

COLORADO RIVER BOARD OF CALIFORNIA

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March 22, 2010

Mr. Alan H. Solomon
 Project Manager
 Siting, Transmission and Environmental
 Protection Division
 California Energy Commission
 1516 Ninth Street, MS 15
 Sacramento, CA 95814-5512

Dear Mr. Solomon:

The Colorado River Board of California (Board), created in 1937, is the State agency charged with safeguarding and protecting the rights and interests of the State, its agencies and citizens, in the water and power resources of the seven-state Colorado River System.

The Board has received and reviewed the California Energy Commission's (CEC) documents Nos. Docket 09-AFC-6 and 09-AFC-7: Request for Agency Participation in the Review of the Blythe and the Palen Solar Power Projects in Riverside County, California, Distribution of Application for Certification. Both the Blythe and the Palen Solar Power Projects are proposed to be located in the Southern California inland desert. The applicants for both the Blythe and the Palen Projects are seeking a right-of-way grant for approximately 9,400 acres and 5,200 acres, respectively, of Federal lands that are administered by the Bureau of Land Management (BLM). The total water consumption during the operational period for the Blythe and the Palen Projects is estimated to be 628 and 314 acre-feet per year over the 30-year license period, respectively. In addition during construction, the water use is estimated to be 3,164 and 1,560 acre-feet for the two projects, respectively. The water supply for each project will be pumped groundwater from on-site wells.

According to the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California, et al.* entered March 27, 2006, (547 U.S. 150 (2006)), the consumptive use of water means "diversion from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation" and consumptive use "includes all consumptive uses of water of the mainstream, including water drawn from the mainstream by underground pumping." Also, pursuant to the 1928 Boulder Canyon Project Act (BCPA) and the Consolidated Decree, no water shall be delivered from storage or used by any water user without a valid contract between the Secretary of the Interior and the water user for such use, i.e., through a BCPA Section 5 contract. Within California, BCPA Section 5 contracts have previously been entered into between users of Colorado River mainstream water and the Secretary of the Interior for water from the Colorado River that exceeds California's basic entitlement to use Colorado River water as set forth in the Consolidated Decree. Thus, no additional Colorado River water is available for use by new

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project proponents along the Colorado River, except through the contract of an existing BCPA Section 5 contract holder, either by direct service or through an exchange of non-Colorado River water for Colorado River water.

The Federal lands proposed for both the Blythe and Palen Projects are located within the "Accounting Surface" area designated by U.S. Geological Survey Water Investigation Report Nos. 94-4005 and 00-4085 (USGS Report). This USGS Report indicates that the aquifer underlying lands located within the "Accounting Surface" is considered hydraulically connected to the Colorado River and groundwater withdrawn from lands underlying the "Accounting Surface" would be replaced by Colorado River water, in total or in part. This means that if it is determined that these wells are, in fact, pumping Colorado River water, a contract with the Secretary of the Interior is required before such a use is deemed to be a legally authorized use of this groundwater.

On November 9, 2009, the Board received applications for Lower Colorado Water Supply Project water for the Blythe and the Palen Solar Power Projects from the projects' consultant/proponent, Mr. Josef Eichhammer of Solar Millennium, LLC. This project, enacted by Congress on November 14, 1986, as the Lower Colorado Water Supply Project Act of 1986 (Act) authorized construction of the Lower Colorado Water Supply Project (LCWSP) and appropriated funds for the U.S. Bureau of Reclamation (Reclamation) to construct Phase I of the Project. The LCWSP consists of well field facilities in the Sand Hills along the All-American Canal in Imperial County. The LCWSP is authorized to provide exchange water up to a total amount of 10,000 acre-feet per year for nonagricultural use to those users of Colorado River water along the Colorado River, who do not have an existing Section 5 BCPA contractual entitlement or whose entitlement to use Colorado River is insufficient to meet their needs. Under a "first come first serve" priority basis, the Board has reviewed applications that it has received and, to date, recommended to Reclamation that applicants for LCWSP water in the amount of about 7,500 acre-feet per year are eligible to receive LCWSP water. At this time, the capacity to pump the fully authorized volume of 10,000 acre-feet of water per year has not been constructed. Furthermore, when the Congress passed the Act authorizing the LCWSP, water for large scale solar power/energy projects was not envisioned. Considering these two factors it does not appear that LCWSP water is a viable option for the Blythe and Palen Projects.

Based upon the applications for LCWSP water that were received from Solar Millennium for the Blythe and the Palen Solar Power Projects, several meetings and telephone conference calls have been held among the solar power projects consultants/proponents, Reclamation, BLM, Board's staff, and others. As a result of discussions in these meetings, the Board's staff has identified a preferred option for obtaining a legally authorized and reliable water supply for both the Blythe and the Palen Solar Power Projects over the life of the project that fits into the timeframe that has been established by Solar Millennium. That option involves obtaining water through an existing Section 5 BCPA contract holder, The Metropolitan Water District of Southern California (MWD). Although other options may be available, they, in the Board's opinion, could not be implemented in a timely manner and address the requirement that water consumptively used

California Energy Commission

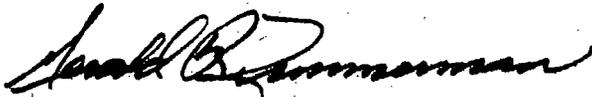
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from the Colorado River must be through a Section 5 BCPA contractual entitlement.

If you have any questions or need further information, please contact me at (818) 500-1625.

Sincerely,



Gerald R. Zimmerman

Executive Director

cc: Ms. Lorri Gray-Lee, Regional Director, Lower Colorado Region, U.S. Bureau of Reclamation

Ms. Holly Roberts, Associate Field Manager, Palm Springs-South Coast Field Office, BLM

Ms. Eileen Allen, Manager, Energy Facilities Siting and Dockets Office, CEC

Dr. Jeffrey G. Harvey, Principal & Senior Scientist, Harvey Meyerhoff Consulting Group

Mr. Gavin Berg, Project Manager, Solar Millennium LLC

Mr. William J. Hasencamp, Manager, Colorado River Resources, The Metropolitan Water District of Southern California



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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1-800-822-6228 – WWW.ENERGY.CA.GOV

**APPLICATION FOR CERTIFICATION
FOR THE PALEN SOLAR POWER
PLANT PROJECT**

Docket No. 09-AFC-7

PROOF OF SERVICE
(Revised 4/5/10)

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DECLARATION OF SERVICE

I, Hilarie Anderson, declare that on April 15, 2010, I served and filed a copy of the attached Letter from the Colorado River Board of California. 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: [\[http://www.energy.ca.gov/sitingcases/solar_millennium_palen\]](http://www.energy.ca.gov/sitingcases/solar_millennium_palen)

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-7
1516 Ninth Street, MS-4
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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.

Original Signature in Dockets

Hilarie Anderson