon Project will not be finished until one of the WWTFs is upgraded.

2. If the Commission concludes that the WWTFs are not part of the Project, the Commission cannot draw conclusions that the WWTFs will result in no significant impacts under CEQA

In the Soil and Water Resources section of the PMPD, the PMPD concludes “[w]e 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

³ *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268 (emphasis added).

the appropriate lead agencies.” (PMPD, p. 309.) Because the PMPD does not include the WWTFs as part of the Beacon Project, the PMPD does not define the size of these projects – one of the factual disputes in this proceeding. However, the size of these projects affects the PMPD’s discussion of growth inducing impacts.

However, despite this missing information and not including the WWTFs in the project description, the PMPD makes conclusions regarding the *WWTFs*’ growth inducing impacts. The PMPD must be consistent. The PMPD should be corrected to clarify whether the *Beacon Project* will or will not result in growth inducing impacts.

i. The PMPD should clarify that the Commission analyzed only the Beacon Project’s *portion* of upgrades to RCSD and California City’s WWTFs

Given the cursory and incomplete analysis of the WWTF upgrades, the Commission should not preempt the ability of RCSD and California City to review those communities’ expansions and upgrades to their WWTFs and sewer systems.

The PMPD’s project description should clarify the size of RCSD’s and California City’s WWTF upgrades that the Commission considered in reaching its determination that the Beacon Project’s portion of those upgrades would not result in significant growth inducing or cumulative impacts.

a. RCSD

The PMPD’s project description states that RCSD will convert 2.0 million gallons per day (“MGD”) from secondary to tertiary treatment. (PMPD, p. 11.) However, the PMPD’s entire impact analysis, which concludes that the Beacon Project will not result in a significant growth inducing impact, rests on the fact that RCSD is only converting its *existing* inflow to tertiary treated standards. (PMPD, p. 400.) It is undisputed that RCSD would provide the Beacon Project with 1,400 AFY, or 1.248 MGD, of recycled water. (PMPD, p. 15.) It is also undisputed that RCSD’s existing flow is 1.3 MGD. (3/22/10 R.T. 145:6-9; Exh. 512, p. 1.)

Therefore, the PMPD’s project description should be corrected to state that RCSD will convert sufficient existing inflow to provide the Beacon Project with 1,400 AFY of tertiary treated water.

The PMPD’s description of the upgrade should not be anything larger than the portion of the existing inflow necessary to provide Beacon with 1,400 AFY of tertiary treated water, because RCSD’s potential WWTF project was never clearly defined and a larger project description would render the PMPD’s conclusions erroneous. In March 2010, RCSD testified that in addition to converting existing

inflow, it would expand its facilities to produce 2.0 MGD of tertiary treated water. (March 22, 2010 Tr., p. 142.) In April 2010, RCSD testified that the District proposed to increase its facilities to produce 2.5 MGD. (Exh. 507, para. 2.) Precisely because RCSD may increase the size of its WWTF from 1.3 MGD to 2.0 MGD or to 2.5 MGD, RCSD clearly stated that an expanded project, “would provide treatment for ***all the existing flow and room for future growth.***” (March 22, 2010 Tr., p. 142 (emphasis added).) Given RCSD’s inability to settle on the size of its WWTF expansion and its ever changing project and given that the PMPD clearly rests on the fact that Beacon’s only relationship to the plant is that it would use *existing inflow*, describing the RCSD WWTF project as anything larger would render the PMPD’s decision on growth inducing impacts clearly in error.

CURE proposes the following correction on page 308 of the PMPD:

The portion of the proposed upgrade to be funded as part of the BSEP would increase tertiary treatment capacity to provide BSEP with 1,400 AFY~~2.0 mgd;~~ ~~slightly~~ less than the anticipated ultimate plant capacity envisioned in the 1999 environmental document. (Exs. 507, 512; 6/8/10 RT 49:20 – 75:21.)

b. California City

The PMPD’s project description for California City’s WWTF expansion, upgrade and new sewer system does not indicate the size of the expansion. However, the entire impact analysis, which concludes that the Beacon Project will not result in a significant growth inducing impact, rests on the fact that the Beacon Project’s portion of California City’s upgrade will not cause the entire upgrade to occur. (PMPD, p. 402.) It is undisputed that California City needs an additional 2,500 homes to be converted from septic to a centralized sewer system to serve 1,400 AFY of recycled water to the Beacon Project. (Exh. 512, p. 3; March 22, 2010 Tr., p. 134; Exh. 500, p. 6-10; March 22, 2010 Tr., p. 132; Exh. 506.) It is undisputed that California City would provide the Beacon Project with 1,400 AFY, or 1.248 MGD, of recycled water. (PMPD, p. 15.)

Despite California City agreeing to provide the Beacon Project with only 1,400 AFY (1.248 MGD) of recycled water, California City stated it may increase the size of its WWTF to 3.0 MGD. Precisely because its expansion may be larger, California City testified that one of the benefits of expanding its wastewater treatment plant and sewer main for the power plant project “is that it will ***allow our City to grow...***” (March 22, 2010 Tr., p. 135, emphasis added.) According to California City’s Sanitary Sewer System Master Plan, an expansion could have the potential to serve an additional 9,750 dwelling units on septic tanks. (Exh. 346, p. 1-2.) Given that the PMPD clearly rests on the fact that Beacon project’s portion of the upgrade will not cause the entire upgrade to occur, describing California City’s

project as anything larger would render the PMPD's decision on growth inducing impacts clearly in error.

CURE proposes the following clarifications and corrections on page 11 of the PMPD:

Tertiary treated recycled water for cooling will be conveyed by underground pipe from wastewater treatment facilities located either in Rosamond or California City. In order to accommodate BSEP's recycled water demands, ~~both~~ Rosamond Community Service District would be required to upgrade its facility to provide BSEP with 1,400 acre feet per year of tertiary treated water and California City would be required to expand their wastewater treatment facilities within their existing boundaries to provide BSEP with 1,400 acre feet per year of tertiary treated water. In California City, this would include new sewer mains and connections to be located within the city, installation of an approximately twelve mile long recycled water pipeline from the wastewater treatment facilities to the Project, and the upgrade of the head works, aerator, clarifier, tertiary filter and replacing the chlorination equipment with UV disinfection within the existing wastewater treatment facilities. Rosamond Community Service District's ~~will convert two million gallons a day from secondary to tertiary treatment. These~~ upgrades will include retrofits to existing equipment, and ~~an~~ twenty-acre extension of a waste water pond, all of which would occur within the existing wastewater treatment facility. The recycled water pipeline from Rosamond is approximately 40 miles and will occur almost entirely along already disturbed and/or developed roadsides with paved and unpaved shoulders. (Ex. 346, 348, Ex. 500, p. 4.2-8, 500, pp.4.9-62-63, 507, 508, 510.)

ii. The PMPD's finding regarding the Beacon Project's growth inducing impacts as a result of recycled water use from RCSD is overbroad.

The PMPD explains that Commission Staff analyzed the RCSD upgrade "as it relates to the Beacon project" and noted that "Beacon's projected costs cover only that portion of the [project]... necessary to provide a constant flow rate of tertiary-treated water to the Beacon facility." (PMPD, p. 400.) In other words, Staff analyzed whether the *Beacon Project*, not the entire and as yet undefined RCSD WWTF upgrade and expansion, would result in growth-inducing impacts. Despite this limited analysis performed by Commission Staff, the PMPD incorrectly concludes that "the proposed upgrade of the RCSD WWTF...would not induce additional population growth." (PMPD, p. 400.)

Furthermore, because the size of RCSD's expansion was never clearly defined or finalized by RCSD, the PMPD should not rely on one contradictory statement by RCSD staff that the WWTF is not an expansion of the plant's capacity to process incoming waste water and, therefore, Phase II cannot reasonably be expected to

induce additional population growth. (PMPD, p. 400.) Again, exactly what Phase II will be was changed throughout this proceeding. In fact, it was increased by another half a million gallons per day at the very last minute before the record was closed. The PMPD cannot say that an adequate analysis of RCSD's larger expansion was ever conducted by the Commission.

The PMPD does not, and could not, describe the size of RCSD's expansion – an unanswered question in this proceeding. And Staff never analyzed RCSD's claimed expansions. The PMPD should be more narrowly tailored and accurate. Instead, without ever clarifying this major factual dispute, the PMPD states that “the proposed upgrade of the RCSD WWTF...is not an expansion of the WWTF's capacity to process incoming wastewater and would not induce additional population growth.” (PMPD, p. 400.)

The PMPD also oversimplifies (to put it mildly) a complicated analysis that was never performed in this proceeding, namely whether RCSD's expansion – once defined – will free up potable water supplies. The PMPD concludes that since “effluent treated to the tertiary level is not considered potable and may not be used for drinking water,” “increased availability of tertiary-treated water would not provide a source of public water to serve additional customers.” (PMPD, p. 400.) ***This finding is inconsistent with nearly every water planning document in the state of California, including planning documents specifically for RCSD, showing that the availability of tertiary-treated water reduces dependence on groundwater and State Water Project water and preserves high-quality drinking water supplies for potable needs.*** (Exh. 355, p. 1-1.)

CURE proposes the following corrections to pages 400 and 401 of the PMPD:

Staff's expert testified that the Beacon Project's portion of the upgrades of the existing WWTF's ability to further treat effluent to a greater level of clarity would not substantially contribute to population growth, distribution, or concentration, or increased demand for public services in the Rosamond area. The Beacon Project's portion of the upgrades ~~it~~ also would not remove or expedite removal of existing obstacles to population growth or expand existing service areas beyond projections that do not include the proposed project ~~or upgrade to the existing WWTF.~~ (*Id.*)

We concur with Staff's ~~and Mr. LaMoreaux's~~ conclusions that the Beacon Project's portion of the proposed upgrade of the RCSD WWTF from secondary to tertiary treatment facilities is not an expansion of the WWTF's capacity to process incoming wastewater and would not induce additional population growth. An increase in the level of treatment for the effluent produced by the existing WWTF for the Beacon Project would not increase the overall capacity of the plant to treat sewage inflow or the number of homes or businesses that can be served by the existing system. Additionally, even effluent treated to the tertiary level is

not considered potable and may not be used for drinking water. Therefore, increased availability of tertiary-treated water solely for the Beacon Project would not provide a source of public water to serve additional customers. We find that there would be no growth-inducing impact from the Beacon Project's portion of a proposed upgrade to the RCSD WWTF secondary treatment facilities.

With CURE's proposed changes, the PMPD will properly limit its conclusion to be consistent with its findings regarding the Beacon Project's portion of RCSD's upgrades.

- iii. **The PMPD's rationale regarding the Beacon Project's growth inducing impacts as a result of recycled water use from California City is overbroad, although the PMPD's conclusion is properly limited to the Beacon Project's proportional share of California City's WWTF expansion.**

For California City, the PMPD finds that the planned capacity of the WWTF will allow a limited number of new homes to be connected to the system to accommodate future growth and provide a surplus of recycled water for City use. (PMPD, p. 401.) The PMPD also recognizes that the City anticipates the WWTF expansion could allow up to a 10 percent increase in housing starts compared to the 3.5 percent annual growth potential on individual septic systems. (PMPD, pp. 401-402.) However, the PMPD finds that "the evidence shows that this is totally unrelated to approval and construction of the BSEP."

Unlike the PMPD's overbroad conclusion regarding RCSD's WWTF upgrades, the PMPD correctly limits its finding regarding California City's WWTF to whether the **Beacon Project's** proportional share of the upgrade would result in significant impacts:

...while a contract to supply the BSEP with recycled water and payment of the plant's proportional share of the WWTF expansion cost would facilitate construction of the expansion, it will not cause it....while upgrades and improvements to California City's waste water treatment system may facilitate development of existing lots, the BSEP's use of tertiary treated water supplied by California City will not directly or indirectly induce substantial population growth in the vicinity of California City. **We find that the BSEP will not cause** direct, indirect or cumulative significant growth inducing impacts to California City or the surrounding environment.

(PMPD, p. 402.)

Although the PMPD's conclusion is not overbroad, the PMPD's factual basis for a finding that a larger expansion is "totally unrelated" to the Beacon Project includes that the upgrade will not provide the City with a new or additional source of potable water to serve additional customers. (PMPD, p. 402.) Again, this finding is inconsistent with nearly every water planning document in the state of California, including planning documents specifically for California City, showing that the availability of recycled water is a water conservation method for ensuring an adequate water supply for residents and planned growth and development. (Exh. 345, pp. 5-39 – 5-40.)

Furthermore, the PMPD's statement that the expansion is not the result of the Beacon Project is a backwards application of one of the tests for determining the scope of the project under CEQA that was discussed in the Soil and Water section, and need not be repeated incorrectly in the discussion of growth inducing impacts.⁴ Therefore, CURE proposes the following corrections to page 401 of the PMPD:

Explained in the **Soil and Water** section of this Decision is that while a contract to supply the BSEP with recycled water and payment of the plant's proportional share of the WWTF expansion cost would facilitate construction of the expansion, it will not cause it. ~~Expansion of the existing WWTF is not the result of or dependent on approval and construction of the BSEP.~~ The Beacon Project's proposed use of a portion of the tertiary-treated water produced by the WWTF, as the byproduct of sewage treatment, will not provide the City with a new or additional source of potable water and, therefore, the Beacon Project's portion of the WWTF upgrade will not contribute to any expansion of the City's public water supply system or allow it to serve any other additional customers. (Ex. 512, pp. 3-4.)

Finally, during operation, the BSEP will employ approximately 66 people. Accommodation of this small population increase is not dependent on either the RCSD WWTF tertiary treatment upgrade or expansion of the California City WWTF and connection system. (See **Socioeconomics** section of this Decision for additional information.) (Ex. 512, p. 4.)

On balance, the evidence supports the conclusion that, while upgrades and improvements to California City's waste water treatment system may facilitate development on existing lots, the BSEP's use of tertiary treated water supplied by California City will not directly or indirectly induce substantial population growth in the vicinity of California City related to the facilities needed to produce water for the Beacon Project. We find that the BSEP will not cause direct, indirect or cumulative significant growth inducing impacts to California City or the surrounding environment.

⁴ The issue in defining the whole of the project under CEQA is whether the Beacon Project is dependent on construction of the WWTF expansion, not the reverse.

With CURE's proposed changes, the PMPD will properly limit its conclusion consistent with its findings regarding the Beacon Project's portion of California City's upgrades.

iv. CEQA and sound public policy dictate consistency in the Commission's findings.

CEQA requires the California Energy Commission to provide public notice of the availability of Staff's environmental review document, an opportunity for public comment on the environmental assessment, and responses to public comments. Specifically, Public Resources Code section 21092 requires the Commission to provide public notice that specifies the period during which comments will be received, ***a description of the proposed project*** and its significant effects, and the address where copies of all documents referenced in the environmental review document are available for review.⁵

The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."⁶ CEQA requires that a project be described with enough particularity that its impacts can be assessed.⁷ It is impossible for the public to make informed comments on a project of unknown or ever-changing description. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs...."⁸ "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input."⁹ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.¹⁰

Public Resources Code section 21091(a) provides that the Commission's public review period may not be less than 30 days. Public Resources Code section 21091(d) provides that the Commission shall consider comments it receives on the draft assessment and shall prepare a written response.

The Commission is not exempt from any of these mandatory CEQA requirements. Unless the PMPD is corrected to eliminate findings regarding potentially significant growth inducing impacts from the WWTFs and to limit its findings to the Beacon Project, the Commission will have failed to provide adequate

⁵ Pub. Res. Code § 21092(a), (b)(1).

⁶ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

⁷ *Id.* at 192.

⁸ *Id.* at 192-193.

⁹ *Id.* at 197-198.

¹⁰ *See, e.g., Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376.

notice to the public that the WWTF projects are being analyzed at this time, pursuant to CEQA.

On the other hand, if the PMPD is corrected to analyze the upgrades and expansions to the RCSD and California City WWTFs as part of the Beacon Project, then a revised PMPD with a clear project description and analysis must be circulated to the public.

- v. The Committee must reject the Applicant's and Staff's proposal to add even more unsupported and overbroad findings of fact regarding significant environmental impacts from the WWTFs, unless the Commission finds that the WWTFs are part of the Beacon Project and circulates a revised PMPD to the public.**

The Commission – and the Applicant and Staff – cannot have it both ways. A Decision on the Beacon Project cannot conclude that the WWTFs are not part of the Project and need not be considered in the environmental analysis of the Project, **and** that the WWTFs expansions and upgrades, including development, construction and operation of a new sewer system in California City, would not result in significant environmental impacts under CEQA. However, this is exactly what the Applicant and Staff seeks.

In its comments on the PMPD, the Applicant proposes that the Committee address – within Soil and Water Resources – all of the potentially significant environmental impacts from the undefined expansions of the WWTFs.¹¹ Incredibly, the Applicant also flips the burden of proof and urges the Committee to find (incorrectly) that CURE introduced no evidence indicating that either of the WWTF expansions has the potential to cause any significant adverse environmental impacts. Finally, the Applicant proposes that the Committee add, among other offending language, that:

- The RCSD expansion will not cause any significant impacts to biological resources;
- There is no reason to believe any cultural resources will be discovered during construction of the expansion of RCSD;
- Fugitive dust would be the main air quality impact from RCSD's WWTF expansion;
- RCSD's WWTF expansion is not expected to significantly impact or lower traffic service levels;
- California City's and RCSD's WWTF expansions are not expected to cause any significant adverse environmental impacts; and

¹¹ Beacon Solar, LLC's Comments on the Presiding Member's Proposed Decision (August 12, 2010), pp. 16-17.

- The WWTF expansions do not have the potential to cause or contribute to any significant cumulative impacts.

There are at least three reasons the Committee should reject the Applicant's proposal to add even more unsupported and overbroad findings of fact regarding the WWTFs.

First, the PMPD failed to include the maximum potential size of the WWTF upgrades in the project description for the Beacon Project. As a result, not only is it impossible for the Decision to conclude that the entire WWTFs upgrades and expansions and sewer projects would not result in growth inducing impacts, but it is impossible for the Decision to conclude whether those projects would not result in significant impacts to biological resources, cultural resources, traffic, and other impacts.

Second, the PMPD notified the public at large that the WWTFs are not part of the Project and need not be considered in the environmental analysis of the Project, which will properly be performed by RCSD and California City as the appropriate lead agencies. If the Decision is revised to evaluate significant impacts from those facilities and reach conclusions regarding those significant impacts, then the Decision must be significantly revised. ***It would be illegal to inform the public that the Commission does not find that the WWTFs are part of the Project, that those facilities will not be analyzed by the Commission, and that those facilities will be analyzed by another lead agency, yet then make findings regarding significant impacts from those facilities under CEQA.*** The public would not have been provided adequate notice under CEQA of the scope of the project being analyzed and, thus, would not have had an opportunity to raise comments under CEQA.

Third, Commission Staff failed to address potentially significant impacts to biological, traffic, air, cultural and other resources from expanded WWTFs. And Staff never responded to evidence submitted by CURE that those projects would result in potentially significant impacts requiring analysis, which has not yet been done.

Specifically, according to the California Department of Fish and Game ("CDFG"), expanding California City's wastewater treatment plant, including proposed ponds, sludge drying beds, or other facilities, may require a take permit. (Exh. 648 and Exh. 663.) As recently as 2006, CDFG found that protected species in the WWTF area include desert tortoise, Mohave ground squirrel, burrowing owl, Le Conte's thrasher, Alkali mariposa lily, Barstow wooly sunflower and desert cymopterus, all special status species under State law. (Exh. 649, 651, 652, 653, 654, 655, 656.) CDFG found that RCSD's WWTF site overlaps with occurrence, or is within the range, of alkali mariposa lily, western snowy plover, tricolored blackbird,

Mohave ground squirrel, and burrowing owl. (Exh. 663.) RCSD also admitted that its expansion may impact threatened desert tortoise. (Exh. 507, para. 7.)

Both Rosamond's and California City's existing wastewater treatment facilities emit pollutants that are subject to air permits from the Kern County Air Pollution Control District (Exh. 664) and any proposal to expand the facilities and add equipment would necessarily increase those emissions. Both Rosamond's and California City's existing wastewater treatment facilities also result in waste discharges to groundwater which are subject to waste discharge requirements ("WDRs") from the Lahontan Regional Water Quality Control Board. (Exh. 665.) **None** of these issues were analyzed by Commission Staff in this proceeding.

Commission Staff also did not analyze cumulative impacts from the expansions of the WWTFs. Staff did not address potentially significant cumulative impacts from the WWTFs combined with Kern County's finding of potentially significant project and cumulative impacts from other solar power plants proposed in the immediate vicinity of the WWTFs. For example, Kern County concluded that enXco's Barren Ridge and Cal City solar power plants proposed a few miles from California City's WWTF may result in significant adverse impacts on hydrology and water quality and biological resources, including, but not limited to, riparian habitat, wetlands, streams and washes, aesthetics, air quality, cultural resources, geology and soils, and traffic. (Exh. 645.) Furthermore, Kern County concluded that those projects have the potential to contribute to cumulative impacts on aesthetics, air quality, biological resources, cultural resources, geology, greenhouse gas emissions, hydrology and water quality, public services, and transportation and traffic. (Exh. 645, p. 57.)

Again, if the Committee decides not to analyze the WWTFs' expansions as part of the Project, the Committee cannot draw conclusions regarding their potentially significant impacts. If the Committee decides to add findings, as requested by the Applicant, the PMPD must be revised to include a complete analysis of all of the impacts of the expansions and recirculated to the public, including individuals in California City and Rosamond, for at least 30 days. The revised PMPD must include a clear project description – whatever that may be – of the size of the WWTF that the Commission is analyzing and explain what evidence the Commission has reviewed to find that the impacts are less than significant.

B. If the Committee Identifies RCSD and California City as the Appropriate CEQA Lead Agencies To Conduct Environmental Review of the WWTFs, the Commission Should Allow Those Agencies To Complete Environmental Review of the Recycled Water Pipelines

The first step in the environmental review process is to establish the environmental setting, or baseline. (*Save Our Peninsula Committee v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125.) The environmental setting, or baseline, refers to the conditions on the ground and is a starting point to measure whether a proposed project may cause a significant environmental impact. CEQA defines “baseline” as the physical environment as it exists at the time CEQA review is commenced. (14 Cal. Code Reg. §15125(a); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453.) “An EIR must focus on impacts to the existing environment, not hypothetical situations.” (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.)

If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA...Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the [environmental review document] adequately investigated and discussed the environmental impacts of the development project.

(*Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 87, quoting and citing *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal.App.4th at p. 721-722, 729.)

Describing the environmental setting is a prerequisite to an accurate, meaningful evaluation of environmental impacts. The importance of having a stable, finite, fixed environmental setting for purposes of an environmental analysis was recognized decades ago. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) Today, the courts are clear that, “[b]efore the impacts of a project can be assessed and mitigation measures considered, an [environmental review document] must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.” (*County of Amador, supra*, 76 Cal.App.4th at 952.) In fact, it is a central concept of CEQA, widely accepted by the courts, that the significance of a project’s impacts cannot be measured unless the EIR first establishes the actual physical conditions on the property. In other words, ***baseline determination is the first rather than the last step in the environmental review process.*** (*Save Our Peninsula Committee v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125.)

The Commission’s regulations require protocol surveys of biological resources along all linear features as a minimum requirement for an application for

certification. (20 Cal. Code Reg. App. B(g)(13)(C) and (D).) For biological resources, the Commission's regulations require an applicant to include "current biological resources surveys using appropriate field survey protocols during the appropriate season(s). State and federal agencies with jurisdiction shall be consulted for field survey protocol guidance prior to surveys if a protocol exists." (20 Cal. Code Reg. App. B(g)(13)(D)(i).) The purpose of these surveys is "to provide biological baseline information" (20 Cal. Code Reg. App. B(g)(13)(D), which enables an analysis of potentially significant impacts, a determination regarding the need for avoidance or mitigation measures and an evaluation of alternatives. Failure to conduct protocol surveys not only violates the Commission's regulations but it does not yield the information required to conduct an adequate analysis under CEQA.

The Commission's regulations also require cultural resources surveys, including archaeological surveys to no less than 50' to either side of the right-of-way along all linear facility routes, as a minimum requirement for an application for certification. (20 Cal. Code Reg. App. B(g)(2)(C) and (D).)

The Decision on the Beacon Project should preserve the Commission's standard of requiring protocol surveys of biological resources and cultural resources along linear facilities, such as the recycled water pipelines, in order to determine the baseline for evaluating impacts to such resources. In the Ivanpah proceeding, Commission Staff and the wildlife agencies required the Applicant to conduct protocol-level surveys that met U.S. Fish and Wildlife Service Guidelines, as well as recommendations from CDFG, and that met Commission data adequacy requirements as set forth in the Commission's regulations, along the linear facilities.¹² The protocol surveys were conducted for all special status plants in the spring and early summer of 2007 and again in the spring of 2008 along the linear facilities.¹³

The Beacon Decision should avoid setting a precedent that allows applicants and staff to reach conclusions on the significance of impacts and required mitigation without baseline information provided by these surveys.

First, it is undisputed that no protocol surveys were conducted for desert tortoise or western burrowing owl along the Western Alternative of the 23-mile segment of the 40-mile Rosamond pipeline, or along the 3-mile segment of the California City pipeline along Mendiburu Road, even though desert tortoise protocol surveys for both species were required for every other proposed Project area. (Applicant O.B., pp. 12, 14; Staff O.B., p. 15.) It is also undisputed that no protocol surveys were conducted for Mohave ground squirrel or special-status or rare plant species along either of these pipeline routes. The only reconnaissance-level

¹² Ivanpah Electric Generating System (07-AFC-5), Energy Commission Staff's Reply Brief, April 16, 2010, p. 24, *citing* Exh. 65 and Exh. 85.

¹³ *Id.*; Ivanpah Electric Generating System, PMPD, p. 11 (07-AFC-5).

vegetation survey conducted for special-status plants along the 23-mile portion of the route occurred on two days in July of 2009 (Exh. 500, pp. 4.2-127-163) and, according to Staff, the surveys were conducted outside of the blooming time for special status species known to occur in the area. (Exh. 500, p. 4.2-130.)

There is *no valid reason* why Staff departed from standard CEQA practice. Staff admitted “[b]ecause only reconnaissance level vegetation surveys were conducted along the 23-mile alignment, pre-construction floristic surveys would be conducted in spring” in accordance with Condition of Certification Bio-20 “to determine whether special-status plants occur within areas that might be directly or indirectly impacted by pipeline construction.” (Staff O.B., p. 16.) In Staff’s October 2009 FSA, Staff required Spring 2010 surveys for special status plant species. (Exh. 500, p. 4.2-114.) Instead of conducting these surveys in time for evidentiary hearings, the Applicant delayed the surveys and Staff ultimately agreed to defer obtaining baseline information upon which to measure impacts until another “spring.” (CURE Reply Brief, pp. 57-58; Condition of Certification Bio-20.)

Deferring surveys for special status plants to determine direct and indirect impacts until after Project approval violates CEQA and the Commission’s regulations and is not inconsequential. Staff found that the Western Alternative of the 23 mile segment of RCSD’s pipeline may potentially impact nine special-status species (Exh. 500, p. 4.2-150), and the record shows that appropriately timed surveys are necessary to evaluate potentially significant impacts (Exh. 632, p. 11-12; CURE O.B., pp. 35-36.) Also, this segment of the pipeline crosses two forks of Cache Creek, an ephemeral drainage and jurisdictional water of the state, and 12 smaller ephemeral drainages. (Exh. 500, p. 4.2-13.)

Second, there is also no dispute that Staff conducted no protocol surveys of potentially significant impacts to biological resources along the Eastern Alternative of the southern 23-miles of the 40-mile Rosamond pipeline through Edwards Air Force Base (“EAFB”). (Applicant O.B., p. 14; Exh. 500, pp. 6-10, Alternatives – Figure 2.) In fact, for this segment, it is undisputed that Staff attempted no analysis whatsoever. The PMPD implies that EAFB exempted portions of the pipeline through EAFB from environmental review under the National Environmental Policy Act (“NEPA”), although the EAFB document in the record is not an exemption under NEPA. (Exh. 639.) Most importantly, Staff conducted *no environmental review under CEQA or the Warren-Alquist Act*. (March 23, 2010 Tr., p. 358 (According to Staff, “technically we did not analyze it...”))

The total failure to conduct environmental review of this segment of the pipeline is egregious given Staff’s admission that “[a]s the [pipeline] route moves north towards the north boundary of [EAFB], the habitat quality improves and becomes moderate to good quality habitat for desert tortoise and Mohave ground squirrel.” (Exh. 500, p. 4.2-145.)

Third, CDFG never reviewed the Eastern Alternative or Western Alternative of the 23-mile segment of the pipeline to RCSD, or the 3-mile segment of the pipeline to California City. The Applicant's incidental take permit application to CDFG for the Beacon Project does not include these segments because the Applicant decided to rely on recycled water right before evidentiary hearings began. (Exh. 92, pp. 2-3.) Finally, there is no evidence of a take permit, a habitat conservation plan, or a biological opinion from the U.S. Fish and Wildlife Service for these pipelines, because the Applicant has not yet consulted with the agency on these aspects of the Project. Therefore, the Commission cannot find that mitigation is sufficient under the California or federal endangered species acts or that these aspects of the Project comply with LORS.

It is also undisputed that potentially significant impacts on cultural resources along at least 21.1 miles of the Rosamond pipeline and 2.8 miles of the California City pipeline were not analyzed. According to the Staff,

“[P]otential significant direct ***impacts to historical resources along*** the surface of the balance of the routes for both the Rosamond Community Services District and City of California City alternatives, ***approximately 21.1 and 2.8 miles respectively, are presently unknown due to the late addition of the specific alternatives to the project application.*** The construction of either alternative, as presently proposed or as subsequently redesigned, may also lead to the whole or partial destruction of presently unknown buried archaeological deposits along the full extent of each route.”

(Exh. 500, p. 4.3-91.) The Applicant similarly admitted that “another approximately 23 miles of new route would need to be assessed for environmental impact such as biological and cultural resources and land use.” (Exh. 169.)

The information and analyses of potentially significant impacts to scarce desert resources does not meet the Commission's standards or state law.

By failing to establish the environmental setting for biological, cultural, land use and other resources along proposed pipeline corridors, the Commission would violate CEQA's basic requirement that the environmental baseline be determined at the first step in the environmental review process. (*Save Our Peninsula Committee v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125.) Consequently, if the Commission approves the Project as proposed, the Commission will violate CEQA as a matter of law.

The decision to move ahead with evidentiary hearings in this proceeding, despite the Applicant's last minute decision to try to use recycled water for the Project, resulted in near total failure to obtain information about the affected

environment and to analyze and mitigate significant impacts from piping water to the Project site. This confluence of events is not a valid basis for the Commission to forgo its long history of complying with the Warren-Alquist Act and CEQA. The Commission should preserve its standards and the law by declining to make findings regarding the pipelines now and allowing RCSD and California City to complete environmental review of the pipelines, pursuant to CEQA, ***before they are approved.***

III. THE APPLICANT'S PROPOSED IN-LIEU FEE CONDITION REQUIRES CHANGES TO ENSURE CONSISTENCY WITH SENATE BILL X8 34

In late March 2010, the California Legislature passed Senate Bill x8 34 that provides a potential mechanism for renewable energy project developers to pay fees to satisfy their obligations to mitigate impacts to candidate, threatened or endangered species. In enacting Senate Bill x8 34, the Legislature was careful to include language that the bill did not change the Commission's obligations under CEQA, CESA or the Warren-Alquist Act:

With respect to the Energy Commission, in the case of an applicant seeking certification for a solar thermal power plant pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, or a lead agency, as defined in Section 21067 of the Public Resources Code, in the case of an applicant seeking approval of a photovoltaic powerplant, the sole effect of a mitigation action described in subdivision (c), and paid for through the deposit of fees as described in Section 2099, is to relieve an applicant of the obligation to directly take actions which are taken instead by the department or its contractor or designee pursuant to subdivision (b) to meet the applicant's obligations with respect to the powerplant's impacts to species and habitat. ***The mitigation action and deposit of fees shall not relieve the applicant of any other obligation, or the Energy Commission or the lead agency of any of its existing requirements of Division 13 (commencing with Section 21000) of, or the requirements of Chapter 6 (commencing with Section 25500) of Division 15 of, the Public Resources Code to analyze, avoid, minimize, or mitigate impacts to species and habitat, or make the findings required by those statutes.***

(Fish and Game Code § 2069(f)(2) (emphasis added).)

Thus, SB x8 34 does not relieve the Commission of its obligation to make findings required pursuant to CEQA and the Warren-Alquist Act, including determining compliance with LORS, regarding the effectiveness of mitigation. In other words,

the Commission must evaluate whether substantial evidence is provided that a specific project's in-lieu fee proposal complies with CEQA and CESA.

The Applicant does not dispute these required findings, as evidenced by its proposed condition.¹⁴ Although CURE does not oppose, in principal, the Applicant's suggestion for an additional Biological Resources condition of certification, the condition must be amended consistent with the legislative intent and plain language of Senate Bill x8 34. Therefore, CURE proposes the following changes to the Applicant's proposed condition:

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 Project's in-lieu fee proposal 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 and all parties that it would like a determination that the Project's in-lieu fee proposal meets CEQA and CESA requirements.

With CURE's proposed changes, the condition would ensure that the Commission specifically evaluate whether the Project's in-lieu fee proposal complies with CEQA and CESA in a public forum, as required by CEQA and the Warren-Alquist Act.

IV. CURE RECOMMENDS OTHER MINOR CORRECTIONS TO THE PMPD

A. Project Description and Purpose

The PMPD's findings of fact with respect to operational water use should be clarified and a finding of fact regarding construction water use should be added. (PMPD, p. 15.) CURE proposes the following clarifications to page 15 of the PMPD:

The project will consume approximately 1,400-acre feet per year of recycled water for power plant cooling and 153 acre feet per year of potable groundwater for other industrial operations with another 47 acre feet per year of potable groundwater held for emergency reserve. Tertiary treated recycled water will be supplied by either California City or Rosamond Community Sanitary District. Potable water will be supplied by

¹⁴ Beacon Solar, LLC's Comments on the Presiding Member's Proposed Decision (August 12, 2010), p. 16.

three on-site existing water supply wells. The project will consume 8,086 acre feet of potable groundwater for construction.

With CURE's clarifications, there will be no confusion regarding the source and amount of water authorized for use at the Beacon Project.

B. Project Alternatives and Soil and Water Resources

The PMPD's discussion of alternatives and Soil Water Resources correctly states that if recycled water will be supplied by California City, some on-site groundwater will be used in decreasing amounts during the first five years as flow from California City increases. (PMPD, p. 19 and p. 313.) The schedule for decreasing water use after five years is set forth in Soil and Water-1. After five years, the Beacon Project will be limited to using 153 AFY of potable groundwater for industrial operations, if California City is selected as the recycled water purveyor.

However, the PMPD's discussion also implies the Beacon Project would be permitted to use groundwater for power plant cooling "as soon as California City can provide it," in other words, for longer than five years. (PMPD, p. 15 and 313.) This was never contemplated, much less analyzed, by Staff, the Applicant or CURE and is inconsistent with the PMPD's conditions of certification. Therefore, CURE proposes the following correction to pages 15 and 313 of the PMPD:

If the Rosamond option is selected, the project will only use groundwater in emergency situations and 153 acre feet per year for other industrial operations, since normal operation will use 100 percent recycled water for cooling starting from the first day of operation. If the California City option is selected, some on-site groundwater will be used in decreasing amounts during the first five years as flow from California City increases after which the project will only use 153 acre feet per year of groundwater for other industrial operations (see section 3 Water Resources and Supply, above; Ex. 337; Condition of Certification **Soil & Water-1**.) ~~This temporary use of groundwater will enable the use of 100 percent recycled water for cooling as soon as California City can provide it.~~

In addition, the Project will be permitted to use 8,086 acre feet during construction, not 8,086 acre feet *per year*. (Exh. 500, p. 4.9-16.) Therefore, CURE proposes the following correction to page 306 of the PMPD and in the Finding of Fact on page 316 of the PMPD:

During construction, total groundwater use is limited to 8,086 AFY.

Finally, the PMPD incorrectly states CURE’s position regarding alternatives. As explained in CURE’s testimony and briefs, and as correctly recognized in the PMPD, CURE recommended that the Beacon Project use dry cooling – an undisputed economically feasible technology to reduce the use of water in the desert specifically for the Beacon Project – or “the use of non-potable water for powerplant cooling, with the non-potable water supply to be in place prior to the start of on-site construction in order to be able to use non-potable water to meet part of the construction water requirements during the first five months of on-site construction, and all of the construction water requirements thereafter.” (PMPD, p. 20.) However, the PMPD then incorrectly implies that CURE only recommended non-potable water for powerplant cooling. (*Id.*) Therefore, CURE proposes the following correction to page 20 of the PMPD:

As explained above, the Energy Commission will require the use of non-potable water for powerplant cooling ~~which is the alternative recommended by CURE.~~

C. Hazardous Materials Management

The PMPD acknowledges CURE’s recommendation that the Project employ double walled piping or secondary containment along the pipeline. (PMPD, p. 180.) However, the PMPD states that HTF spills erupt from fittings or heat collection tubes. Then, the PMPD states that the Commission agrees with CURE that secondary containment is appropriate and that the Beacon Project will employ adequate secondary containment. Unfortunately, the PMPD could not have agreed with CURE, because the Beacon Project does not provide secondary containment along the pipeline. Instead, the Project has a berm around the solar site and the power block. (3/22/10 RT 500:17-23.) Therefore, CURE proposes the following correction to page 180 of the PMPD:

CURE recommends double walled piping or secondary containment along the pipeline. However, the evidence shows that all HTF spills reported at the SEGS facilities erupted from “either some type of fitting or, in some cases, they were actually heat collection tubes,” never from a straight pipe such as a header or a primary feeder line. (3/22/10 RT 463:2-18.) The record indicates that double walled piping would be unnecessary. We do not agree with CURE that secondary containment is appropriate along the pipelines. ~~and~~ the record shows that BSEP will employ adequate secondary containment. (3/22/10 RT 499:9-501:1.)

D. Waste Management

The PMPD attempts to calculate how many gallons of HTF must be spilled to result in 750 cubic yards of contaminated soil – the maximum capacity of the land treatment unit, even though this information is not in the record. The PMPD’s assumptions and calculations are incorrect and unsupported. The PMPD’s calculation also is not as simplistic as the PMPD makes it out to be. If it was, then

surely the Applicant, Staff or CURE would have provided it; but they did not. Specifically, the PMPD states:

We begin with the simple observation that it takes about 202 liquid gallons or 174 dry gallons to make a cubic yard [official notice]. Using the lesser number, in order to attain “triple digits” in cubic yards, it requires at least, 17,350 gallons. Staff’s analysis, based upon 750 cubic yards of soil, equates to 130,125 gallons of contaminated soil. This number represents more contaminated soil than the SEGS facility has produced in its entire twenty years of operation combined. Thus, we are satisfied that Staff’s analysis based upon an estimated 750 cubic yards of contaminated soil *per year* is an adequate baseline.

(PMPD, p. 204.)

CURE proposes that the PMPD delete the above referenced paragraph in its entirety. The “simple observation” is wholly inaccurate. First, the paragraph contains incomplete sentences and the conversions between liquid gallons, dry gallons and cubic yards of pure HTF and contaminated soil are unexplained and unsupported by the record.

Second, the claim that this calculation shows that 750 cubic yards of soil is “more contaminated soil than the SEGS facility has produced in its entire twenty years of operation combined” is inconsistent with the record. It is undisputed that 6,408 cubic yards of contaminated soil was removed from the SEGS facility on just one day (July 16, 2007). (Exh. 612, p. 1.)

Third, the PMPD’s conclusion of this paragraph – that 750 cubic yards of contaminated soil per year is an adequate baseline – refers to the incorrect legal issue involved. The issue is whether Staff should have limited its analysis of foreseeable impacts from only 750 cubic yards of contaminated soil. The baseline, on the other hand, is zero cubic yards of HTF-contaminated soil since there is currently no HTF use on the proposed Project site.

Finally, if neither the Applicant nor Staff (nor CURE without further information from the Applicant) could calculate the number of gallons of HTF that, if spilled, would result in 750 cubic yards of contaminated soil, then the PMPD should not, unless the PMPD clearly cites evidence in the record that this detailed finding of fact is accurate. Again, CURE proposes that the PMPD delete the paragraph on page 204 in its entirety.

~~We begin with the simple observation that it takes about 202 liquid gallons or 174 dry gallons to make a cubic yard [official notice]. Using the lesser number, in order to attain “triple digits” in cubic yards, it requires at least, 17,350 gallons. Staff’s analysis, based upon 750 cubic yards of soil,~~

~~equates to 130,125 gallons of contaminated soil. This number represents more contaminated soil than the SEGS facility has produced in its entire twenty years of operation combined. Thus, we are satisfied that Staff's analysis based upon an estimated 750 cubic yards of contaminated soil per year is an adequate baseline.~~

The PMPD also incorrectly claims that CURE believes there is a one-to-one correlation between the quantity of HTF spilled and quantity of soil contaminated. The PMPD provides no cite to this alleged CURE claim and is incorrect. CURE agrees that this is not the case and proposes the following correction on page 204 of the PMPD:

~~CURE's second misconception is that~~ There is not a one-to-one correlation between quantity of HTF spilled and quantity of soil contaminated. ~~However, the testimony clearly establishes that this is not the case.~~

Finally, the PMPD is incorrect that there is no difference between spilled liquid and spilled solid HTF and that an analysis of liquid spills applies to solid spills. Spilled liquid HTF presents completely different potential impacts to the environment and, as such, is regulated differently by the State of California. (Health and Safety Code § 25203, 25113(a), 25123.3(a)(2), (b).) Spilled solid HTF involves vacuuming up HTF and filtering out the particulates, an activity that the Applicant never described until questioned at hearings (3/22/10 Tr., p. 468:6-7) and an activity which Staff never analyzed. If the Commission wants to proceed without analyzing these activities, then the Commission should not do so with its eyes closed. Thus, CURE proposes the following correction to page 205 of the PMPD:

~~The third misconception conveyed by CURE is the idea that Staff's analysis failed because it did not conduct a separate analysis for spilled HTF in its solid state apart from Staff's analysis of spilled HTF in its liquid state. (CURE Opening Brief, p.84.) This is akin to the difference between spilling a cup of ice or a cup of water onto the ground. They only significant~~ One of the differences between spilled HTF in its solid state and spilled HTF in its liquid state is that HTF as a solid ~~the two is that the ice is easier to retrieved~~ d differently. We recognize that a chemical change occurs when HTF is spilled but that appears to happen in its liquid state immediately upon release (3/2210 RT 467:23–13). ~~Once the HTF is spilled, the chemical composition of spilled liquid HTF and spilled solid HTF is the same. The only difference is temperature. Again, w~~We find that some of Staff's analysis of the liquid spills applies to spills in a solid state as well.

Finally, the PMPD does not address whether the Project's proposal to stage contaminated soil that contains liquid HTF on plastic in the staging area of the LTU complies with Section 25123.3(a)(2) of the Health and Safety Code, an issue on which CURE provided considerable testimony and briefing.

The facts are undisputed. The Applicant, Staff, CURE and the PMPD agree that Therminol may remain liquid if a spill occurs. (PMPD, p. 167; Exh. 500, p. 4.4-8.; Exh. 612, p. 7; Exh. 615.) It is undisputed that the LTU does not incorporate a liner containment system and will be constructed with a prepared base consisting of 2 feet of compacted, low permeability, lime-treated material. (Exh. 500, p. 4.9-173.) The Applicant stated that the Project will stage soil contaminated with HTF on plastic in a staging area of the LTU and will cover it with plastic sheeting. (PMPD, p. 205; Exh. 203, p. 8; Exh. 500, p. 4.9-210.)

The law is also clear. Section 25123.3 of the California Health and Safety Code sets forth the requirements for temporarily staging hazardous waste. Temporary waste staging is appropriate for hazardous waste only if:

- The waste is non-RCRA contaminated soil.
- The hazardous waste being accumulated does not contain free liquids.
- The hazardous waste is accumulated on an impermeable surface, such as high density polyethylene (HDPE) of at least 20 mills that is supported by a foundation, or high density polyethylene of at least 60 mills that is not supported by a foundation, among other requirements.
- Controls are provided for windblown dispersion and precipitation runoff and run-on and any stormwater permit requirements issued by a regional water quality control board.
- The accumulation site must be inspected weekly and after storms to ensure that the controls for windblown dispersion and precipitation runoff and run-on are functioning properly.
- After final offsite transportation, the accumulation site is inspected for contamination and remediated as necessary.
- The site is certified by a registered engineer for compliance with these standards.

(Health and Safety Code § 25123.3(a)(2), (b).) If any of the requirements are not met, then the Project must be regulated as a hazardous waste storage facility under Health and Safety Code Section 25200 et seq. Thus, CURE recommends the following clarifications to **WASTE-7**:

WASTE-7: The project owner shall submit to the CPM and DTSC for approval the applicant's assessment of whether the HTF contaminated soil is considered hazardous or non-hazardous under state regulations. The land treatment unit (LTU) shall contain a temporary staging area in compliance with Health and Safety Code Section 25123.3. HTF contaminated soil that exceeds the hazardous waste levels must be disposed of in accordance with California Health and Safety Code (HSC) Section 25203. HTF-contaminated soil that does not exceed the hazardous waste levels may be discharged into the land treatment unit (LTU). For discharges into the LTU, the project owner shall comply with the

Waste Discharge Requirements contained within Appendix E, F, and H, in the Soil & Water Resources section of the Final Staff Assessment.

Verification: The project owner shall document all releases and spills of HTF as described in Condition of Certification **WASTE-9** and as required in Appendix E, F, and H, in the Soil & Water Resources section of the Final Staff Assessment. Cleanup and temporary staging of HTF-contaminated soils shall be conducted in accordance with the approved Operation Waste Management Plan required in Condition of Certification of **WASTE-6**. The project owner shall sample HTF-contaminated soil in the temporary staging area in accordance with the United States Environmental Protection Agency's (USEPA) current version of "Test Methods for Evaluating Solid Waste" (SW-846). Samples shall be analyzed in accordance with USEPA Method 8015 or other method to be reviewed and approved by DTSC and the CPM. Within 14 days of an HTF spill the project owner shall provide the results of the analyses and their assessment of whether the HTF-contaminated soil is considered hazardous or non-hazardous to DTSC and the CPM for review and approval...

With CURE's proposed corrections, the PMPD's conclusions will remain unchanged, but the findings underlying the PMPD's conclusions will be consistent with the record in this proceeding and the conditions will ensure compliance with LORS.

E. Biological Resources

CURE objects to the Applicant's proposal to add the verification to Condition of Certification BIO-14 *as written in the Final Staff Assessment*.¹⁵ BIO-14, including the verification, *was subsequently changed*. (February 2010 Beacon Solar Energy Project's Revisions to Biological Conditions of Certification, p. BIO-24)¹⁶ These changes, as agreed upon by Staff *and the Applicant*, were identified in Staff's Prehearing Conference Statement as Exhibit 502:

Exhibit 502: post January 11, 2010, workshop Supplemental Biological Resources Conditions of Certification available at http://www.energy.ca.gov/sitingcases/beacon/documents/2010-02-09_Revisions_Biological_Resources_Conditions_of_Certification.pdf

While the Applicant accurately set forth the changed condition, the Applicant did not provide the changed verification. Therefore, CURE proposes to add the verification as written and agreed upon by Staff and the Applicant and as set forth in Exhibit 502:

¹⁵ Beacon Solar, LLC's Comments on the Presiding Member's Proposed Decision (August 12, 2010), pp. 14-16.

¹⁶ http://www.energy.ca.gov/sitingcases/beacon/documents/2010-02-09_Revisions_Biological_Resources_Conditions_of_Certification.pdf

BIO-14...

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. **For the first year of operation the Designated Biologist shall submit quarterly reports** to the CPM, CDFG, and USFWS describing the dates, durations and results of site visits conducted at the evaporation ponds. **Thereafter,** the Designated Biologist shall submit annual monitoring reports **with this information.** The **quarterly** and 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 **annual** report shall be submitted to the CPM, CDFG, and USFWS no later than January 31st of every year for the life of the project.

With CURE's proposed correction, the PMPD's conditions would be consistent with the record.

F. Soil and Water Resources: Compliance with LORS

Water Code Section 13146 requires *all* state agencies, including the CEC, to comply with all State Board Water Quality Control Policies, “unless otherwise directed or authorized by statute.” The State Water Resources Control Board’s 1988 *Adoption of Policy Entitled “Sources of Drinking Water”* (State Board Res. No. 88-63) (“Policy 88-63”)¹⁷ states generally that “[a]ll surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply,” except water with TDS exceeding 3,000 mg/L and not reasonably expected to supply a public water system.¹⁸ Water Code section 13551 prohibits the use of water “suitable for potable domestic use for nonpotable uses, including...industrial and irrigation uses if suitable recycled water is available as provided in Section 13550.” Water Code section 13550 “declares that the use of potable water for nonpotable uses, including, but not limited to,...industrial and irrigation uses, is a waste or unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water is available” that meets various conditions.

The PMPD incorrectly states that Policy 88-63 does not apply to the Beacon Project, because “groundwater quality is not in dispute.” (PMPD, p. 313.) It is undisputed that groundwater beneath the Project site is fresh, high-quality water suitable for domestic water supplies and is actually used for agricultural and domestic use in the area. (Exh. 500, pp. 4.9-31, 4.9-58.) Groundwater beneath the

¹⁷ http://www.swrcb.ca.gov/board_decisions/adopted_orders/resolutions/1988/rs1988_0063.pdf

¹⁸ Policy 88-63 at 1.

Project site is high quality, with TDS ranging between 350 and 564 ppm. (Exh. 500, pp. 4.9-7, 4.9-11, 4.9-31.) Thus, indisputably, the groundwater is suitable for municipal or domestic water supply pursuant to the Policy 88-63. The groundwater is also well within the secondary maximum contaminant level for TDS in drinking water of 1,000 mg/L and below or near the recommended limit of 500 mg/L and thus complies with the State's Drinking Water Standards. (Exh. 500, p. 4.9-58, citing 22 Cal. Code Regs. §§ 64431, 64449.)

The PMPD recognizes that RCSD submitted a letter expressing its willingness to provide the Beacon Project with 1,456 AFY of recycled water for the Project. (PMPD, p. 75.) However, the conditions only require the Project to use 1,400 AFY for power plant cooling and allow the Applicant to use 153 AFY of potable groundwater for other industrial operations. The Commission must determine whether allowing the use of 153 AFY of potable groundwater for industrial uses is a waste or unreasonable use when 56 AFY would be available from RCSD.

Therefore, CURE recommends the following corrections to page 313 of the PMPD:

Finally, we agree with CURE that SWRCB Resolution 75-58 does not apply to the BSEP. However, groundwater is suitable for municipal or domestic supplies under ~~but neither does~~ Resolution No. 88-63, ~~since groundwater quality is not in dispute.~~ We find nothing in Resolution No. 88-63 that prohibits using limited amounts of groundwater for the beneficial use of power generation. However, the use of 153 AFY of potable groundwater for industrial uses may be unreasonable under section 13550 of the Water Code, if RCSD or California City expand the WWTFs to produce more than 1,400 AFY of tertiary treated water.

With CURE's proposed corrections, the Commission will ensure that the Beacon Project does not result in the unreasonable use of potable groundwater for industrial operations.

G. The PMPD's Final Exhibit List is Incorrect

The PMPD does not include the correct exhibit list for CURE. CURE's exhibits 600 through 639 were accepted into the record on March 22, 2010. CURE's exhibits 600 through 639 appear to be properly listed in the PMPD's Final Exhibit List.

However, CURE also docketed exhibits 640 through 666, along with a list of those exhibits, on June 1, 2010, and CURE's exhibits were accepted into evidence on June 8, 2010. The June 8, 2010 transcript indicates that CURE's exhibits numbered 640 through 666 were accepted into the record. (6/8/2010 Tr. 247:10-11.)

Finally, the table of contents in the PMPD indicates that Appendix A is the Exhibit List. However, the Exhibit List is actually attached as Appendix B.

Therefore, the PMPD must be revised accordingly. CURE provides the following corrections to CURE’s exhibits numbered 640 through 666:

640	May 13, 2010	Adams Broadwell Joseph & Cardozo Public Record Act Requests to California City and Rosamond
641	May 2010	California City and Rosamond Responses to Public Records Act Requests
642	March – May 2010	Abengoa Notices of 30-Day Public Comment Periods
643	2010	Kern County Planning Department Notices of Preparation of Draft EIRs for Solar Projects
644	March 8, 2010	Kern County Notice of Preparation of a Draft EIR for Ridge Rider Solar Park
645	March 8, 2010	Kern County Notice of Preparation of a Draft EIR for Cal City Solar and Barren Ridge Solar
646	May 28, 2010	Map of Solar Projects Near Beacon Project Site and Declaration of Matt Hagemann
647	October 6, 1999	Rosamond Letter to State Clearinghouse Regarding Negative Declaration for Wastewater Treatment Plan Expansion
648	May 2010	California Department of Fish and Game Documents in Response to Records Request – California City
649	January 9, 2006	Letter from W.E. Loudermilk, California Department of Fish and Game, to William Way, Jr., California City Regarding Species in California City
650	December 5, 2006	California City Notice of Intent and Availability of a Negative Declaration for Zone Change 174, General Plan Amendment 06-02 and Tentative Tract Map 6632
651	November 4, 2005	Biological Resource Assess, APN 212-010-28, California City
652	2009	US Fish and Wildlife Service. 2009. Preparing for any action that may occur within the range of the Mojave desert tortoise (<i>Gopherus agassizii</i>)
653	1992	US Fish and Wildlife Service. 1992. Field survey protocol for any non-federal action that may occur within the range of the desert tortoise
654	2006	Boarman WI, WB Kristan. 2006. Evaluation of Evidence Supporting the Effectiveness of Desert Tortoise Recovery Actions. Scientific Investigations Report 2006-5143. US Geological Survey, Sacramento (CA)
655	2002	Boarman WI. 2002. Threats to Desert Tortoise Populations: A Critical Review of the Literature. U.S. Geological Survey, Western Ecological Research Center. Sacramento (CA)

656	1986	Schamberger ML, FB Turner. 1986. The application of habitat modeling to the desert tortoise (<i>Gopherus agassizii</i>)
657	6/1994	Desert Tortoise (Mojave Population) Recovery Plan, U.S. Fish & Wildlife Service
658		Current Status of the Mohave Ground Squirrel, Philip Leitner
659	2004 6/2005	Home-Range Size and Use of Space by Adult Mohave Ground Squirrels, <i>Spermophilus Mohavensis</i> , John H. Harris and Philip Leitner, <i>Journal of Mammalogy</i> 2004; Long-Distance Movements of Juvenile Mohave Ground Squirrels, <i>Spermophilus Mohavensis</i> , John H. Harris and Philip Leitner, <i>the Southwestern Naturalist</i> , June 2005
660	1972	Hoyt DF. 1972. Mohave Ground Squirrel Survey. California Department of Fish and Game. Sacramento (CA): Special Wildlife Investigations Report
661	6/2/01	CNPS Botanical Survey Guidelines, California Native Plant Society
662	1999	Hailey J, and D Bainbridge. 1999. Desert Restoration: Do something or wait a thousand years? [abstract] Mojave Desert Science Symposium; 1999 Feb 25-27, Las Vegas. USGS, Western Ecological Research Center [internet]
663	May 2010	California Department of Fish and Game Documents in Response to Records Request – Rosamond
664	May 10, 2010	Kern County APCD Permits to Operate – California City and Rosamond Wastewater Treatment Facilities
665		Lahontan RWQCB Waste Discharge Requirements - California City and Rosamond Wastewater Treatment Facilities
666	January 15, 2010	Letter from Lorelei Oviatt, Kern County to Eric Solar, CEC, RE: Additional Kern County Planning Department Comments, Final Staff Assessment for the Proposed Beacon Solar Energy Project (08-AFC-2) Impacts on Public Services

Dated: August 19, 2010

Respectfully submitted

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

Attorneys for the CALIFORNIA UNIONS FOR
RELIABLE ENERGY

PROOF OF SERVICE

I, Bonnie Heeley, declare that on August 19, 2010 I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY'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 via email and by U.S. Mail with first-class postage thereon, fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked "email preferred." An original paper copy and one electronic copy, mailed and emailed respectively, was sent to the Docket Office.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on August 19, 2010.

_____/s/_____
Bonnie Heeley

CALIFORNIA ENERGY COMMISSION
ATTN DOCKET NO. 08AFC2
1516 NINTH STREET MS4
SACRAMENTO, CA 95814-5512
docket@energy.state.ca.us

Kristy Chew
Adviser to Commissioner Byron
California Energy Commission
1516 Ninth Street MS4
Sacramento, CA 95814-5512
Kchew@energy.state.ca.us

SARA HEAD, VICE PRESIDENT
AECOM ENVIRONMENT
1220 AVENIDA ACASO
CAMARILLO, CA 93012
Sara.head@aecom.com

BILL PIETRUCHA, PROJECT MGR
JARED FOSTER, P.E., MECH. ENG.
WORLEY PARSONS
2330 E. BIDWELL ST SUITE 150
FOLSOM, CA 95630
Bill.pietrucha@worleyparsons.com
Jared.foster@worleyparsons.com

JANE LUCKHARDT
DOWNEY BRAND ATTORNEYS LLP
621 CAPITOL MALL 18TH FLR
SACRAMENTO, CA 95814
jluckhardt@downeybrand.com

KAREN DOUGLAS
CALIFORNIA ENERGY
COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
kdougl@energy.state.ca.us

JEFFREY D. BYRON
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
jbyron@energy.state.ca.us

KENNETH CELLI
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
kcelli@energy.state.ca.us

ERIC K. SOLORIO
CALIFORNIA ENERGY
COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
esolorio@energy.state.ca.us

JARED BABULA
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
jbabula@energy.state.ca.us

Jennifer Jennings
PUBLIC ADVISER'S OFFICE
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
publicadviser@energy.state.ca.us

S. BUSA, K.STEIN, M.RUSSELL,
D.MCCLOUD, G.NARVAEZ
NEXTERA ENERGY RESOURCES LLC
700 UNIVERSE BLVD
JUNO BEACH, FL 33408
Scott.busa@nexteraenergy.com
Kenneth.stein@nexteraenergy.com
Meq.russell@nexteraenergy.com
Duane.mcccloud@nexteraenergy.com
Guillermo.narvaez@nexteraenergy.com

DIANE FELLMAN
DIRECTOR WEST REGION
NEXTERA ENERGY RESOURCES
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102
Diane.fellman@nexteraenergy.com

California Unions for Reliable Energy
T.Gulesserian/M.Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
Email only
tgulesserian@adamsbroadwell.com

California ISO
e-recipient.com
Email only