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**DOCKET**

**09-AFC-8**

DATE SEP 23 2010

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September 23, 2010

California Energy Commission  
Dockets Unit  
1516 Ninth Street  
Sacramento, CA 95814-5512

Subject: **GENESIS SOLAR LLC'S RESPONSE TO PARTIES COMMENTS ON  
THE PRESIDING MEMBER'S PROPOSED DECISION  
GENESIS SOLAR ENERGY PROJECT  
DOCKET NO. (09-AFC-8)**

Enclosed for filing with the California Energy Commission is the original of **GENESIS SOLAR, LLC'S RESPONSE TO PARTIES COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION** for the Genesis Solar Energy Project (09-AFC-8).

Sincerely,

A handwritten signature in blue ink, appearing to read "Marie Mills", is written in a cursive style.

Marie Mills

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STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

Application for Certification for the  
**GENESIS SOLAR ENERGY PROJECT**

**DOCKET NO: 09-AFC-8**

**GENESIS SOLAR LLC'S RESPONSE  
TO PARTIES COMMENTS ON THE  
PRESIDING MEMBER'S PROPOSED  
DECISION**

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Genesis Solar, LLC (Genesis) hereby provides this written response to the parties' comments on the Presiding Member's Proposed Decision (PMPD) to assist the Committee in preparation of the final errata to the PMPD. Genesis previously submitted comments on the PMPD which were discussed at the PMPD Conference Hearing. Since Genesis did not have the benefit of the other parties comments at the PMPD Conference Hearing, it did not have an opportunity to inform the Committee where there is agreement or highlight the few areas of disagreement. Genesis does so here.

**STAFF COMMENTS**

Genesis agrees with all of the Comments provided by Staff in its September 20, 2010 filing except the following:

***References to the REAT Table, BIO-12, -18, -19 and 22***

In its PMPD Comments, Staff added language referencing the Desert Renewable Energy REAT Biological Compensation/Mitigation Cost Estimate Breakdown, dated July 23, 2010 (REAT Table) as the basis for estimating the cost of land acquisition and the in lieu fee program. Genesis does not object to this approach and addition of the language in certain portions of the conditions. The last sentence of this additional language states,

“This estimate may be revised with updated information from the REAT agencies.”

Genesis requests this sentence be deleted **only** from those portions of the conditions that relate to the calculation of Security. As the Committee is aware, the primary purpose of the security is to ensure performance of the condition, which could be satisfied only by actual acquisition of land or payment of the in lieu fee in accordance with that program. In order to provide certainty at this time, Genesis believes that the Security amounts should be fixed and should not be subject to change. Therefore Genesis requests that the above reference sentence be deleted from:

- Security portion of **BIO-12** shown on page 34 of Staff’s Comments;
- Security portion of **BIO-18** shown on page 41 of Staff’s Comments;
- Security portions of **BIO-19** shown on pages 42 and 43 of Staff’s Comments;
- Security portion of **BIO-22** shown on page 46 of Staff’s Comments

#### ***Page 35, BIO-13***

Genesis agrees with Staff’s modifications to this Condition of Certification and requests the addition of the following language to clarify the how the Raven Management Fee is calculated.

No less than 10 days prior to the start of any Project-related ground disturbance activities, the Project owner shall provide documentation to the CPM, BLM, CDFG and USFWS that the one-time fee for the USFWS Regional Raven Management Program ~~of~~ has been deposited to the REAT-NFWS subaccount for the Project. ***The amount shall be a one-time payment of \$105 per acre of permanent disturbance of 1754 acres.***

#### ***Page 41, BIO-18***

Genesis requests the following modification to Staff’s increased Security amount. Staff increased the amount from \$44,460 to \$143, 045. The correct amount should be 39 acres multiplied by the per acre number in the REAT Table resulting in \$120,432.<sup>1</sup>

#### ***Page 44, BIO-20***

Genesis requests the following modification to Staff’s proposed language changes to **BIO-20** to clarify how Security was calculated.

The Security shall be approved by the CPM, in consultation with CDFG and the USFWS, to ensure sufficient funding. ~~As of publication of the RSA, this~~ ***The amount is \$422,668 based on the most current guidance***

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<sup>1</sup> Using the per acre fee of \$3,088 used to calculate Desert Tortoise Security multiplied by 39 acres

*from the REAT agencies (Desert Renewable Energy REAT Biological Resource Compensation/Mitigation Cost Estimate Breakdown for use with the REAT-NFWF Mitigation Account, July 23, 2010).*

**Page 46, BIO-22**

The phrase “As of the date of the publication of the RSA,” should be struck from the Security portion of this condition.

**Page 48, BIO-29**

Staff provided modifications to Condition of Certification **BIO-29** to reflect changes made in the Beacon Solar Energy Project. Genesis requests the following modifications to clarify the timing of the payment of the in-lieu fee in order to accommodate that the in lieu fee program may not be in place prior to the start of construction of the GSEP.

**BIO-29** 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 provided that the Project’s the in-lieu fee provision proposal is found by the Commission to be in compliance with CEQA and CESA requirements. If the in-lieu fee proposal is found by the Commission to be in compliance, and the Project Owner chooses to satisfy its mitigation obligations through the in-lieu fee, the Project Owner shall provide proof of the in-lieu fee payment to the CPM ~~prior to construction related ground disturbance.~~

**Verification:** If electing to use this provision, the Project owner shall notify the Commission and all parties to the proceeding that it would like a determination that the Project’s in-lieu fee proposal meets CEQA and CESA requirements. ***If the Project owner elects to use this provision prior to construction related ground disturbance posting the Security required by the Conditions of Certification,*** the Project Owner shall provide proof of the in lieu fee payment to the CPM ***prior to construction related ground disturbance.*** ***If the Project owner elects to use this provision after posting such Security, the Project owner shall provide proof of the in lieu fee payment prior to the time required for habitat compensation lands to be surrendered in accordance with the Conditions of Certification.***

## **CBD COMMENTS**

### ***Comment 1.A.***

Genesis agrees with CBD's contention and believe that Staff's Comments already provide the requested language.

### ***Comment 1.B.***

Genesis disagrees with repeating the requirement already contained in Condition of Certification **CUL-14** to install a security gate and/or guard at the south end of the access road to prevent unauthorized access. CBD requests a gate and a 24 hour security guard which is excessive. Condition of Certification **BIO-6** already requires an extensive training program for workers and Condition of Certification **BIO-8**, Item 15 already provides that workers cannot use anything but designated routes.

### ***Comment 2.***

Genesis agrees with CBD's correction.

### ***Comment 3.***

This addition is unnecessary as the General Conditions (**COMPLIANCE-1**) already require the Project owner to provide access to the site to the CPM for the life of the GSEP.

### ***Comment 4.***

Genesis objects to any revisions to Conditions of Certification **BIO-16** or **BIO-21**. Genesis believes that the conditions as written adequately address CBD's concerns.

### ***Comment 5.***

Genesis objects to modification of the compensatory mitigation. The ratios contained in all of the Conditions of Certification were subject to many months of dialogue and Genesis eventually agreed to mitigate for Desert Tortoise Habitat of 5:1 for critical habitat and 1:1 for the rest of the site even though no desert tortoise or recent tortoise sign was observed during protocol surveys in the project footprint. Mitigation at these ratios is far and above the amount necessary to mitigate GSEP's actual impacts.

### ***Comment 6.***

Genesis believes that modification is unnecessary in light of Staff's comments on the PMPD.

***Comment 7.***

Genesis objects to CBD's request to mitigate for a "sand shadow". Mitigation is for impacts to species and Genesis clearly proved to Staff and at the evidentiary hearing that the area of the potential "sand shadow" was not Mojave Fringe Toed Lizard habitat, thereby not requiring mitigation. No party including CBD presented any evidence to the contrary at the evidentiary hearings.

Additionally, Genesis objects to CBD's additional language relating to restoration and revegetation. Condition of Certification **BIO-23** reflects the Decommissioning Plan process and any reclamation will be performed in accordance with BLM regulations.

***Comment 8***

Genesis objects to CBD's request to expand monitoring for Golden Eagles within 10 miles of the Project boundaries. Genesis already conducted several Golden Eagle surveys and no active nests were identified within 10 miles. While one nest located 9.8 miles from the project boundary could not be classified as inactive, no eagles were observed using this nest. However, even assuming this nest was active; Staff and Genesis experts agree that due to the distance from the project site disturbance to golden eagles was unlikely. This is further supported by the lack of prey concentration in the area. Monitoring greater than 1 mile from the construction activities is simply unwarranted and CBD provided no evidence to the contrary.

***Comment 9.***

Genesis objects to CBD's addition of a condition requiring Genesis to develop plans for the Riverside County Fire Department (RCFD). The PMPD correctly concluded that the impacts from the extremely rare, if at all, occurrence that the RCFD will need to respond with the All Terrain Vehicles and that such response would significantly impact any species, are simply either too speculative and/or insignificant. Therefore, mitigation is unwarranted.

***Comment 10.***

Genesis disagrees with CBD's contention that Genesis proposed language is vague. Genesis does agree with the language provided in the recent Blythe Solar Power Project Decision, whereby the words "case by case" were deleted.

**CURE COMMENTS**

CURE's overall contention is that the Commission did not afford meaningful public participation in the decision-making process for the GSEP. This is not only a gross misrepresentation of the facts, but offensive. There is no other California permitting process that permits more public involvement or opportunity than the Siting Process by the Commission. The very law that CURE cites is being violated here (CEQA) does not

provide for a single mandatory public hearing, where the Commission has had over 20 publicly noticed workshops, hearings and meetings for the GSEP alone. Genesis sincerely hopes the Commission tires of CURE's economically motivated criticism.

CURE claims that the Commission must now respond to each and every one of its comments on the PMPD. The Commission should remember that CURE is not merely a member of the public participating in an EIR process anymore. It voluntarily elected to become a party and as such is governed by the Commission's Process which was certified by the Secretary of Resources pursuant to Public Resource Code Section 21080.5. The Commission regulations have given CURE every possible chance to present evidence and argument to influence the ultimate Decision of the Commission. And CURE has done so.

CURE raises the following issues in its comments on the PMPD.

1. CURE contends the project impacts the Colorado River and requires and entitlement;
2. CURE contends that the Commission should have required additional Cultural Resources field investigation in order to comply with CEQA and cannot make the appropriate finding of override;
3. The Commission failed to analyze the environmental effects of SCE's transmission facility upgrades to be constructed downstream of the Colorado River Substation Expansion and
4. The Commission failed to properly analyze the environmental consequences of use of HTF.

Every one of CURE's "comments" have been thoroughly examined by the Staff in workshops, and by the Committee in evidentiary hearings and numerous briefs. CURE provides evidence of this by including all of its briefs as attachments to its "comments" which reference all of the evidence in the record and case law it relies on for the **very same contentions**. CURE does not raise a single new issue in its comments on the PMPD and each of the issues it does raise has been thoroughly reviewed and analyzed. One need only read the PMPD to determine that the Committee read and considered every one of CURE's contentions. In effect, the Committee's PMPD responded to every one of CURE's contentions already. This is not a case of meaningful participation and response to comments. CURE simply just does not agree with the Committee's Decision, which is its right. But to say now that its comments must be addressed by the Committee in order to comply with CEQA lacks logic and credibility. The Commission should cleanly reject any contention that the PMPD or the process does not comply with CEQA and reject all of CURE's contentions in its comments as already decided. The Commission need not respond again to each of CURE's points.

Lastly, Genesis objects to CURE's last minute attempt to introduce evidence by attaching emails purportedly from the Bureau. The grounds for objection are, the evidentiary record is closed, the documents lack foundation as they are

unauthenticated, the documents are hearsay, and the information as presented is out of context and is irrelevant.

CURE also presents excerpts from the Final Environmental Impact Statement (FEIS) regarding its erroneous conclusions regarding the Colorado River. It is important for the Commission to note that:

- The FEIS has been circulated for public comment;
- Genesis and others commented with the same type of information presented to the Committee at evidentiary hearing demonstrated no entitlement is required;
- The FEIS is not BLM's final position; and
- Genesis is confident that the BLM after considering all of the information presented will conclude in its Record of Decision that no entitlement of Colorado River water is necessary for the GSEP to legally pump California groundwater in the Chuckwalla Valley.

### **CONCLUSION**

Genesis looks forward to a Decision on the 29<sup>th</sup> of September that reflects the PMPD as modified by errata consistent with our earlier comments as modified by Staff and this response.

Dated: September 22, 2010

Respectfully Submitted,



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Scott A. Galati  
Counsel to Genesis Solar, LLC





**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](http://WWW.ENERGY.CA.GOV)**

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

**Docket No. 09-AFC-8**

**PROOF OF SERVICE  
(Revised 8/5/10)**

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DECLARATION OF SERVICE

I, Marie Mills, declare that on September 23, 2010, I served and filed copies of the attached: **GENESIS SOLAR, LLC'S RESPONSE TO PARTIES COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION** dated September 22, 2010. 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: [[http://www.energy.ca.gov/sitingcases/genesis\\_solar](http://www.energy.ca.gov/sitingcases/genesis_solar)].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:  
(*Check all that Apply*)

**FOR SERVICE TO ALL OTHER PARTIES:**

- ☒ sent electronically to all email addresses on the Proof of Service list;  
☐ by personal delivery;  
☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

**AND**

**FOR FILING WITH THE ENERGY COMMISSION:**

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

**OR**

- ☐ depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 09-AFC-8

1516 Ninth Street, MS-4

Sacramento, CA 95814-5512

[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

  
\_\_\_\_\_

Marie Mills