Tessera Solar
power from stirling energy systems

October 25, 2010

DOCKET
08-AFC-13
DATE OCT 25 2010
RECD. OCT 25 2010

Mr. Christopher Meyer
CEC Project Manager
Attn: Docket No. 08-AFC-13
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Calico Solar (formerly Solar One) Project (08-AFC-13)
Applicant's Submittal of Additional Comments on the Presiding Member's Proposed Decision

Dear Mr. Meyer:

Tessera Solar hereby submits Additional Comments on the Presiding Member's Proposed Decision. I certify under penalty of perjury that the foregoing is true, correct, and complete to the best of my knowledge.

Sincerely,

Felicia L. Bellows
Vice President of Development

Tessera Solar | 4800 N. Scottsdale Road | Suite 5500 | Scottsdale, AZ 85251 | P +1 602 535 3576 | F +1 602 535 3617 | tesserasolar.com

This Page Intentionally Left Blank

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

Calico Solar (formerly known as SES Solar One) Project Calico Solar, LLC	)	**Docket No. 08-AFC-13**
	)	**APPLICANT'S SUPPLEMENTAL COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION**

In addition to the comments submitted on October 18, 2010, Calico Solar, LLC, the Applicant for the Calico Solar Project, submits these supplemental comments on the Presiding Member's Proposed Decision (PMPD) to approve the Project.

Calico Solar again thanks the Committee and the Commission's Staff for the time, energy and attention which they have dedicated to their consideration of the Project. The Project is a key piece in helping California provide clean, renewable energy to residences and businesses throughout the state. Through the Energy Commission's process, the Project has been revised to reduce impacts to the environment, while still being able to provide clean power.

These supplemental comments on the PMPD address, in part, the discussions at the October 22, 2010 hearing and some of the issues raised in CURE Initial Comments on the PMPD dated October 19, 2010, Staff's Initial Comments on the PMPD dated October 20, as well as Additional Staff Comments on the Fire Protection Analysis in the PMPD dated October 22, 2010, Sierra Club Comments on the PMPD dated October 20, 2010, and Defenders of Wildlife Comments on the PMPD dated October 21, 2010.

Calico Solar's supplemental comments on the PMPD are provided below.

I. Introduction

The Commission's regulations require that "The presiding member's proposed decision shall contain the committee's responses to significant environmental points raised during the application proceeding." 20 CCR § 1752.5. The PMPD does so. CURE's statement that CEQA sections 20191(a) and 21092 required the CEC to provide a 30-day public comment period on Supplemental Staff Assessment (SSA) Parts I and II (as well as for any errata or addenda to the SSA documents) is incorrect. See CURE Comments at 1.

CEQA sections 21091(a) and 21092 refer to public review periods and notice requirements for Draft EIRs. Under its Certified Regulatory Program, the CEC does not issue EIRs; as the notices in this proceeding explained, the CEC "produces several

environmental and decision documents rather than an Environmental Impact Report." Notice, 4/1/2010.

The CEC document that most closely resembles a Draft EIR is the Staff Assessment (SA). Here, the CEC did not give notice and a 30-day comment period for the SA; it gave notice and a 91-day comment period for the SA. Notice, 4/1/2010.

Because it responds to comments made on the SA, the SSA most closely resembles a Final EIR prepared under CEQA.[1] CEQA does not require a lead agency to provide a comment period on a Final EIR. Here again, the CEC provided far more opportunity for public comment on the SSA than CEQA would require for a Final EIR. The CEC took written comments and oral comments at numerous hearings, as well as affording opportunities for live testimony and cross-examination of experts that are found nowhere in CEQA.

Finally, the CEC's PMPD provided a third round of public review and comment, with a formal 30-day comment period, that is not part of the normal CEQA process. The CEC's extensive requirements for public participation in the environmental review process exceed CEQA's requirements for EIRs, and were fully implemented in this proceeding. Calico Solar suggests that the PMPD be revised to reflect the public review process by including the following paragraph on page 6 of the Introduction after the second paragraph on that page:[2]

> Consistent with the CEC's process, the SSA responded in writing to comments at the following locations: Ex. 300 (SSA), B.2-85 - B.2-87 (alternatives), C.2-155 - C.2-166 (biological resources), C.4-28 - C.4-29 (geology and paleontology), C.5-24 - C.5-25 (hazardous materials management), C.6-24 - C.6-27 (public health and safety), C.7-133 - C.7-141 (soil and water resources), C.8-40 - C.8-41 (land use, recreation, and wilderness), C.9-19 - C.9-22 (noise and vibration), C.10-25 - C.10-26 (socioeconomics and environmental justice), C.13-38 - C.13-42 (visual resources), C.14-25 (waste management), C.15-34 - C.15-35 (worker safety and fire protection); Ex. 309 (SSA, Part 2), C.2-145 - C.2-147 (cultural resources), C.11-31 - C.11-32 (traffic and transportation). Additionally, after the SSA was issued, Commission hearings and its docket provided further opportunities for comments. Public agencies, intervenors, and the public have had extensive opportunities to make comments and

---

[1] The PMPD occasionally refers to the SA as the "Preliminary Staff Assessment" and to the SSA as the "Final Staff Assessment." PMPD, Introduction at 3, 6. These defined terms seem confusing. Calico Solar suggests referring to these documents as the SA and SSA as the PMPD does elsewhere in the text.

[2] As discussed at the October 22, 2010 hearing, Calico Solar requests that each substantive section be updated to incorporate by reference these responses to public comments included in the SSA.

have these comments addressed and considered by the Commission.

CURE complains that the project changed after the SA was issued in March 2010, but the impacts of the project were only reduced, and mitigation increased, during this time. *See* Ex. 82 (Bellows Rebuttal Testimony) at 3-4; Ex. 114 (Bellows Testimony) at 2. Nothing in CEQA requires a public review process to start over every time a project is reduced in size or improved.

CURE claims that the CEC environmental process had to start over because of the issuance of the desert tortoise translocation plan, elimination of detention basins unless final hydrology studies show they are necessary, addition of backup cultural resources mitigation, and identification of a local water supply that will not require railroad and truck transport of water. The record shows not only that these developments were neutral or beneficial, but that they all received a very thorough airing in written and oral comments and testimony. The opportunities for this airing were provided by the CEC procedures CURE criticizes.

Moreover, the Commission's process has allowed for public scrutiny of the environmental review that goes far beyond what CEQA requires.[3] Therefore, the Commission has ensured that both the letter and intent of the public review provisions of CEQA and the Warren-Alquist Act have been met.

II. Project Description

A. Impervious Surfaces

The following sentence in the PMPD is correct, although somewhat opaque: "Except for the building sites, roads, and two evaporation ponds, the majority of the project site

---

[3] The Warren-Alquist Act and the Commission's regulations provide far more opportunities for public comment on the environmental analysis than CEQA requires.

- CEQA does not require a lead agency to conduct any hearings. The Warren-Alquist Act requires evidentiary hearings at which the public and all parties to the proceeding can comment on the application and the staff assessment. Pub. Res. Code § 25521. In this case the Commission provided seven full days of hearings and multiple workshops.
- As these proceedings make clear, the Commission has liberal intervention rules. CEQA does not provide for data requests or any type of discovery from applicants. CURE, an organization devoted to the advancement of labor interests, could and did require the Applicant to answer multiple data requests regarding the project and its environmental impacts.
- CEQA provides no right to examine witnesses. Under the CEC's intervention rules, CURE could and did cross-examine the CEC experts who prepared the environmental analyses, the applicant's representatives, and the applicant's experts.
- CEQA does not require a lead agency to allow time for comment on its proposed decision on a project. The CEC regulations require that a PMPD be circulated for 30 days and that comments be addressed. Here again, CURE took full advantage of its opportunity to comment.

would remain pervious; only a negligible portion of the site would be affected by pavement and SunCatchers foundations." PMPD, Project Description at 7. This statement, which is quoted from the SSA (Ex. 300 at B.1-11), correctly indicates that the building sites, roads and two evaporation ponds will be impervious. There is substantial evidence to support the conclusion that only a negligible portion of the site would be affected by pavement and SunCatcher foundations. The impermeable areas of the Project site would be confined to the maintenance roads, the service roads, the main entrance roads, the SunCatcher pedestals, and the main services complex. Transcript, Byall testimony August 6, 2010 at 11-12. The main entrance road would have a gravel cap on it and all roads would be treated with soil tack and; there are no "traditionally paved roads." Transcript, Bellows and Byall testimony September 20, 2010 at 185. All roads would be at grade, not raised, and designed not divert water flow. Transcript, Chang and Moore testimony September 20, 2010 at 89-90, 172.

CURE's comment on the PMPD is that "Applicant's expert testified that all of the unpaved roads will be treated with soil tackifiers, rendering them impervious (9/20/10 RT 169)." CURE Comments at 4. This statement is a slight mischaracterization of Mr. Moore's testimony. In response to a question from Mr. Lamb asking: "And if you emplace Soil Tech [sic] on any of roadways, would you agree that that makes them *more impervious* than if they would have been left in their natural state?" Mr. Moore responded, "Yes." Transcript, Moore testimony September 20 2010 at 169 (emphasis added). He then went on to explain that the surrounding soil adjacent to the roadways is pervious surface, naturally occurring ground. *Id.*

B. Hydrogen K-Bottles

The PMPD is correct in stating that "If the distributed hydrogen supply system utilizing k-bottles at each SunCatcher PCU is utilized at the Calico Solar site, the system would use two redundant hydrogen generators and one steel storage tank located at the Main Services Complex as described in the centralized system." PMPD, Project Description at 14. Calico Solar has not, as CURE has suggested (CURE Comment at 8), amended the AFC to rely upon a centralized hydrogen system and, instead, maintains its option to use the k-bottles or the centralized hydrogen system, as Ms. Winterbauer testified to on June 29, 2010 (Ex. 81) and as Mr. Hussain testified to on July 28, 2010 (Ex. 90).

III. Reliability

At the August 6, 2010 hearing, Staff proposed a new condition REL-1. Transcript, August 6, 2010 at 227-230. Calico Solar does not believe that this reliability condition is necessary, but, as stated in the PMPD, Calico Solar did not contest it. PMPD, Reliability at 4. In its October 19, 2010 comments, CURE proposed REL-2, as a new condition of certification, which CURE stated was "based upon the conditions included in the BLM's Record of Decision for the Imperial Valley Project." CURE Comment at 9.

Neither Condition REL-1, to which Calico does not object, nor REL-2 is required to mitigate any environmental impact of the Calico Solar Project.[4] The CEC approved the Imperial Valley Project, which uses the same technology as this Project, without REL-2. In Imperial Valley, the condition was requested and agreed to in return for a covenant from several organizations not to sue on the Imperial Valley Project. REL-2 is inapplicable to the CEC's review of the Calico Project.

IV. Transmission System Engineering

The PMPD accurately describes the project and also discusses the impacts of related projects. The potential impacts of the Lugo-Pisgah transmission corridor are discussed at length based upon available information in the SSA. Ex. 300 (SSA) at sections B.1.2, B.1.5, B.3.4, C.1.8, C.2.7, C.3.11, C.4.8, C.5.8, C.6.8, C.7.8, C.8.8, C.9.8, C.10.8, C.12.8, C.13.8, C.14.8, C.15.8. Staff provided additional information about the nature of foreseeable transmission projects in Exhibit 304.

CURE faults the PMPD for not analyzing all impacts related to the Lugo-Pisgah corridor.[5] CURE comments at 10. The PMPD discusses the Lugo-Pisgah corridor in the Alternatives section, in the Transmission Systems Engineering section, in the Transmission Line Safety and Nuisance section, in the Worker Safety section, in the Soil and Water section, and in the Visual section. CURE objects that transmission improvements are not discussed in other sections of the PMPD. CURE Comments at 4-7. The Applicant has no objection to the Commission modifying the PMPD to make it even more clear that the Commission has considered the currently available information, presented in the SSA and in the SSAA, regarding related transmission improvement projects.

Applicant suggests that the Commission include approximately the same text in the Biological Resources section that it included on page 60 (number 13) of the Cultural section of the PMPD:

> Project –Related Future Actions
>
> We also consider the potential impacts of future transmission line construction, line removal, substation expansion, and other upgrades that might be required by SCE as a reasonably foreseeable result of the Calico Solar project if approved and

---

[4] The PMPD does not rely on REL-1 in its analysis, its findings of fact or its conclusions of law. PMPD, Reliability at 6-7. The only reference to REL-1 is that Staff proposed it, Calico Solar did not contest it and the Commission adopted it. PMPD, Reliability at 4.

[5] CURE also contends that the PMPD fails to analyze the whole project because it does not analyze the environmental impacts of the other downstream facility upgrades to be undertaken by SCE. CURE Comments at 10. CURE simply ignores the fact that these other upgrades are pre-project upgrades and are expected to be implemented by higher-queued projects. PMPD, TSE at 3.

constructed as proposed. (Ex. 304, Ex. 309, section C.2.7 pp. C-2-117 to C-2-126.)

Our focus here is on two possible upgrade scenarios:

(1) The 275 MW Early Interconnection Option – This includes upgrades to the existing SCE system to result in 275 MW of additional latent system capacity. The Pisgah Substation would be expanded adjacent to the existing substation, one or two new 220kV structures would be constructed to support the gen-tie line from the project into the Pisgah Substation, and new telecommunications facilities would be installed within existing rights of way.

(2) The 850 MW Full Build-Out Option – This include replacing a 67-mile 220 kV SCE transmission line with a new 500kV line, expanding the Pisgah Substation at a new location and making other telecommunication upgrades to allow for additional transmission system capacity to support operation of the Calico Solar project.

Staff produced evidence, which we have considered, generally describing the potential environmental and health effects that may result from these upgrades. BLM and the California Public Utilities Commission will fully evaluate the SCE upgrades and related projects in an Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

CURE also states "The Project Description must be substantially revised to include the transmission upgrades that must be studied as a part of the whole of the action under CEQA." CURE Comments at 7. There is no need to modify the project description to encompass activities that are not currently being approved and that cannot be approved by the Commission. More fundamentally, the crux of CURE's argument is a "piecemealing" claim that is completely baseless. Even though the PMPD discusses the transmission improvements that CURE believes should be discussed, CURE claims that the PMPD amounts to piecemeal environmental review because some improvements are discussed in Staff's analysis and in sections of the PMPD outside the project description. Including the transmission upgrades in the project description section of the PMPD would not change the environmental analysis. The only way the Commission could have disclosed more without speculation would be to wait for the CPUC to act, and the law is abundantly clear that this is not required. See *Towards Responsibility in Planning v. City Council*, 200 Cal. App. 3d 671, 681 (1988). "Where ... environmental review of one project includes in general terms discussion of the potential effects of an anticipated future project, which is still contingent upon the happening of events which are currently outside the powers of the decision makers to cause, [an EIR has not] failed to fulfill its purpose of providing adequate, complete, and good faith efforts at full disclosure of information about the effect which the proposed project is

likely to have on the environment." *Planning and Conservation League v. Castaic Lake Water Agency*, 180 Cal.App.4th 210, 237 (2009) (quoting *Del Mar Terrace Conservancy, Inc. v. City Council*, 10 Cal.App.4th 712, 736-37 (1992). The Commission has been informed of the environmental impacts of its decision. CEQA does not require the Commission to engage in detailed speculation about unavailable information. 14 CCR § 15151; *National Parks & Conservation Assn. v. County of Riverside*, 42 Cal.App.4th 1505, 1520 (1996); *No Oil, Inc. v. City of Los Angeles*, 196 Cal. App. 3d 223, 234 (1987).

V. Worker Safety

There is a timing problem with conditions WORKER SAFETY-7 and WORKER SAFETY-8 as drafted in the PMPD. PMPD, Worker Safety at 21-23. As discussed at the October 22, 2010 hearing, a simple clarification as proposed below would resolve the inherent inconsistency between the two conditions.

> **WORKER SAFETY-8** If the agreement with the San Bernardino County Fire Department or the Fire Needs Assessment and Risk Assessment, contemplated in **WORKER SAFETY-7**, are not in place before above-ground construction commences, **WORKER SAFETY-8** applies. In the event that the project owner has not satisfied the conditions set forth in **WORKER SAFETY-7** by the time the project owner, in consultation with the CPM, determines construction must commence, the project owner shall pay to SBCFD (a) $91,750 (250 acres x $367 per acre) prior to the start of construction for Phase 1a; (b) $762,259 (2,077 acres x $367 per acre) prior to the start of construction for Phase 1b; and (c) $1,426,896 (3,888 acres x $367 per acre) prior to the start of construction for Phase 2. This funding shall off-set any initial funding required by **WORKER SAFETY-7** above until the funds are exhausted. This offset will be based on a full accounting by the SBCFD regarding the use of these funds.
>
> **Verification:** At least 10 days prior to the start of site mobilization for Phase 1a, 1b and Phase 2, respectively, the project owner shall provide to the CEC CPM either:
>
> a. documentation that the payment described above has been made;
>
> **or**
>
> b. that payment has been made pursuant to a contractual agreement with the SBCFD. 11
>
> The CEC CPM shall adjust any payments initially required by **WORKER SAFETY-7** based upon the accounting provided by the SBCFD.

At the October 22, 2010 hearing, Staff presented Additional Staff Comments on Fire Protection Analysis in the Presiding Member's Proposed Decision. Based upon the discussion at the hearing, Calico Solar does not believe that any of Staff's recommended revisions to the PMPD are necessary. Staff's concern that regarding the timing of WORKER SAFETY-7 is resolved by the revision to WORKER SAFETY-8 presented above. Pursuant to WORKER SAFETY-7, Calico Solar must fund mitigation prior to plant operation pursuant to its agreement with the San Bernardino County Fire District (SBCFD) or pursuant to the Fire Needs and Risk Assessment or as determined by the CPM. However, if Calico Solar does not have an agreement with SBCFD or a Fire Needs and Risk Assessment prior to the construction of permanent above-ground structures, then, pursuant to the revised WORKER SAFETY-8, Calico Solar would be required to pay to SBCFD the amounts set for in WORKER SAFETY-8. With regard to Staff's request that the independent contractor be "selected and approved by the CPM," Calico Solar acknowledges that this language was included in the stipulated language for WORKER SAFETY-7, but Calico Solar would also agree to the PMPD's proposed revision to WORKER SAFETY-7 such that the independent contractor would be selected by Calico Solar and approved by the CPM. PMPD, Worker Safety at 21. Calico Solar would also agree to the PMPD's further provision that if Calico Solar and SBCFD do not agree with the recommendations of the independent contractor, the CPM may determine the funding amount based upon the results of the study and comments for Calico Solar and SBCFD. *Id.*

VI. Biological Resources

A. Desert Tortoise

1. Compensatory Mitigation

The PMPD is correct when it states that "mitigation for the loss of 4,614 acres of desert tortoise habitat on the project site is not dependent on the successful relocation of tortoise found on the site. Rather, "Staff, the applicant, representatives [of the BLM ~~and~~] the USFWS and CDFG, testified that the acquisition of and enhancement of habitat compensation lands, required by Condition **BIO-17**, serves as the mitigation for the habitat loss." PMPD, Biological Resources at 48.

CURE quotes these sentences from the PMPD and states that the PMPD fails to mitigate for the loss of individual desert tortoises on the Project site. CURE Comments at 11. However, CEQA does not require mitigation for the individual losses, unless those losses are numerous enough to cause adverse effect to the species as a whole. 14 Cal. Code Regs. § 15065(a)(1). Instead, CEQA and the PMPD state that the significance thresholds are concerned with impacts to special-status species as opposed to individuals. 14 Cal. Code Regs. § 15065; SSA at C.2-14. Specifically, where a project would substantially reduce the number of a special-status species, habitat mitigation can reduce the impact to less-than-significant. 14 Cal. Code Regs. § 15065(b)(2). BIO-17 provides compensatory mitigation for desert tortoise impacts. See SSA at C.2-3.

BIO-17 provides that "The project owner shall provide compensatory mitigation acreage of 10,302 acres of desert tortoise habitat lands, adjusted to reflect the final project footprint, as specified in this condition. In addition, the project owner shall provide funding for initial improvement and longterm maintenance, enhancement, and management of the acquired lands for protection and enhancement of desert tortoise populations, and comply with other related requirements of this condition." PMPD, Biological Resources at 121.

CURE claims that the Commission has no substantial evidence that the purchase of land as compensatory mitigation for impacts to desert tortoise habitat is defined, feasible, effective, or capable of implementation. CURE Comments at 15. CURE disregards testimony in the record by Ms. Fesnock, a representative of BLM, that sufficient mitigation land is available for purchase. Transcript, Fesnock testimony August 5, 2010 at 145. This constitutes substantial evidence and is sufficient under CEQA. *See Cal. Native Plant Soc'y v. City of Rancho Cordova*, 172 Cal. App. 4th 603, 610-11, 619-25 (2009) (upholding mitigation measures that required the applicant to adhere to a specified habitat replacement ratio and to complete and implement a mitigation and monitoring plan that would include identification of "[t]arget areas for creation, restoration and preservation").

Additionally, BIO-17 provides that "As many as [~~4,614~~ 4,613][6] acres of the compensation lands requirement may be satisfied by applicant's compliance with the desert tortoise habitat acquisition or enhancement requirements of BLM, to be calculated as an acre-for-acre offset in the Energy Commission requirement for mitigation provided to satisfy BLM's requirements. For purposes of this paragraph, credit will be given for BLM-required mitigation without regard to whether BLM uses the mitigation funds for habitat acquisition or for enhancement projects to benefit the species." PMPD, Biological Resources at 122.

CURE claims that the Commission cannot allow for 4,614 acres of mitigation requirements to be used as directed by BLM. CURE Comments at 15. CURE fails to recognize, however, that in requiring 1:1 mitigation, BLM does not pursue desert tortoise recovery goals through parcel-by-parcel acquisitions and management. Rather, as set forth in the SSA, the BLM uses an alternative program of implementing regional management plans and land use planning, as described in the West Mojave Plan, the California Desert Conservation Act plan, and the Desert Tortoise Recovery Plan. (Ex. 300 (SSA) at C.2-77) These plans, which were prepared by federal agencies, set forth strategies for the recovery of sensitive species, including desert tortoise. The rigorous mandate of these plans will satisfy the mitigation that Calico Solar is required to provide.

---

[6] As discussed at the October 22, 2010 hearing, the Project site proposed as Scenario 5.5 is 4,613 acres. Therefore, 1:1 mitigation acreage will also be 4,613 acres. At the October 22, 2010 hearing, Calico Solar requested that the acreage amounts be corrected throughout the PMPD.

Nevertheless, under BIO-17, Calico Solar will be required to dedicate an additional 5,689 acres of desert tortoise compensation lands to satisfy the 3:1 and 5:1 mitigation requirements. These additional 5,689 acres will not be provided for the BLM alternative program. Accordingly, even if some or all of the 4,613 acres of compensatory mitigation that BLM requires is not sufficient to satisfy CEQA, the additional acres of compensatory mitigation lands will fully satisfy CEQA mitigation requirements.

Also, Defenders of Wildlife claim that desert tortoise mitigation does not adequately address desert tortoise north-south habitat connectivity. Defenders at 4. Staff considered impacts to north-south wildlife movements and determined that the highway may act as a sink for the desert tortoise should they wander onto the highway. Transcript, Huntley testimony, August 5, 2010 at 128. The record includes substantial evidence to the contrary. Dr. Mock stated that he did not believe that the north-south movement corridor was much of an issue for various types of wildlife due to the substantial lands on both the east and west sides of the project, particularly the Pisgah ACEC to the east. Transcript, Mock testimony September 20, 2010 at 392.

2. Desert Tortoise Translocation Plan

The PMPD's summary of the Desert Tortoise Translocation Plan in BIO-16 is correct: "The project owner shall develop and implement a final Desert Tortoise Translocation Plan (Plan) in conformance with standards and guidelines described in Translocation of Desert Tortoises (Mojave Population) From Project Sites: Plan Development Guidance (USFWS 2010), any more current guidance or recommendations as available from CDFG or USFWS, and meets the approval of USFWS, CDFG, BLM's Wildlife Biologist and the CPM. The goal of the Plan shall be to safely exclude desert tortoises from within the fenced project area and translocate them to suitable habitat capable of supporting them, while minimizing stress and potential for disease transmission." Biological Resources at 120. As discussed at the October 22, 2010 hearing, Calico Solar docketed the "Desert Tortoise Translocation Plan, Calico Solar Project, Final Plan[7]-Corrected Version October 14, 2010," which is referenced in the US Fish & Wildlife Service's Biological Opinion dated October 15, 2010 (BO) as "final desert tortoise translocation plan (URS 2010g)" and discussed in detail at pages 10-15 of the BO. At the October 22, 2010 hearing, Calico Solar asked the Committee to take official notice of the BLM's Record of Decision dated October 2010 (ROD), which was docketed on October 20, 2010. The Commission may take official notice of the ROD as official act of the BLM. 20 CCR § 1213; Cal. Evid. Code § 452(c). The ROD includes the BO in its appendices.

---

[7] The Desert Tortoise Translocation Plan relies on the principles of adaptive management. While the docketed Translocation Plan is the final version, which is covered by the Biological Opinion, Calico Solar and the agencies expect to treat the Translocation Plan as a living document and update it as lessons are learned.

CURE states that the Commission provides no evidence that translocation would minimize impacts to desert tortoises. CURE Comments at 14. Defenders of Wildlife claim that agency biologists view the translocation plan as an experimental procedure. Defenders Comments at 7. Sierra Club re-iterated its argument that the translocation plan is not a valid mitigation measure. Sierra Club Comments at 7. These arguments fail to take into account that the translocation plan is a coordinated effort on the part of the BLM, USFWS, CDFG and Calico Solar. Transcript, Miller testimony, August 5, 2010 at 43; Transcript, Miller, Odahal, and Huntley testimony September 20, 2010 at 405, 413, 466; Ex. 300 (SSA) at C.2-3.

The record includes substantial evidence that impacts to translocated and recipient site desert tortoises have been taken into consideration. The SSA analyzes translocation, focusing on the capturing, handling and relocating of the desert tortoises. *Id.* at C.2-73. The SSA states that no direct project impacts would occur to the Ord Rodman Desert Wildlife Management Area (DWMA), the Pisgah Area of Critical Environmental Concern (ACEC), or the Cady Mountains Wilderness Study Area north of the project site, but that indirect impacts may occur. *Id.* at C.2-16. Short-distance (less than 500 meters) relocation of desert tortoises is preferable because it minimizes the homing trigger and stress to the relocated tortoises. Transcript, Miller testimony August 5, 2010 at 49, 60. Based upon conversations with USFWS biologist Ashleigh Blackford, staff has stated that all of the desert tortoises detected within 500 meters of the northern boundary may be relocated into the northern "linkage area" and two tortoises will be able to be placed in the Pisgah ACEC. Ex. 317 (SSAA) at C.2-29; Transcript, Huntley testimony September 20, 2010 at 411, 464. Therefore, the number of tortoises required to be translocated to the DWMA would be limited. Ex. 317 (SSAA) at C.2-29.

For translocations of greater than 500 meters, density of desert tortoises living in a proposed recipient site is a factor used in determining if the proposed site can accommodate the translocated tortoises. Transcript, Miller testimony August 5, 2010 at 58-59; Transcript, Blackford testimony August 25, 2010 at 121-22. Desert tortoises will not be translocated to an area that cannot support additional animals, which minimize the impacts to desert tortoises in the recipient sits as well as the translocated animals. Additionally, the blood testing and monitoring is also designed to protect desert tortoises at recipient areas as well as the translocated desert tortoises from diseases. Transcript, Miller testimony August 5, 2010 at 60; Transcript, Blackford testimony August 25, 2010 at 122. There is no evidence that the off-site desert tortoise habitat will be impacted by the Translocation Plan.

CURE, Defenders of Wildlife and Sierra Club raise issues with the specific provisions of the Translocation Plan (CURE Comments at 13-14, 17-18; Defenders Comments at 7; Sierra Club Comments at 8). Development and implementation of a final Desert Tortoise Translocation Plan is required by BIO-16. PMPD, Biological Resources at 120-21. As discussed above, Calico Solar has docketed the final Translocation Plan dated October 22, 2010, which has been approved by the relevant agencies and satisfies BIO-16. The verification of BIO-16, however, does not require Calico Solar to provide a final Translocation Plan until 30 days after the publication of the CEC License Decision or the BLM's ROD, whichever comes first. PMPD, Biological Resources at 121. The final

Translocation Plan is to be provided to the BLM's Wildlife Biologist and the CPM. *Id.* It is not necessary for the Commission to consider the final Translocation Plan in its final decision. Still, Calico Solar would like to address one of the many inaccuracies in the intervenor's comments on the specifics of the Translocation Plan.

CURE states that the USFWS guidelines require that one tortoise in the receiving area and one tortoise in the control area be tested and radio-tagged for tracking for every tortoise translocated. CURE Comments at 12. This requirement, which is referenced in the PMPD (PMPD, Biological Resources at 48), is still valid and remains a part of the final Translocation Plan.

The new guidance from the Desert Tortoise Recovery Office that CURE references (CURE Comments at 12) are also included in the final Translocation Plan.

B. Golden Eagle

Calico Solar believes that the record reflects that potential impacts to golden eagles likely will be minimal, even without mitigation. The PMPD, however, determines that overall loss of foraging habitat for golden eagles within the region is a cumulative impact that is mitigated to less than significant. PMPD, Biological Resources at 49. Assuming that mitigation is necessary to address a significant impact to golden eagles, Calico Solar agrees that the PMPD's proposed Conditions of Certification (BIO-17 and BIO-20) would be sufficient to mitigate any impacts to a less-than-significant level. Surveying and protecting any eagle nests that are discovered, as Condition of Certification BIO-20 requires, will prevent take of any nesting golden eagles. Foraging golden eagles will be protected by BIO-17. The desert tortoise requires a certain type of habitat to thrive, such as portions of the site, and comparable habitat must be provided under BIO-17. PMPD, Biological Resources at 123-24. To the extent golden eagles forage on lands like these, such areas would be provided as compensation lands under BIO-17.

Sierra Club has suggested that Scenario 5.5 failed to address destruction of potential foraging habitat of golden eagles. Sierra Club Comments at 9. CURE also contends that take of golden eagles will result from loss of foraging habitat and interruption of breeding activities, notwithstanding the mitigation proposed in conditions BIO-17 and BIO-20. CURE Comments at 16-17. At the October 22, 2010 hearing, the parties discussed CURE's proposed language to be added to the end of the last paragraph on page 49 of the Biological Resources section, which summarizes the cumulative impacts on the golden eagle. Calico Solar still believes that the record reflects that potential impacts to golden eagles likely will be minimal, even without mitigation. However, if the Committee chooses to adopt CURE's language, Calico Solar proposes the following revisions based upon the discussion at the October 22, 2010 hearing:

> This compensation acreage for golden eagle may be included ("nested") within the acreage acquired and managed as desert tortoise habitat compensation (Condition of Certification **BIO-17**) only if: a) ~~Adequate acreage~~ 4,613 acres of qualifying desert tortoise compensation lands also meet the Selection Criteria ~~(to be~~

~~developed by Staff)~~ as foraging habitat within a home range of a ~~for~~ Golden Eagle; and b) The desert tortoise habitat compensation lands are acquired and dedicated as permanent conservation lands within 18 months of the start of project construction. If these two criteria are not met, then the project owner shall provide 4,614 acres of golden eagle habitat compensation lands, adjusted to reflect the final project footprint and additional delineation of suitable habitat, independent of any compensation land required under other conditions of certification, and shall also provide funding for the initial improvement and long-term maintenance and management of the acquired lands, and shall comply with other related requirements this condition. ~~Costs of these requirements are estimated to be [to be provided by Staff] based on the acquisition of 4,614 acres.~~ Regardless of actual cost, the project owner shall be responsible for funding all requirements of this condition.

Sierra Club has also suggested that Scenario 5.5 failed to address or alleviate risks to golden eagles from noise disturbances and potential collisions with SunCatchers. Sierra Club Comments at 9. There is substantial evidence that any impacts to golden eagles from these risks have been adequately mitigated. Conditions of Certification BIO 1 through BIO 9 and BIO 19 mitigate any noise impacts by requiring buffer zones around active nests to sufficiently attenuate construction noise levels. Ex. 300 (SSA) at C.2-64 - C.2-65. Potential collisions with SunCatchers are addressed by Condition of Certification BIO-22, which requires a monitoring and reporting program that would document and report potential collision mortality. Ex. 300 (SSA) at C.2-89, C.2-230 - C.2-231. Moreover, Dr. Mock testified that the reduced number of SunCatchers featured in Scenario 5.5 will decrease the risk of golden eagle collisions even further. Transcript, Mock testimony, September 20, 2010, at 457.

C. Nelson's Bighorn Sheep

Calico Solar agrees with the PMPD's analysis of Nelson's bighorn sheep, which is supported by Staff's analysis in the SSA and the SSAA. *See* PMPD, Biological Resources at 20-21, 50; Ex. 300 (SSA) at C.2-40,C.2-45,C.2-93-C.2-95; Ex. 317 (SSAA) at ES-5, C.2-6, C.2-15. Defenders of Wildlife re-asserts that the potential impacts to north-south movement corridors for bighorn sheep are being inadequately considered. Defenders Comments at 2. Sierra Club makes the same argument. Sierra Club Comments at 9. Staff has considered north-south movement corridors. Transcript, Huntley testimony, August 5, 2010 at 128. There is substantial evidence in the record that any impact on north-south movement corridors is not significant. Dr. Mock testified that north-south migration was a "nonstarter" based on modeling, but in any case "you have substantial lands on both the east and west sides of the project that function as a north-south movement area for whatever wildlife that might be associated with those areas." Transcript, Mock testimony September 20, 2010 at 392; 450-460.

D. Mojave Fringed-Toed Lizard

Calico Solar agrees with the PMPD's findings with respect to the Mojave fringed-toed lizard (MFTL). See PMPD, Biological Resources at 59. BIO-13 requires 3:1 compensatory mitigation for breeding habitat and 1:1 compensatory mitigation for foraging and cover, which will render impacts less than significant. This mitigation notwithstanding, Defenders of Wildlife states that it is concerned about "habitat connectivity with the adjacent BLM Pisgah ACEC." Defenders Comments at 10. Staff, however, justifiably concluded: "Condition of Certification TRANS-7 would require a 223-foot setback between the project's boundaries and the BNSF railroad right of way and Interstate-40. This setback would provide a suitable movement corridor for Mojave fringe-toed lizards east and west through the project site." SSAA C.2-47; Transcript, Huntley testimony September 20, 2010 at 472. Sierra Club claims that the adequacy of the setback for habitat connectivity is unsupported. Sierra Club Comments at 11. Staff's conclusions, explained both in the SSA and in cross-examination, are based on, among other things, observation of MFTL on the land in question and studies of MFTL behavior and habitat. Transcript, Huntley Testimony September 20, 2010 at 473-74. Therefore, substantial evidence in the record supports the PMPD's conclusions with respect to MFTL.

E. Other Species

Condition BIO-21 (Burrowing Owl Impact Avoidance and Minimization Measures) is unnecessarily included twice in the PMPD. PMPD, Biological Resources at 136-140 and 140-144. The two conditions appear to be identical, so one may be deleted.

F. Special Status Plants

BIO-12 as currently drafted in the PMPD will mitigate impacts to plants to be less than significant. PMPD, Biological Resources at 82-105. Defenders of Wildlife claim that the avoidance measures will not be effective. Defenders Comments at 8-9. Staff, however, concluded that the potentially significant impact would be mitigated to an insignificant level with the implementation of BIO 12. Ex. 317 (SSAA) at ES-3, C.2-25. Staff's conclusion is based upon BIO-12, which is a lengthy, demanding and thorough condition. "Staff concludes that its proposed Condition of Certification BIO-12 would reduce the project's direct, indirect, and cumulative impacts below a level of significance by avoiding and protecting all white-margined beardtongue locations on-site, locating and identifying late-season special-status plants that may be affected by the project, and mitigating any significant adverse impacts to them through additional on-site avoidance and protection, or through acquiring and protecting lands off-site, or through other offsite measures such as habitat improvement or management. Staff concludes that this mitigation strategy is both feasible and effective." *Id.* at C.2-25; see Ex. 300 (SSA) at C.2-59. Staff and the PMPD are correct. Defenders of Wildlife note that the PMPD states that "there is no known feasible horticultural method to propagate white-margined beardtongue." Defenders Comments at 9; PMPD, Biological Resources at 15. One component of the BIO-12 condition requires the Applicant to conduct research to develop propagation methods for this reason.

Sierra Club contends there has been insufficient review of whether the proposed removal of the detention basins may threaten the white-margined beardtongue. Sierra Club Comments at 10. Evidence contrary to this statement was presented by both Calico Solar and Staff. At the September 20, 2010 hearing, Dr. Mock testified that no additional adverse impacts to the species would result under Scenario 5.5. Transcript, Mock testimony, September 20, 2010, at 455-56. Staff also testified that the removal of the detention basins could possibly improve habitat quality downstream and thus benefit the white-margined beardtongue on account of improved sediment flow that would accompany removal of the detention basins. Transcript, Huntley testimony, September 20, 2010, at 248-49.

VII. Soil and Water Resources

A. Water Supply Reliability

Based on substantial evidence, the PMPD correctly concludes that "the Lavic Groundwater Basin will be used as the primary water source for the project" (PMPD, Project Description at 18) and that "the newly constructed Well #3 adjacent to the project site will provide all water needs for the project" (PMPD, Soil and Water Resources at 33). CURE disagrees. CURE Comments at 8, 19. The PMPD relies on the Applicant's discovery that a well within the Lavic Groundwater Basin could provide enough water for construction and operations of the proposed project. PMPD, Project Description at 9; SSA at B.1-13. There is substantial evidence in the record that Well #3 is an adequate water supply for the project. Mr. Scott testified that the water source for the Project is groundwater from the Lavic Lake Basin and that tests show there is sufficient volume from Well #3 to provide water for the life of the project with no significant adverse impacts to the groundwater basin or adjacent wells. Ex. 77 (Scott Prepared Testimony) at A4 and A5; Transcript, Scott Testimony, August 6, 2010 at 72. Mr. Liles, who conducted the testing, explained that the well "should produce enough water for this project. I feel confident that it would do that." Transcript, Liles Testimony, August 6, 2010 at 81. CURE asserts that monitoring requirements in the conditions require that the Commission find that the water supply is unreliable. CURE Comments at 8. This is not accurate. As Mr. Scott testified, while it is reasonably likely that Well #3 would be available for the life of the project, "in any circumstance, it's always good to have a backup well." Transcript, Scott Testimony, August 6, 2010 at 79.

B. Detention Basins or Other Flood Control Devices

The PMPD accurately reflects the parties' agreement that the determination of the need for drainage or detention basins could benefit from a hydrologic study. PMPD, Soil and Water Resources at 18, 46. Staff has correctly indicated two instances where the PMPD should be revised to indicate that detention basins will only be constructed pursuant to SOIL&WATER-8. Staff Comments at 21 and 26.

- On-site debris basins ~~will~~ may be constructed for the major site runoff discharge and ~~will~~ could also provide for low flow detention....Berms with

culverts ~~will~~ may be used at road crossing and other locations as needed to pass flows. PMPD, Soil and Water at 13.

- With regard to erosion risk and stormwater runoff, debris and detention basins ~~shall~~ may be installed, if deemed appropriate and necessary during final design, which are sized and located to intercept storm water flow from off-site areas as it enters the project site. PMPD, Soil and Water at 37.

Additionally, in the Geological and Paleontological Resources section, the following paragraph needs to be deleted or revised in the following manner to clarify that detention basins are not currently contemplated, but may be included in the final design:

> The project may include~~s approximately 12~~ detention basins that ~~will~~ would be designed to intercept stormwater on the north side of the site. If detention basins are deemed appropriate and necessary, the ~~The~~ down-slope sides of the detention basins ~~will~~ may require an engineered embankment up to approximately 15 feet high and a spillway. (Ex. 300, C.4-6.) Because the proposed site is topographically elevated above terrain to the south and west, the potential for flooding at the site is limited to infrequent high volume (flash flood) events due to heavy rainfall in the adjacent Cady Mountains. If flash flooding occurs it will primarily affect the drainages that cross the site (northeast to southwest), and the record indicates that overbank flow is not expected to occur. The ~~proposed~~ detention basins, if deemed appropriate and necessary, ~~along the northern (upslope) site border will~~ would minimize the potential for flash flood damage to the project. Proposed Conditions of Certification **GEO-2** and **GEO-3**, if applicable, would ~~will~~ ensure that detention basins and detention dams (as defined by DWR) ~~are~~ would be designed in accordance with current regulations and standards. Therefore, we find that the likelihood of catastrophic flooding at the proposed project site is low. Application of civil engineering design standards will minimize the potential for flash flood damage. (Ex. 300, p. C.4-13; see also, **Soil and Water Resources** section of this Decision.) PMPD, Geo/Paleo at 3.

CURE alleges that "Staff and intervenors testified that there is a likelihood that stormwater basins will be necessary in the final design. 9/20/10RT 245-246." CURE Comments at 7. This statement is incorrect. While it is possible that detention basins will be needed, it is not likely. CURE mischaracterizes the record. At the page in the September 20, 2010 hearing transcript to which CURE cites, a Staff witness, Mr. Weaver, testified that there are many alternative methods of flood control the Applicant could use, and he refused to concede to Mr. Lamb, an attorney for Intervenor BNSF, that it would be necessary for the Applicant to retain the detention basins. Transcript, Weaver testimony September 20, 2010 at 245-46. Substantial evidence in the record supports the conclusion that there will not be a significant impact in the absence of debris basins. Transcript, Chang testimony September 20, 2010 at 88.

Calico Solar agreed to pay for a hydrology study and to implement the clear performance standards in SOIL&WATER-8. The record contains substantial evidence that if appropriate performance standards are met, that would be sufficient to address impacts related to a hundred-year storm event. Transcript, Hamilton testimony September 20, 2010 at 328-29. There is substantial evidence in the record that studies can be designed to determine how to meet performance standards to meet mitigation criteria. Transcript, Chang testimony September 20, 2010 at 128. There is also substantial evidence in the record that SOIL&WATER-8 is adequate. Transcript, Byall testimony September 20, 2010 at 134. Substantial evidence clearly indicates that mitigation is feasible, and the utilization of a study to address sedimentation impacts is permissible under CEQA. *See Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.,* 47 Cal. 3d 376, 418 (1988) (upholding mitigation measure for noise impacts that required evaluation of specific noise control techniques to ensure compliance with noise performance standards once ventilation system had been designed); *National Parks & Conserv. Ass'n v County of Riverside*, 71 Cal. App. 4th 1341, 1366 (1999) (county appropriately deferred determination about placement of tortoise protection fences along railroad line to further study of migration patterns during operation of project).

If detention basins are required, CURE raises the question of whether inclusion of detention basins into the Project design would reduce available land, the number of SunCatchers, and the power output. CURE Comments at 7. While inclusion of detention basins or some other form of flood control devices may reduce the amount of developable land on the Project site, it would not cause a "significant decrease" in the number of SunCatcher units or the power output. The detention basin area proposed for the 6,215 acre site was 545 acres.[8] Ex. 82 (Bellows testimony), Attachment C map of Biological Resources Avoided Calico Solar. Even if it is determined that the reduced Project contemplated in Scenario 5.5 would require the same size detention basins as the 6,215 acre project, the remaining developable land (4,068 acres = 4,613- 545) would only result in the estimated power output to decrease from 663.5 MW to 581.1 MW (assuming the loss of 7 MW per acre). The Project still would generate a massive amount of clean, renewable energy, vastly increasing the supply of renewable energy available to California consumers. If the Project generates between 580 and 665 MW, its substantial societal benefits would not be undermined. Therefore, the Commission would still be able to conclude that the Project benefits outweigh the significant impacts based upon the finding that the Project will contribute a substantial amount of renewable energy power toward meeting California's Renewables Portfolio Standard and California's adopted renewable energy and GHG policy goals.

---

[8] This map shows that the detention basin area would have been 545 acres. The detention basins, which the map indicates are included within the 545 acres, would have been 72 acres. Calico Solar subsequently calculated the area of the detention basins to be 486 acres, as shown in the proposed Scenario 1, which was docketed on September 8, 2010, as part of Applicant's Submittal of Reduced Project Boundary Scenarios. Calico Solar uses the 545 acres in this discussion to capture the maximum reduction in mega-wattage as a result of the possible reduction in acreage available for development.

C. SOIL&WATER Conditions

In Calico Solar's comments on the PMPD submitted on October 18, 2010, Calico Solar requested a revision to SOIL&WATER-7. Calico Solar Comments at 6, comment #16. The revision was based upon a mis-reading of the condition, which has now been resolved. At the October 22, 2010 hearing, Calico Solar withdrew its comment #16.

Also at the October 22, 2010 hearing, BNSF presented proposed revisions to the SOIL&WATER conditions as well as to condition CIVIL-1. At the Committee's request, Calico Solar, BNSF and Staff discussed the proposed revisions during the lunch break on October 22, 2010 and will continue these discussions at a workshop on October 25, 2010. Per the Committee's further request, Calico Solar will provide separate comments on the SOIL&WATER conditions prior to the noticed October 26, 2010 hearing that was scheduled specifically to discuss these conditions.

VIII. Cultural Resources

At the October 22, 2010 hearing, the parties agreed to delete, in its entirety, condition CUL-3, which is located on pages 74 and 75 of the PMPD.

IX. Land Use

In its comments submitted on October 18, 2010, Calico Solar addressed the questions raised in the PMPD regarding the Project's inclusion of donated lands and lands acquired with assistance from the federal Land and Water Conservation Fund (LWCF). Calico Solar Comments at 7-11. As Calico Solar explained in its previously submitted comments, both LWCF and donated lands are located within the revised Project boundary and Calico Solar has provided an approximate total acreage for this area using the same methodology Calico Solar has used to calculate other project acreages.

Calico Solar believes that its previously submitted comments are sufficient to assist the Committee in addressing the questions raised in the PMPD. However, Calico Solar notes that further support of Calico Solar's position may be found in the ROD, of which Calico Solar has requested that the Commission take official notice, and the memorandum from the BLM State Director dated October 7, 2010 recommending authorization of the use of acquired and donated lands by Calico Solar; which Staff docketed with a motion to the Committee on October 14, 2010 to reopen the record for the purpose of admitting the memorandum.

The PMPD referenced the May 28, 2009 BLM Interim Policy regarding donated and acquired lands. In its LORS analysis, the PMPD states that the Project would be inconsistent with this Interim Policy. As Calico Solar explained in its previously submitted comments, that determination is incorrect. Calico Solar Comments at 7-11. Additionally, BLM approved the Project and issued its ROD. The BLM cannot approve a project that is inconsistent with its policies and the Commission should not second guess the BLM's interpretation of its own policy. Additionally, the BLM memorandum provides a summary of its rationale for its decision regarding the acquired and donated lands. See Staff's Comments at 33.

X. Traffic and Transportation

The timing of events proposed in the verification of PMPD condition TRANS-2 does not work. PMPD, Traffic and Transportation at 12. As drafted Calico Solar would have to submit the proposed traffic control plan 30 days prior to the start of construction and would have to respond to comments on the plan 30 days before that (60 days prior to the start of construction). Staff suggested revising the verification such that Calico Solar would have to respond to comments 30 days prior to the start of construction. Staff's Comments at 34. However, Staff's revision would require Calico Solar to submit the plan and respond to comments on the same day. To allow for an adequate period, Calico Solar requests that the timing in the verification of TRANS-2 be revised as follows:

> **Verification:** At least 30-days prior to the start of construction, including any grading or site remediation on the power plant site or its associated easements, the project owner shall submit the proposed traffic control plan to BNSF Railway; San Bernardino County; and the Department of Transportation (Caltrans) District 8 office for review and comment and to the CPM for review and approval. The project owner shall also provide the CPM with a copy of the transmittal letter to BNSF Railway; San Bernardino County; and the Department of Transportation (Caltrans) District 8 office requesting review and comment. BNSF Railway, San Bernardino County and the Department of Transportation (Caltrans) District 8 will have 15 days to provide written comments on the proposed plan.
>
> At least ~~60~~ 5 calendar days prior to the start of construction, the project owner shall provide copies of any comment letters received from BNSF Railway; San Bernardino County; and the Department of Transportation (Caltrans) District 8 office along with any changes to the proposed traffic control plan for CPM review and approval.

XI. Override Findings

Based upon the discussion above regarding the possible reduction in mega-wattage resulting from the possible addition of detention basins or other flood control devices into the final Project design, Calico Solar suggests that references to 663.5 MW and 709 MW in the Override section should be revised to be "between 580 and 665 MW." See PMPD, Override Findings at 2, 6. Even with this reduction in power output, the Project would generate a massive amount of clean, renewable energy, vastly increasing the supply of renewable energy available to California consumers. Therefore, taken in consideration with the other benefits, even if the Project generates 580 MW, the

benefits of the Project are sufficient for the Commission to make the necessary override findings after weighing the benefits of the Project against the potential impacts.

Respectfully submitted,

Date: 10/25/10

BINGHAM McCUTCHEN LLP

By : _____

Ella Foley Gannon
Attorneys for Applicant
Calico 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

APPLICATION FOR CERTIFICATION

***For the CALICO SOLAR** (Formerly SES Solar One)*

Docket No. 08-AFC-13

PROOF OF SERVICE
(Revised 8/9/10)

APPLICANT
Felicia Bellows
Vice President of Development
& Project Manager
Tessera Solar
4800 North Scottsdale Road,
#5500
Scottsdale, AZ 85251
felicia.bellows@tesserasolar.com

CONSULTANT
Angela Leiba
AFC Project Manager
URS Corporation
1615 Murray Canyon Rd.,
#1000
San Diego, CA 92108
angela_leiba@URSCorp.com

APPLICANT'S COUNSEL
Allan J. Thompson
Attorney at Law
21 C Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

Ella Foley Gannon, Partner
Bingham McCutchen, LLP
Three Embarcadero Center
San Francisco, CA 94111
ella.gannon@bingham.com

INTERESTED AGENCIES
California ISO
e-recipient@caiso.com

Jim Stobaugh
BLM – Nevada State Office
P.O. Box 12000
Reno, NV 89520
jim_stobaugh@blm.gov

Rich Rotte, Project Manager
Bureau of Land Management
Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
richard_rotte@blm.gov

Becky Jones
California Department of
Fish & Game
36431 41st Street East
Palmdale, CA 93552
dfgpalm@adelphia.net

INTERVENORS
County of San Bernardino
Ruth E. Stringer,
County Counsel
Bart W. Brizzee,
Deputy County Counsel
385 N. Arrowhead Avenue,
4th Floor
San Bernardino, CA 92415-
bbrizzee@cc.sbcounty.gov

California Unions for Reliable
Energy (CURE)
c/o: Loulena A. Miles,
Marc D. Joseph
Adams Broadwell Joseph
& Cardozo
601 Gateway Boulevard, Ste. 1000
South San Francisco, CA 94080
lmiles@adamsbroadwell.com

Defenders of Wildlife
Joshua Basofin
1303 J Street, Suite 270
Sacramento, California 95814
e-mail service preferred
jbasofin@defenders.org

Society for the Conservation of
Bighorn Sheep
Bob Burke & Gary Thomas
P.O. Box 1407
Yermo, CA 92398
cameracoordinator@sheepsociety.com

Basin and Range Watch
Laura Cunningham &
Kevin Emmerich
P.O. Box 70
Beatty, NV 89003
atomictoadranch@netzero.net

*indicates change

INTERVENORS CONT.

Patrick C. Jackson
600 N. Darwood Avenue
San Dimas, CA 91773
e-mail service preferred
ochsjack@earthlink.net

Gloria D. Smith, Senior Attorney
*Travis Ritchie
Sierra Club
85 Second Street, Second floor
San Francisco, CA 94105
gloria.smith@sierraclub.org
travis.ritchie@sierraclub.org

Newberry Community
Service District
Wayne W. Weierbach
P.O. Box 206
Newberry Springs, CA 92365
newberryCSD@gmail.com

Cynthia Lea Burch
Steven A. Lamb
Anne Alexander
Katten Muchin Rosenman LLP
2029 Century Park East,
Ste. 2700
Los Angeles, CA 90067-3012
Cynthia.burch@kattenlaw.com
Steven.lamb@kattenlaw.com
Anne.alexander@kattenlaw.com

ENERGY COMMISSION

ANTHONY EGGERT
Commissioner and Presiding Member
aeggert@energy.state.ca.us

JEFFREY D. BYRON
Commissioner and Associate Member
jbyron@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

Lorraine White, Adviser to
Commissioner Eggert
e-mail service preferred
lwhite@energy.state.ca.us

Kristy Chew, Adviser to
Commissioner Byron
e-mail service preferred
kchew@energy.state.ca.us

Caryn Holmes
Staff Counsel
cholmes@energy.state.ca.us

Steve Adams
Co-Staff Counsel
sadams@energy.state.ca.us

Christopher Meyer
Project Manager
cmeyer@energy.state.ca.us

Jennifer Jennings
Public Adviser
e-mail service preferred
publicadviser@energy.state.ca.us

*indicates change

DECLARATION OF SERVICE

I, Darin Neufeld, declare that on October 25, 2010, I served and filed copies of the attached Applicant's Submittal of Additional 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/solarone].

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:

__X__ sent electronically to all email addresses on the Proof of Service list;

____ by personal delivery;

__X__ 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:

__X__ 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. 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, 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 Signed By
Darin Neufeld

*indicates change