STATE OF CALIFORNIA
California Energy Commission

In the Matter of: The Application for Certification for the GENESIS SOLAR ENERGY PROJECT	Docket No. 09-AFC-8

BRIEF
OF
INTERVENOR TOM BUDLONG ON VISUAL RESOURCES

July 29, 2010

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BRIEF OF INTERVENOR BUDLONG

I. The Visual Resources Section of the March 10, 2010 Staff Assessment Is Seriously Flawed.

A. There Are Direct and Aggregate Impacts of the Project Itself On Visual Resources Which Are Significant and Have Not Been Mitigated Sufficiently to Warrant a Determination that The Project's Direct Impacts on Visual Resources Are Insignificant.

The CEQA Guidelines, Appendix C, lists certain questions to be addressed regarding whether the potential impacts of a project are significant. Two of these questions, with respect to Genesis, warrant a "yes" answer:

(a) Would the project have a substantial adverse effect on a scenic vista?

(b) Would the project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

The Staff Assessment, however, concludes that though there are significant cumulative impacts of the project, when considered along with local and regional energy projects that are reasonably likely to occur, the direct impacts of the project itself are not significant, with respect to visual resources.

The Staff Assessment states:

> "A characteristic feature of this desert landscape is the potential for large projects to be seen over great distances where even slightly elevated viewpoints exist, due to the large open areas of level topography and absence of intervening landscape features." (p. C12-6).

The Staff Assessment finds that at each KOP the Project's effects on scenic resources do not reach a level of "significance." For example, although there are high levels of visual change arising from bright point spread reflections of the sun (as depicted in Figure 13), the Staff Assessment concludes that:

> In the context of the setting's moderately high visual sensitivity, this moderate level of visual change would, with recommended conditions of certification, be less than significant. (p. C12-16).

The Staff Assessment determines that with respect to KOP 2 and 3 there would be "adverse," but less than significant effects" to motorists and rest area visitors

(pp. C-12-17, C12-18). Similar determinations are made with respect to KOP 4a and 4b (p. C12-19). With respect to views form the Palen-McCoy Wilderness Area, there is a similar determination: "Notwithstanding a moderately high level of viewer sensitivity, this would represent a less-than-significant level of impact." P. C12-21.

Staff did not consider what the "aggregate" direct effects would be on a viewer who viewed the project from KOPs 1-4(a-b) and from the Palen-McCoy WA, or from any combination of two or more of these viewpoints. Had the Staff considered such effects in light of viewer sensitivity, it could (and should) reach a conclusion that the impacts would be significant, especially in light of the incremental visual resource impacts caused by redesign of the project for the dry-cooling alternative.

B. Staff Failed to Consider Three Significant Factors In Evaluating Visual Resources Impacts.

1. The Change in Project Description to Dry-Cooling Causes Impacts on Visual Resources That Were Not Considered As "Direct Aggregate" Impacts of the Project.

Staff determines that:

> "Because of the increase in height by incorporating the ACC fans into the GSEP, there would be an increase in visual contrast, project dominance, and view blockage caused by the ACC structures when compared to views with the proposed wet-cooling system." (p. C-12-29).

Staff concludes that:

"[The] visual change of the alternative would be somewhat greater than the Proposed Project but would remain moderate and less than significant." (p. C12-29).

2. Night lighting impacts are not sufficiently considered or mitigated. The Staff Report determines "night lighting of control room, warehouses, administration building, project roadways, or security lighting could all potentially contribute to

nighttime light pollution." Condition of Certification VIS-2 does not prescribe standards for determining what constitutes "minimizing" illumination of the project, or set out any nighttime objective illumination standards at all.

3. The Palen-McCoy Wilderness Area was designated by Congress under the 1994 California Desert Protection Act, Public Law 103-433, in consideration of its wilderness attributes, lack of human-produced structures, and freedom from exposure to "sights and sounds" of industrialization and development. In Section 101 Congress found that:

> (1) wilderness is a distinguishing characteristic of the public lands in the California desert, one which affords unrivaled opportunity for experiencing vast areas of the Old West essentially unaltered by man's activities, and which merits preservation for the benefit of present and future generations;
> (2) the wilderness values of desert lands are increasingly threatened by and especially vulnerable to impairment, alteration, and destruction by activities and intrusions associated with incompatible use and development; and
> (3) preservation of desert wilderness necessarily requires the highest forms of protective designation and management.

Visual resources impacts should be considered in light of the underlying reasons for Congress' designation of the Palen McCoy Wilderness Area. To the extent that Congress' intent in establishing the Wilderness Area may be thwarted through construction and operation of the Project, staff should find the visual resource impacts of the Project "significant."

C. Staff Should Reevaluate Its Analysis of Visual Impacts of The Project By Considering the Aggregate Direct Impacts.

Staff should reconsider its evaluation of visual impacts of the project and consider the aggregate direct impacts related to:

a. the residual impacts at KOP's 1-4 (that are less than significant).

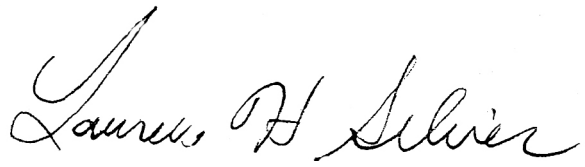
b. the impacts of new design features arising from selection of the dry cooling alternative.

c. the impacts from night lighting in light of the vagueness of Condition VIS 2.

When the direct impacts are considered in the aggregate, it should be apparent that the project has a substantial adverse effect on scenic vistas viewed from at least some of the KOP's and that the project creates a substantial new source of substantial light or glare which would adversely affect day or nighttime views in the area since the glare and nighttime lighting effects are not likely to be sufficiently mitigated. (Appendix G, CEQA Guidelines, Questions A and B).

Dated: July 13, 2010

Respectfully submitted,



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PROOF OF SERVICE

I, Willow Wray, declare that on July 29,2010, I served and filed copies of the attached document entitled:

BRIEF OF INTERVENOR TOM BUDLONG ON VISUAL RESOURCES

dated July 29,2010. 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://ww.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:

FOR SERVICE TO ALL OTHER PARTIES:

x__ 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:

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

CALIFORNIA ENERGY COMMISSION
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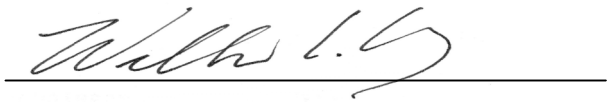
I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding. Executed on July 29, 2010.



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(Revised 7/29/10)

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