

**CALIFORNIA ENERGY COMMISSION**

1516 NINTH STREET  
 SACRAMENTO, CA 95814-5512  
 www.energy.ca.gov



October 5, 2011

**DOCKET**

**09-AFC-5C**

DATE Oct. 05 2011

RECD. Oct. 07.2011

Mr. Matt Stucky, P.E.  
 Abengoa Solar, Inc.  
 235 Pine Street, Suite 1800  
 San Francisco, CA 94104

**RE: ABENGOA MOJAVE SOLAR POWER PROJECT (09-AFC-5C)  
 COMPLIANCE CONDITIONS OF CERTIFICATION BIO-6**

Dear Mr. Stucky:

This letter is to inform you that the California Energy Commission (Energy Commission) is in receipt of information that the Abengoa Mojave Solar Power Project (AMS) is out of compliance with Condition of Certification BIO-6.

**BACKGROUND**

Per the Public Resources Code (PRC), Section 25532, the Energy Commission shall assure that any facility certified under this division is operating in compliance with conditions adopted or established by the Energy Commission or specified in the written decision on the application. In addition, the California Code of Regulations, Title 20, Section 1770 states that the Energy Commission shall provide adequate monitoring of all conditions and measures set forth in the final decision required to mitigate potential impacts and to assure that the facility is operated in compliance with all applicable laws.

**CONDITIONS OF CERTIFICATION COMPLIANCE**

The AMS project was approved by the Energy Commission in September 2010. The Final Decision contains a Condition of Certification for which AMS appears to be out of compliance. Biological Condition of Certification BIO-6 states "(t)he project owner shall develop a Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) in consultation with the Designated Biologist and shall identify...(a)ll biological resource mitigation, monitoring, and compliance measures required in federal agency terms and conditions, such as those provided in the Biological Opinion." Item #3 on page 12 of the Biological Opinion states "Abengoa will use water for construction, operation, and maintenance.....in a manner that does not result in puddling."

On a site visit to AMS on September 22, 2011, Dale Rundquist (CPM) and Chris Marxen observed that the overflow of water from the two construction water tanks being filled by the Ryken well was being dispersed in an undisturbed area of the site north of a graded area and access road to one of the tanks used to fill dust suppression water trucks. On September 28, 2011, the CPM and Energy Commission Staff Biologist Andrea Martine observed similar activity. This distribution of water was being conveyed by the use of

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agricultural sprinklers and was creating puddling and ponding of water that may attract wildlife to the area. This is an activity that places AMS out of compliance with BIO-6.

The puddling of water has been occurring at the site since the week of September 4. The Chief Building Official at the site, Steve Hermsmeyer, made almost daily notifications concerning the need to end the puddling at the morning coordination meetings beginning on September 9. In attendance at one or all of these meetings were managers from Sukut Construction and Abener-Teyma. On September 28, the CPM and the Energy Commission's Staff Biologist notified Designated Biologist Peggy Wood that the activities violated BIO-6.

The Energy Commission staff will continue to work closely with AMS to ensure conformance with all conditions of certification. However, AMS should understand that any use of water that results in a ponding or puddling prohibited by Condition of Certification BIO-6 will be considered a violation of that condition. The violation may result in formal Energy Commission actions including the assessment of penalties in accordance with the provisions of PRC Section 25534. In addition, the staff is currently considering whether to recommend to the Energy Commission that penalties, in accordance with PRC Section 25534 be imposed for the failure to comply with the Condition of Certification BIO-6. Should staff file a complaint, you will be notified pursuant to the provisions of Section 1232, Title 20, California Code of Regulations (20 CCR) and have an opportunity to respond pursuant to the provisions of Sections 1233 and/or 1237, 20 CCR.

If you have any questions, please call me at (916) 651-0587 or e-mail me at [cmarxen@energy.state.ca.us](mailto:cmarxen@energy.state.ca.us).

Sincerely,



Christopher J. Marxen  
Compliance Office Manager  
Siting, Transmission,  
and Environmental Protection Division

cc: Docket Unit, California Energy Commission