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DOCKET	
08-AFC-13	
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August 31, 2010

Jim Stobaugh, National Project Manager
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[US MAIL & E-MAIL]

BLM Director (210)
Attention: Brenda Williams
1620 L Street, NW, Suite 1075
Washington, DC 20036

[OVERNIGHT MAIL]

Re: Comments and Protests to the Final Environmental Impact Statement and Proposed Amendment to the California Desert Conservation Area Plan for the Calico Solar (formerly SES Solar One) Project, San Bernardino County, California

Dear Jim Stobaugh and Brenda Williams:

I hereby submit my comments and protests to the Final Environmental Impact Statement and Proposed Amendment to the California Desert Conservation Area Plan for the Calico Solar (formerly SES Solar One) Project, San Bernardino County, California (PRMP-A/FEIS).

I. INTRODUCTION AND CRITICAL INFORMATION

On August 6, 2010, the Department of The Interior Bureau of Land Management published the Notice of Availability of the PRMP-A/FEIS.

This document is timely as it is being submitted within 30 days of the Notice of Availability.

The following information is included pursuant to 43 CFR 1610.5-2.

Person Filing Protest: Patrick C. Jackson

Mailing Address: 600 N. Darwood Avenue, San Dimas, Calif. 91773

Telephone No. (909) 599-9914

II. INTEREST OF PERSON FILING PROTEST

I, Patrick C. Jackson, own land adjacent to the proposed Calico Solar Project (Project) and will be **adversely affected** by the Project and the Proposed Amendment to the California Desert Conservation Area (CDCA) Plan. I am submitting these comments and protests (Protest) on my behalf and on behalf of two other owners of private properties adjacent to the Project.

I have actively participated in the planning process of the Project since 2008 and as an Intervenor since July 14, 2009, when the Committee designated to conduct proceedings in California Energy Commission, Docket No. 08-AFC-13, Application for Certification for the Calico Solar Project granted my Petition to Intervene.

All issues within this Protest have been raised and submitted during the planning process.

III. ISSUE DOCUMENTS

The following documents were previously submitted to Jim Stobaugh and Richard Rotte, Project Manager, Calico Solar Project, Alan Stein and/or Roxie Trost during the planning process. These documents are hereby incorporated in this Protest.

1. December 8, 2008 Patrick C. Jackson December 8, 2008, 3:09 PM, E-Mail to Richard Rotte
2. December 13, 2008 Patrick C. Jackson December 13, 2008, Letter to Alan Stein, BLM, California Desert District Office, and Christopher Meyer, Project Manager, Siting, Transmission and Environmental Protection Division, California Energy Commission
3. January 15, 2009 Patrick C. Jackson January 15, 2009, Letter to Alan Stein, BLM, California Desert District Office
4. March 12, 2009 Patrick C. Jackson March 12, 2009, Letter to Roxie C. Trost
5. March 21, 2009 Patrick C. Jackson March 21, 2009, Letter to Richard Rotte

6. May 31, 2009 Patrick C. Jackson May 31, 2009, 8:16 AM, E-Mail to Jim Stobaugh
7. June 29, 2009 Patrick C. Jackson June 29, 2009, 4:01 PM, E-Mail to Jim Stobaugh
8. June 29, 2009 Patrick C. Jackson June 29, 2009, 9:09 PM, E-Mail to Jim Stobaugh
9. August 23, 2009 Patrick C. Jackson August 23, 2009, Letter to Felicia Bellows and Camille Champion, Tessera Solar
10. September 5, 2009 Patrick C. Jackson September 5, 2009, Letter to Jim Stobaugh and Rich Rotte
11. October 25, 2009 Patrick C. Jackson October 25, 2009, Letter to Jim Stobaugh and Rich Rotte
12. October 25, 2009 Patrick C. Jackson Status Report No. 1
13. November 7, 2009 Patrick C. Jackson November 7, 2009, Letter to Jim Stobaugh and Rich Rotte
14. November 7, 2009 Patrick C. Jackson November 7, 2009, 9:19 AM, E-Mail to Jim Stobaugh and Richard Rotte
15. November 9, 2009 Patrick C. Jackson November 9, 2009, 4:27 PM, E-Mail to Richard Rotte
16. December 13, 2009 Patrick C. Jackson December 13, 2009, Letter to Rich Rotte
17. December 13, 2009 Patrick C. Jackson December 13, 2009, Letter to Rich Rotte
18. December 19, 2009 Patrick C. Jackson Status Report No. 2
19. January 14, 2010 Patrick C. Jackson Status Report No. 3
20. January 23, 2010 Patrick C. Jackson January 23, 2010, Letter to Roxie C. Trost
21. February 6, 2010 Patrick C. Jackson February 6, 2010, Letter to Roxie C. Trost
22. February 13, 2010 Patrick C. Jackson Status Report No. 4
23. March 13, 2010 Patrick C. Jackson Status Report No. 5

24. April 22, 2010 Patrick C. Jackson April 18, 2010, Letter to Shawn R. Jackson, Esq., e-mailed to Roxie Trost on April 22, 2010
25. May 1, 2010 Patrick C. Jackson's Comments on the Staff Assessment and Draft Environmental Impact Statement for the Calico Solar Project Application for Certification (08-AFC-13) San Bernardino County, Part 1
26. May 5, 2010 Patrick C. Jackson May 5, 2010, 4:48 PM, E-Mail to Jim Stobaugh, Richard Rotte, Alan Stein, Roxie C. Trost & William Quillman
27. May 27, 2010 Patrick C. Jackson's Comments on the Staff Assessment and Draft Environmental Impact Statement for the Calico Solar Project Application for Certification (08-AFC-13) San Bernardino County, Part 2
28. June 26, 2010 Patrick C. Jackson's Comments on the Draft Environmental Impact Statement For The Calico Solar Project
29. July 25, 2010 Patrick C. Jackson's Prehearing Conference Statement
30. August 15, 2010 Patrick C. Jackson's Reply Brief on the Private Property Access Issue and Objection and Motion to Strike Applicant's Exhibit 82-B
31. August 19, 2010 Patrick C. Jackson August 19, 2010, 4:26 PM, E-Mail to Richard Rotte
32. August 21, 2010 Patrick C. Jackson August 21, 2010 Letter to Felicia Bellows
33. August 23, 2010 Patrick C. Jackson August 23, 2010, 3:41 PM, E-Mail to Richard Rotte
34. August 23, 2010 Patrick C. Jackson August 23, 2010, 5:37 PM, E-Mail to Richard Rotte

IV. BACKGROUND

On December 2, 2008, the Tessera Solar/Calico Solar, LLC, (Applicant) submitted an Application for Certification (AFC) to the California Energy Commission (CEC) for a proposed 8,230-acre solar project in the Hector area of San Bernardino County, California. In conjunction

with the AFC, the Applicant's predecessor, Stirling Energy Systems, LLC (SES) previously submitted three applications for rights-of-way (ROW) to construct the solar project, now known as Calico Solar Project (Project). The Project has been revised to 6,215 acres of BLM-managed land and portions of 130 acres of privately owned land the Applicant has acquired since 2008.

In May 2008, SES Solar One, LLC, entered into an Agreement for Private Crossing (Agreement) with Burlington Northern Santa Fe (BNSF) Railway Company and added gates and barricades at the railway crossing at Hector Road. The Agreement and gated crossing blocked Hector Road and gave the Applicant **exclusive** access to thousands of acres of BLM-managed and private lands outside the Project area and **landlocked** the private lands adjacent to the Project.

The Applicant proposes and the PRMP-A/FEIS mandates the closure of long-established California Desert Conservation Area (CDCA) Plan designated open routes and the substitution of alternative "Public Access Routes" but the **Applicant's "Public Access Routes" have not been proven legal or safe for public use. The Applicant also has not conducted environmental studies for the off-site "Public Access Routes" as required by the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).**

Since 2008, I have protested the gated BNSF crossing at Hector Road and the proposed closure of CDCA designated open routes. As part of this protest, I requested the BLM Barstow Field Office provide information on Hector Road under the Freedom of Information Act (FOIA). The BLM Barstow Field Office did not provide all of the requested information and I filed an appeal with the United States Department of the Interior (DOI) Office of the Solicitor. The appeal is ongoing.

V. ISSUES AND PARTS PRMP-A/FEIS PROTESTED

I am submitting this document to urge the Bureau of Land Management (BLM) Director to rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS do not comply with all applicable laws, ordinances, regulations and standards (LORS) on the grounds the proposed CDCA Plan amendment does not comply with:

1. Federal Land Policy and Management Act of 1976 as amended (FLPMA),
2. California Desert Conservation Area (CDCA) Plan 1980 as amended,
3. National Environmental Policy Act (NEPA),
4. California Environmental Quality Act (CEQA),
5. Endangered Species Act (ESA),
6. *Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735 (10th Cir. 2005) (*SUWA v. BLM*) and
7. *Center for Biological Diversity v. Bureau of Land Management*, 422 F.Supp.2d 1115, 1166-67 (N.D. Cal. 2006) (*CBD v. BLM*).

I request the BLM Director rule the closure of existing CDCA designated "open routes" and the substitution of the Applicant's "Perimeter Road" and "Public Access Routes" do not comply with FLPMA, CDCA, NEPA, CEQA, ESA, SUWA v. BLM and CBD v. BLM.

I also request the BLM Director rule the Land Use and the Traffic and Transportation sections are incomplete and do not comply with NEPA and CDCA on the grounds the withholding of information by the BLM Barstow Field Office prevents me and other interested third parties from participating fully in the PRMP-A/FEIS process.

VI. PRMP-A/FEIS PROPOSED ROUTE CLOSURES

The public and private property owners have been using CDCA designated open routes in the Hector area for over fifty years to access the lands in the Project area and the Proposed Amendment to the PRMP-A/FEIS would close the open routes necessary for the adjacent private property owners to access their properties. The PRMP-A/FEIS states:

Approval of the Proposed Action would necessitate the closure of portions of a number of BLM routes in the project area that are currently open. The open routes within the project area that would have segments closed include AF045, AF052, AF053, AF058, AF298, AF132, AF133, and AF0450 (Table 4-42). . . .

The BLM route closures in the project site would be a direct impact on recreational access to those route segments within the project site. Route closures would also cause a direct impact on access from Hector Road interchange to the Cady Mountains and the other destinations in the vicinity of the project because travelers would be required to use alternate routes potentially resulting in longer travel times.

Routes AF045, AF050, and AF058 have been used to gain access to privately-owned lands outside the project area in Sections 8, 9, 13, 16, 17, Township 8 North, Range 5 East. BLM routes AF132, AF133 and Af0450 (sic) have been used to gain access to privately owned properties outside the project in Section 1, Township 8 North, Range 5 East and Section 36, Township 9 North, Range 5 East. Route closures resulting from approval of the Proposed Action would constitute a direct impact on the owners of the private properties adjacent to the project area, and indirect impacts on the owners on the owners of private properties in the project vicinity.

A proposed project access road outside the project site perimeter fence would provide non-exclusive alternative access from AF 133, on the western boundary of the project site, to Sections 1 and 36 adjacent to the project site on the north, and on to AF051 on the eastern/southeastern boundary of the project site (Figure A-29). Mitigation for BLM route closures within the project site would be provided by authorizing the development of a non-exclusive use perimeter road outside the facility fence. The road would be located between the project site perimeter fence and a tortoise exclusion fence on the northern boundary of the project site.

Access to private properties in Sections 8, 9, 16 and 17 would remain from Hector Road and AF0410. A draft consideration under consideration by the CEC would require that the project site southern boundary fence be located no closer than

360 feet from the northern edge of I-40. An existing frontage road on the north side of I-40 would provide access to Section 13 from both the Pisgah Road interchange to the east, and the Hector Road interchange to the west.

There would be long-term adverse direct impacts on travel in the project vicinity because of BLM route closures. The closures would be for the life of the Calico Solar Project, but would be somewhat mitigated by the provision of alternate access routes to private properties and recreation and other destinations in the project vicinity.¹ [Emphasis added]

Part of the preceding statement is not correct. The “proposed project access road outside the site perimeter fence would **not** provide non-exclusive alternative access from AF133, on the westerly boundary of the project site” as AF133 will be closed.²

VII. THE ROUTES TO BE CLOSED IN THE PROJECT AREA ARE CDCA DESIGNATED OPEN ROUTES AND VALID FLPMA RIGHTS OF WAY

The public and the private property owners of the lands adjacent to the Project have been using CDCA designated open routes for over fifty years to access the lands in the Project area. The CDCA designated open routes are valid Federal Land Policy Management Act (FLPMA) right of ways.³ Sec. 701. [43 U.S.C. 1701 note] (a) of The Federal Land Policy and Management Act of 1976 as amended states:

Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

The CDCA open routes are valid FLPMA right of ways and the BLM can not close these rights of way and deprive private property owners’ their “land use right” to use existing rights of way to access their lands. The Courts have upheld FLPMA rights-of-way and land use rights.

The decision by the United States Court of Appeals for the Tenth Circuit in *Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735 (10th Cir. 2005) (hereinafter *SUWA v. BLM*), reads, in pertinent part:

In 1866, Congress passed an open-ended grant of "the right of way for the construction of highways over public lands, not reserved for public uses." Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253, *codified at* 43 U.S.C. § 932, *repealed by* Federal Land Policy Management Act of 1976 (FLPMA), Pub.L. No. 94-579 § 706(a), 90 Stat. 2743. This statute, commonly called "R.S. 2477," remained in effect for 110 years, and most of the transportation routes of the West were established under its authority. During that time congressional policy promoted the development of the unreserved public lands and their passage into

¹ PRMP-A/FEIS, pp. 4-326, 4-327.

² *Id.*, 4-326.

³ Patrick C. Jackson Status Report No. 5; Application for Certification, p. 5.7-131.

private productive hands; R.S. 2477 rights of way were an integral part of the congressional pro-development lands policy.

In 1976, however, Congress abandoned its prior approach to public lands and instituted a preference for retention of the lands in federal ownership, with an increased emphasis on conservation and preservation. *See* FLPMA, 43 U.S.C. § 1701 *et seq.* As part of that statutory sea change, Congress repealed R.S. 2477. There could be no new R.S. 2477 rights of way after 1976. But even as Congress repealed R.S. 2477, it specified that any "valid" R.S. 2477 rights of way "existing on the date of approval of this Act" (October 21, 1976) would continue in effect. Pub. L. No. 94-579 § 701(a), 90 Stat. 2743, 2786 (1976). The statute thus had the effect of "freezing" R.S. 2477 rights as they were in 1976. *Sierra Club v. Hodel*, 848 F.2d 1068, 1081 (10th Cir. 1988), overruled on other grounds by *Village of Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970, 971 (10th Cir. 1992) (en banc).

The difficulty is in knowing what that means. Unlike any other federal land statute of which we are aware, the establishment of R.S. 2477 rights of way required no administrative formalities: no entry, no application, no license, no patent, and no deed on the federal side; no formal act of public acceptance on the part of the states or localities in whom the right was vested. As the Supreme Court of Utah noted 75 years ago, R.S. 2477 "was a standing offer of a free right of way over the public domain," and the grant may be accepted "without formal action by public authorities." *Lindsay Land & Live Stock Co. v. Churnos*, 285 P. 646, 648 (Utah 1929), (quoting *Streeter v. Stalnaker*, 85 N.W. 47, 48 (Neb. 1901)). In its *Report to Congress on R.S. 2477: The History and Management of R.S. 2477 Rights-of-Way Claims on Federal and Other Lands* 1 (June 1993), the Department of the Interior explained that R.S. 2477 highways "were constructed without any approval from the federal government and with no documentation of the public land records, so there are few official records documenting the right-of-way or indicating that a highway was constructed on federal land under this authority." [Emphasis added]

The Tenth District's ruling in *SUWA v. BLM* holds that valid R.S. 2477 rights-of-way cannot be identified and therefore the BLM cannot contend the CDCA designated open routes in the Project area are not valid FLPMA right of ways.

In its decision, the Tenth District also stated:

Until very recently, the BLM staunchly maintained that it lacked authority to make binding decisions on R.S. 2477 rights of way.(7) Illustrative of this position is the BLM's decision (or lack thereof) in *Alfred E. Koenig*, A-30139 (November 25, 1964). There, an applicant seeking to purchase certain tracts of land asked the BLM to adjudicate the validity of an asserted R.S. 2477 right of way. The BLM refused on the ground that courts, not it, should be the final arbiter of R.S. 2477 claims. The Secretary of the Interior affirmed:

The Bureau's decision does leave the question of the status of the [R.S. 2477] road uncertain both for appellant and for the small tract lessees who may be affected by any determination regarding the status of the road insofar as it conflicts with lands leased by them or which may be patented to them. However, . . . this Department has considered State courts to be the proper forum for determining whether there is a public highway under that section of the Revised Statutes and the respective rights of interested parties. Thus, although the Bureau's conclusion may seem unsatisfactory to all of the parties concerned here, it was the proper conclusion in the circumstances as the questions involved are matters for the courts rather than this Department. *Id.* at 2-3. This refusal to adjudicate R.S. 2477 disputes has been the consistent position of the BLM and the IBLA for over one hundred years.⁽⁸⁾ In its 1993 Report to Congress, the BLM explained that "[n]o formal process for either asserting or recognizing R.S. 2477 rights-of-way currently is provided in law, regulations, or DOI policy," and that "[c]ourts must ultimately determine [sic] the validity of such claims." U.S. Department of the Interior, *Report to Congress on R.S. 2477: The History and Management of R.S. 2477 Rights-of-Way Claims on Federal and Other Lands* 25 (June 1993) (hereinafter cited as *1993 D.O.I Report to Congress*). [Emphasis added]

(7) *Kirk Brown*, 151 IBLA 221, 227 n.6 (1999) ("Normally, the existence of an R.S. 2477 road is a question of state law for adjudication by state courts."); *Sierra Club*, 104 IBLA 17, 18 (1988) ("[T]he Department has taken the position that the proper forum for adjudicating R.S. 2477 rights-of-way is the state courts in the state in which the road is located."); *James S. Mitchell, William Dawson*, 104 IBLA 377, 381 (1988) ("[T]he Department has taken the consistent position that, as a general proposition, state courts are the proper forum for determining whether, pursuant to [R.S. 2477], a road is properly deemed to be a 'public highway.'"); *Leo Titus, Sr.*, 89 IBLA 323, 337 (1985) ("[T]his Department has considered State courts to be the proper forum for determining whether there is a public highway under [R.S. 2477] and the respective rights of interested parties."); *Nick DiRe*, 55 IBLA 151, 154 (1981) ("[T]he question of the existence of a 'public highway' [under R.S. 2477] is ultimately a matter for state courts"); *Homer D. Meeds*, 26 IBLA 281, 298 (1976) ("[T]his Department has considered State courts to be the proper forum to decide ultimately whether a public highway under [R.S. 2477] has been created under State law and to adjudicate the respective rights of interested parties. *Herb Penrose*, A-29507 at 1-2 (July 26, 1963) ("State courts are the proper forums for determining the protestant's rights and the rights of the public to use the existing . . . [R.S. 2477] road."); Solicitor's M-Opinion, *Limitation of Access to Through-Highways Crossing Public Lands*, M-36274, 62 I.D. 158, 161 (1955) ("Whatever may be construed as a highway under State law is a highway under [R.S. 2477], and the rights thereunder are interpreted by the courts in accordance with the State law.").

(8) *Wason Toll Road Co. v. Creede*, 21 Pub. Lands Dec. 351, 354-55 (1895) appears to go the other way, holding that a townsite patent would issue subject to an existing R.S. 2477 right of way. But the Land Department abandoned this position the next year in *Dunlap v. Shingle Springs & Placerville R.R. Co.*, 23 Pub. Lands Dec. 67, 68 (1896). See *The Pasadena and Mt. Wilson Toll Road Co. v. Schneider*, 31 Pub. Lands Dec. 405, 408 (1902) (noting supersession).

In summing its decision, the Tenth Circuit states, in pertinent part:

In sum, nothing in the terms of R.S 2477 gives the BLM authority to make binding determinations on the validity of the rights of way granted thereunder, and we decline to infer such authority from silence when the statute creates no executive role for the BLM. This decision is reinforced by the long history of practice under the statute, during which the BLM has consistently disclaimed authority to make binding decisions on R.S. 2477 rights of way. Indeed, there have been 139 years of practice under the statute--110 years while the statute was in force, and 29 years since its repeal--and the BLM has not pointed to a single case in which a court has deferred to a binding determination by the BLM on an R.S. 2477 right of way. We conclude that the BLM lacks primary jurisdiction and that the district court abused its discretion by deferring to the BLM.

The Tenth Circuit ruling in *SUWA v. BLM* mandates the BLM lacks the unilateral authority to make binding determinations on the validity of existing rights-of-way and the BLM can not close CDCA designated open routes as closure of the routes would constitute as an irreversible binding determination.

The Applicant and the BLM do not have the authority to amend the CDCA Plan to deprive the private property owners of adjacent lands of their right to use CDCA designated open routes. The CDCA states, in pertinent part:

The need for access across public lands to permit utilization of State and privately owned lands and to permit authorized developments on public lands, including mining claims, is recognized.⁴

The BLM has long recognized the right of private property owners in the Project area to use CDCA designated open routes to access their lands.

In the West Mojave Plan amendment to the California Desert Conservation Plan, the BLM identified motorized vehicle access needs and designated open routes to provide for a variety of activities. The activities identified in the plan include access to private land. Mr. Patrick Jackson may use designated open routes as long as his use does not exceed a level defined as casual use. ‘*Casual use* means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements.’ (43CFR2801.5)⁵

Given established history and the above facts and law, I request the BLM Director rule the CDCA designated open routes in the Project area remain open in keeping with FLPMA and CDCA and so the adjacent private lands will not be landlocked.

⁴ U.S. Department of Interior Bureau of Land Management, *The California Desert Conservation Area Plan 1980 as amended*, p. 11.

⁵ Roxie C. Trost February 25, 2010 letter to Shawn R. Jackson, Esq.

VIII. THE APPLICANT'S PROPOSED PERIMETER ACCESS ROADS DO NOT COMPLY WITH ALL APPLICABLE LAWS, ORDINANCES, REGULATIONS AND STANDARDS (LORS)

The Applicant's proposed perimeter access roads are not safe and do not comply with all applicable laws, ordinances, regulations and standards (LORS).

1. The Applicant has not presented evidence as required by CEQA the proposed perimeter access roads are safe.⁶ The proposed perimeter access roads are to be within 223 feet of the Project's SunCatchers and motorists on the perimeter access roads will be subject to flash blindness from glint and glare.⁷
2. The Applicant and the BLM have not established the necessary environmental baseline conditions for the proposed perimeter access roads as required by *Center for Biological Diversity v. Bureau of Land Management*, 422 F.Supp.2d 1115, 1166-67 (N.D. Cal. 2006).
3. The Applicant has not presented evidence motorists on the perimeter access road can cross the Southern California Edison (SCE) right-of-way or the BNSF railroad crossing on the east side of the Project.

IX. THE APPLICANT'S PROPOSED PUBLIC ACCESS ROUTES DO NOT COMPLY WITH CEQA GUIDELINES

Prior to the Applicant installing gates and barricades blocking Hector Road at the Burlington Northern Santa Fe (BNSF) railway crossing, the private property owners in Sections 1 and 36 traveled approximately 4.5 miles on Hector Road from Interstate 40 to access their lands. The gated BNSF crossing and the Applicant's "Proposed Public Access Routes" will force the private property owners and the public to use approximately 24 miles of mostly desert dirt roads from Newberry Springs or approximately 17 miles of desert dirt roads from Ludlow to access their lands. The additional traffic on the "Proposed Public Access Routes" will expose motorists to hazardous desert conditions and increase the threat to biological resources including endangered desert tortoises.

The Applicant's "Proposed Public Access Routes" are depicted on Exhibit 82-B, Figure No. 2 - Proposed Public Access Routes And Post-Construction Route Designations Calico Solar Project of the Applicant's Submittal of Rebuttal Testimony docketed with the CEC on July 29, 2010.

The Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS do not comply with CEQA Guidelines as these sections do not identify the environmental consequences of the "Proposed Public Access Routes". The Applicant has not presented evidence of any environmental studies conducted on the "Proposed Public Access Routes".

⁶ CEQA Guidelines, § 15002(a).

⁷ Testimony given at Evidentiary Hearing before the California Energy Resources Conservation and Development Commission, August 18, 2010.

CEQA Guidelines Section 15002(a)(1) through (3) state, in pertinent part:

The basic purposes of CEQA are to:

- (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.
- (2) Identify ways that environmental damage can be avoided or significantly reduced.
- (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

Section 15088.5(a) of the CEQA Guidelines state:

A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. [Emphasis added]

The fact the Applicant has not presented any evidence to show environmental studies were conducted on the 24 and 17 miles of "Proposed Public Access Routes" is significant, as the:

1. westerly "Proposed Public Access Routes" cross Troy Dry Lake,
2. easterly "Proposed Public Access Routes" pass through the Pisgah Crater Area of Critical Environmental Concern (ACEC) and
3. segments of the off-site "Proposed Public Access Routes" traverse or are within washes.

As to the easterly "Public Access Routes," Section 3.14.6.1 of the PRMP-A/FEIS states:

The Pisgah Crater ACEC was designated to cover a portion of the Pisgah Crater and surrounding area. The crater and lava flow are uncommon landforms in the western Mojave Desert. It also contains lava tubes of several types, some of which are used as bat roosts. The Pisgah Crater area has a high genetic biodiversity within species of reptiles and small mammals. The ACEC includes areas where populations of crucifixion thorn, white-margined beardtongue, sand linanthus, and Mojave-fringe-toed lizard occur. Desert tortoise also occurs in

*this area. Management of the ACEC allows the existing land uses at the time of designation, including mining, utility easements, rockhounding, and competitive recreation events to continue.*⁸

The Applicant's easterly "Proposed Public Access Routes" will force the public and private property owners to drive through the Pisgah ACEC and the "increased activities could lead to direct and indirect impacts on the wildlife populations and their habitats for which the ACEC was designated."⁹

Segments of the Applicant's off-site "Public Access Routes" traverse private lands and the Applicant has not presented evidence the routes are legal and travelers would not trespass onto private lands by using the routes.

As the Applicant has not conducted environmental studies for the "Proposed Public Access Routes," I request the BLM Director rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS do not comply with CEQA Guidelines §§ 15088.5(a), 15151.

I also request the BLM Director rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS are incomplete as the PRMP-A/FEIS does not mention or discuss the off-site "Public Access Routes".

X. RECORDS REQUESTED UNDER THE FREEDOM OF INFORMATION ACT

On December 13, 2009, I requested records the BLM has on Hector Road under the Freedom of Information Act (FOIA). The request for information was made in accordance with 5 U.S.C. § 552 *et seq.* and Title 20 California Code of Regulations § 1716(d).

To date, I have not received all the records I requested and I filed a FOIA appeal with the United States Department of the Interior (DOI) Office of the Solicitor on May 8, 2010. This appeal is ongoing.¹⁰

As a matter of record: On December 13, 2009, I also requested records the BLM has on water well quantity testing and water well sites under FOIA. I have not received all the records I requested and I filed a FOIA appeal with the DOI Office of the Solicitor on May 8, 2010. This appeal is also ongoing.¹¹

The National Environmental Policy Act (NEPA) requires the BLM to provide information requested under FOIA.¹²

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

⁸ PRMP-A/FEIS, p. 3-135.

⁹ *Id.*, p. 4-311.

¹⁰ Patrick C. Jackson Status Report No. 5.

¹¹ *Id.*

¹² Federal Register, Vol. 75, No. 35, February 23, 2010, p. 8046.

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

(2) all agencies of the Federal Government shall -

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

(i) the environmental impact on the proposed action.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes.¹³ [Emphasis added]

The Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS do not comply with NEPA as the BLM Barstow Field Office withheld significant information necessary for the sections to comply with NEPA.

The Memorandum of Understanding Between the U.S. Department of Interior, Bureau of Land Management California Desert District and the California Energy Commission Staff Concerning Joint Environmental Review For Solar Thermal Power Plant Projects (BLM/CEC MOU) states, in pertinent part:

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

To date, the BLM Field Office has not provided relevant and material information requested under FOIA. In not providing the requested information, the BLM's actions do not meet the legal requirements of Title 20 California Code of Regulations § 1716.

The BLM's withholding of relevant and material records prevents me and other interested parties from presenting evidence and participating fully in commenting on the PRMP-A/FEIS as required under NEPA and Title 20 California Code of Regulations §§ 1711, 1723(b).

Pursuant to the BLM/CEC MOU, the BLM Director is bound by California Code of Regulations to rule the BLM Barstow Field Office did not comply with Title 20 California Code of Regulations § 1716 and further rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS are incomplete and do not comply with all applicable LORS.

¹³ 42 USC § 4332.

XI. THE PRMP-A/FEIS DOES NOT COMPLY WITH SECTION 1500.1 OF THE NATIONAL ENVIRONMENTAL ACT (NEPA)

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

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

NEPA requires the BLM to provide information requested under FOIA.

Enacted in 1970, NEPA is a fundamental tool used to harmonize our economic, environmental, and social aspirations and is a cornerstone of our Nation's efforts to protect the environment. NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before acting. Additionally NEPA emphasizes public involvement in government actions affecting the environment by requiring that the benefits and risks associated with proposed actions be assessed and publicly disclosed.¹⁴ [Emphasis added]

The Land Use and the Traffic and Transportation sections of PRMP-A/FEIS do not comply with Section 1500.1 of NEPA as the BLM Barstow Field Office withheld significant information on CDCA designated open routes requested under FOIA.

¹⁴ Federal Register, Vol. 75, No. 35, February 23, 2010, p. 8046.

XII. THE PRMP-A/FEIS DOES NOT COMPLY WITH NEPA AS THE BLM'S WITHHOLDING OF INFORMATION PREVENTS THE PUBLIC TO BE INVOLVED IN THE DECISION-MAKING PROCESS

The Council of Environmental Quality for NEPA:

... wants to develop more effective and accessible tools for citizen involvement in government decision-making. These actions are designed to provide carefully-tailored new assessment and reporting requirements, facilitate agency compliance with NEPA, and enhance the quality of public involvement in governmental decisions relating to the environment.¹⁵ [Emphasis added]

XIII. PROTESTS AND REQUESTS

1. I protest the closure of long-established CDCA designated open routes necessary for private property owners to access their lands.
2. I protest the substitution of proposed perimeter public access roads that will be unsafe and not comply with *CBD v. BLM*.
3. I protest the substitution of the Applicant's imaginary "Proposed Public Access Routes" which have not been proven legal or safe for public use.
4. I protest the closure of CDCA open routes and the substitution of non-existent alternative "Public Access Routes" which will **landlock** the private lands adjacent to the Project.
5. I protest the Applicant not presenting evidence of environmental studies conducted on the off-site "Public Access Routes" as required by NEPA, CEDA and ESA.
6. I protest the BLM Barstow Field Office withholding information requested under FOIA which prevents me and other interested parties in participating fully in the PRMP-A/FEIS process.
7. I request the BLM Director rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS are incomplete and do not comply with FLPMA, CDCA, NEPA, CEQA, ESA, *SUWA v. BLM* and *CBD v. BLM*.
8. I request the BLM Director rule the Land Use and the Traffic and Transportation sections are incomplete and do not comply with NEPA and CDCA on the grounds the withholding of information by the BLM Barstow Field Office prevents me and other interested third parties from participating fully in the PRMP-A/FEIS process.

¹⁵

Id.

9. I request the BLM Director rule the Land Use and the Traffic and Transportation sections of the PRMP-A/FEIS be revised to comply with all applicable LORS and recirculated for public comment.

Respectfully submitted,

Original Signed By

Patrick C. Jackson
Private Property Owner & Intervenor

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

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

Docket No. 08-AFC-13

DECLARATION OF SERVICE

I, **Patrick C. Jackson**, declare that on **August 31, 2010**, I served and filed copies of the attached *Comments and Protests to the Final Environmental Impact Statement and Proposed Amendment to the California Desert Area Plan for the Calico Solar Project, San Bernardino County, California*. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent *Proof of Service* located on the web page for this project at:

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

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

FOR SERVICE TO THE APPLICANT AND ALL OTHER PARTIES:

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

AND

FOR FILING WITH THE ENERGY COMMISSION:

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

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. **08-AFC-13**
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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

August 31, 2010

Date

Original Signed By

Patrick C. Jackson



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION

For the CALICO SOLAR (Formerly SES Solar One)

Docket No. 08-AFC-13

PROOF OF SERVICE
(Revised 8/9/10)

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