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Clerk's Copy

February 24, 2014

VIA HAND DELIVERY

Hon. Jeff Stone, Board Chairman
Hon. Marion Ashley, Board Vice-Chairman
Hon. Kevin Jeffries
Hon. John F. Tavaglione
John J. Benoit
Riverside County Board of Supervisors
4080 Lemon Street
Riverside, CA 92504

Riverside County Planning Department
ATTN: Adam Rush, Larry Ross
Riverside CAC, 12th Floor
4080 Lemon Street
Riverside, CA 92504

RE: Final Environmental Impact Report, Conditional Use Permit, Public Use Permit, and Proposed Development Agreement for the McCoy Solar Energy Project (SCH# 2011101007) – 2/25/14 Board Agenda Item # 16-1

Dear Chairman Stone and County Supervisors,

This letter is submitted on behalf of Blythe, California residents David Vazquez and Ralph Figueroa, and the Laborers International Union of North America, Local Union No. 1184, and its members living in Riverside County (hereinafter "**LiUNA**") (collectively "**Commenters**") concerning the California Environmental Quality Act (hereinafter "**CEQA**") Final Environmental Impact Report (hereinafter "**FEIR**") and Conditional Use Permit, Public Use Permit, and Proposed Development Agreement with Riverside County for the McCoy Solar Energy Project (SCH# 2011101007).

The proposed McCoy Solar Energy Project is a 750 megawatt photovoltaic solar energy generating facility and related infrastructure in unincorporated Riverside County, California

Submitted by Gideon Kracov 02-25-14

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(hereinafter "**Project**"). The Project is proposed to be constructed on approximately 7,700 acres of federal public land administrated by the Bureau of Land Management (hereinafter "**BLM**"), as well as 477 acres of privately owned land within Riverside County. The Project includes, among other things, a solar plant site, an 11-km transmission line, a 230 kV switchyard, two telecommunications lines, a distribution line, and an access road. The Project is located in a rural area of the Sonoran Desert in unincorporated Riverside County, located approximately 13 miles northwest of the town of Blythe, California, approximately 32 miles east of the town of Desert Center, California and approximately 6 miles north of Interstate-10. It is south of McCoy Wash, east of the McCoy Mountains and north of the Blythe Airport. The Project would be developed in the Mojave Desert Air Basin and over the Palo Verde Mesa Groundwater Basin.

The Project, which is subject to both State and Federal approvals, received its federal approval on March 13, 2013 from BLM. Commenters previously participated in BLM's public notice and comment process for the Project, submitting letters dated August 23, 2012 and March 4, 2013.

This comment letter incorporates by reference all written and oral comments submitted on the Project by any commenting party or agency, including all written and oral comments submitted on the Project as part of BLM's March 13, 2013 approval.[1] All of this already is in the record.

Let us begin by respectfully noting the rushed nature of the Project approvals before you. *A continuance is necessary*. Approximately 10 days ago, County staff circulated the FEIR, which totals approximately 5,000 pages. *This office received the FEIR only seven days before the hearing*. The public had insufficient time to review and comment on this extremely lengthy and complex document. Then, last Friday, February 21, 2014, the Staff Report, totaling well over 600 pages was published. Again, insufficient time (four days) was provided to allow public review and comment.

The same is true for the Honorable Board of Supervisors. How could this Board possibly review all these documents in the extremely compressed time period? How can the Board assess the public's comments on the FEIR, including this comment letter? This violates CEQA's key requirement to inform decisionmakers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. § 15002(a)(1). A continuance is necessary to enable the public and decisionmakers to fully review the materials that the County relied on its environmental review, pursuant to CEQA. Pub. Res. Code § 21092(b)(1); 14 Cal. Code Regs. § 15072. Commenters respectfully insist that holding this hearing today, and acting on this Project, will violate CEQA's rules on informed decisionmaking and public participation. Moreover, while there

[1] It is well-established that any party, as Commenters here, who participates in the administrative process can assert all factual and legal issues raised by any commenting party or agency. *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 875; *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1263.

is no express statute that affords the right to have notice and an opportunity to be heard, the doctrine of due process applies to land use administrative hearings of the type at issue here. *Mohlief v. Robert Janovici*, 51 Cal.App.4th 267, 302 (1996) (standards regarding adequacy of due process apply at administrative hearings); *Clark v. City of Hermosa Beach*, 48 Cal.App.4th 1152, 1171-72 (1996) ("A hearing requires that the party be apprised of the evidence against him so that he may have an opportunity to refute, test and explain it.").

Notwithstanding the expedited time periods provided by the County, Commenters did their best to review the FEIR and Staff Report. Without waiving any claim as to the inadequacy of the notice and opportunity to review the Project approval documents and FEIR, they have prepared these comments on the FEIR with the assistance of expert biologist James W. Cornett, M.S. and expert geologist Heidi Bauer, PG, in letters attached hereto as Exhibits A and B. Cornett is an environmental scientist with more than 30 years of experience researching and studying Riverside County's desert environment. Cornett previously served as the Director of Natural Sciences at the Palm Springs Desert Museum. Rhymes is a Certified Geologist with over twelve years of academic and professional experience with hydrology, hazardous materials, and pollution investigation.

Commenters strongly support the appropriate development of renewable energy. Renewable energy projects, however, must be carefully sited and designed so as to avoid unnecessary and damaging environmental impacts. They also must receive proper environmental review under CEQA. This is especially true given the recent "gold rush" of solar energy proposals in the southern California region.

Here, Commenters are concerned that the FEIR did not give the extensive DEIR comments on the project the required review, or analyze them as carefully as needed. *Incredibly, given the volume of comments received, the FEIR only recommends minor changes to barely 12 pages of the entire DEIR*. FEIR 3-2. As a result, the FEIR and CEQA compliance for the Project have the following deficiencies:

I. Lack Of Clarity On AB 900 Compliance;

II. The Cumulative Impacts Discussion Of The Contiguous Blythe Solar Project Is Inadequate;

III. The FEIR Does Not Adequately Analyze Or Mitigate For Impacts On Biological Resources;

IV. The FEIR Does Not Adequately Analyze Or Mitigate For The Project's Impacts On Hydrology and Water Resources;

V. The FEIR Does Not Adequately Analyze Or Mitigate For The Project's Impacts On Surface Water Drainage And Flooding Risks;

VI. The FEIR Does Not Adequately Analyze Or Mitigate For Hazards and Hazardous Materials;

VII. The Valley Fever Analysis is Inadequate;

VIII. The FEIR Does Not Provide Adequate Information On Mitigation Measures For The Project, Deferring Key Mitigation; and

IX. Recirculation Is Necessary.

It is the County Board's role to make the final CEQA findings, and to make County Code §§ 18.28.f and 18.29.d findings for the requested use permits that the Project "will not be detrimental to the health, safety or general welfare of the community, and that conditions be imposed "to protect the health, safety or general welfare of the community." Commenters respectfully believe, for all the reasons set forth in this letter, that this rushed approval cannot satisfy these standards, and therefore this item should be continued, or denied at this time.

I. STANDING.

Commenters David Vazquez and Ralph Figueroa and members of the Laborers International Union of North America, Local Union No. 1184 live, work, and recreate in the vicinity of the Project site. Commenters will suffer the impacts of a poorly executed or inadequately mitigated project, just as would the members of any nearby homeowners' association, community group or environmental group. Commenters live and work in areas that will be affected by hazardous materials and water pollution generated by the Project. Moreover, Commenters rely upon water and biological resources that may be affected by the Project. Commenters have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent possible.

LiUNA advocates for programs and policies that promote good jobs and a healthy natural and working environment in order to protect the health and safety of workers and their families. An important part of the LiUNA's ongoing advocacy involves participating in and, where appropriate, challenging projects that would result in harmful environmental effects, or the violation of environmental laws, to the detriment of the interests of LiUNA's members. Workers often suffer environmental impacts that are more severe than the general population.

Workers and labor organizations have a long history of engaging in the CEQA process to secure safer working conditions, reduce environmental impacts and maximize economic benefits. The courts have held that, "unions have standing to litigate environmental claims." *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.

II. LEGAL BACKGROUND

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. § 15002(a)(1).) "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (citing *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 392. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 (*"Berkeley Jets"*); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. 14 Cal. Code Regs. § 15002(a)(2–3); *see also Berkeley Jets,* 91 Cal.App.4th at 1354; *Citizens of Goleta Valley,* 52 Cal.3d at 564; *Laurel Heights,* 47 Cal.3d at 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." (14 Cal. Code of Regs. § 15002(a)(2).) If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15092(b)(2)(A–B).

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Communities for a Better Environment v. Richmond (Chevron)* (2010) 184 Cal.App.4th 70, 80 (*"CBE v. Richmond"*) (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–50).

CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. 14 Cal.

Code Regs. § 15002(a)(2–3); *see also Berkeley Jets,* 91 Cal.App.4th at 1354; *Citizens of Goleta Valley,* 52 Cal.3d at 564–65. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." 14 Cal. Code Regs. § 15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." Pub. Res. Code § 21081; 14 Cal. Code of Regs. § 15092(b)(2)(A–B).

A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (quoting *King County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117.

III. THE PROJECT DOES NOT COME TO TERMS WITH AB 900 COMPLIANCE, AND THE APPLICANT'S AB900 COMMITMENTS

The Project has made certain commitments under California's AB900 process. DEIR page 4.8-7. AB900, the "Jobs and Economic Improvement Through Environmental Leadership Act," required the Governor to establish procedures for applying for streamlined environmental review for certain projects. Included is information establishing that the prevailing and living wage requirements of Pub. Res. Code section 21183(b) will be satisfied. Here, the Project applied to AB900 status, made these commitments on February 16, 2012, and received approval from Governor Brown. Exhibit C hereto. *The County Board should inquire whether the Applicant is following through, is simply ignoring these commitments.*

It is true that the Applicant did not complete the AB900 process in its entirety. http://opr.ca.gov/s_californiajobs.php. The Project received the Governor's AB900 certification, but not the required "Legislative Concurrence." Nevertheless, the Project's AB900 commitments have not been formally withdrawn. Under these circumstances, the Project should not be allowed to evade the AB900 requirements, including but not limited to prevailing wages.

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IV. THE CUMULATIVE IMPACTS DISCUSSION OF THE CONTINGUOUS BLYTHE SOLAR PROJECT IS INADEQUATE

CEQA requires a mandatory finding of significance if a project will have significant cumulative impacts together with other past, present and reasonably foreseeable future projects. (CEQA sect. 21083(b)) The purpose of a cumulative impact analysis is to analyze impacts that "can result from individually minor but collectively significant projects taking place over a period of time." (*Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 117; CEQA Guidelines section 15355(b).) As the court stated in *Communities for a Better Environment v. California Resources Agency*, 103 Cal. App. 4th 98, 114 (2002):

> Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

Here, the FEIR, and DEIR, do not adequately describe the cumulative impacts of the Blythe Solar Power Project, a 485 MW, 4,183 acre project directly south and contiguous/adjacent to the McCoy Solar Project, and proposed by the same Applicant.

To begin, the FEIR and DEIR here provides very little detail, and virtually no specificity about the cumulative environmental impacts of these two huge projects, adjacent to one another, on the environment including but not limited to air quality, biological and hydrogeologic impacts, particularly during the years of construction and decommissioning of these projects. The DEIR groups the Blythe Solar project together with many other projects, but this project is directly adjacent to the McCoy Solar Project, and it therefore merits far more complete analysis.

Furthermore, the Blythe Solar project has changed significantly since the circulation of the McCoy DEIR. On August 30, 2013, well after the McCoy DEIR was circulated, the BLM published a Notice of Intent to Publish an Environmental Impact Statement for a revised Blythe Solar project, that proposes conversion of the previously approved project from thermal solar to photovoltaic solar technology. The new EIS was circulated on February 7, 2014. Exhibit D hereto.

As a result, neither the DEIR not the FEIR here have any substantive analysis of the new changes to the Blythe Solar project, and how they may cumulatively impact the

environment when the neighboring McCoy Solar Project is also taken into account. FEIR Comment Letter 04.

references the new gen-tie line and the relationship to the Blythe Solar project, but there is no specific, substantive analysis of the Blythe Solar project, as a whole, given its proximity to McCoy Solar. For example, there is nothing in this FEIR and DEIR that describes the cumulative impacts of the revised Blythe Solar project's air quality impacts that will violate the applicable 24-hour and annual PM10 standards, as well as the annual NOx threshold. Exhibit E hereto.

Moreover Response to Comment O2-6 acknowledges the proximity of Blythe Solar, but its conclusions are outdated given the recent changes to Blythe Solar. Response to Comment O3-57 calls such analysis 'speculative," but that is not the case as the new Blythe Solar EIS has been circulated. Doesn't it merit at least some analysis or review by the County?

A. The FEIR Does Not Address The Cumulative Impacts From The Site And Surrounding Projects On Erosion And Sedimentation

This deficiency regarding cumulative impacts review is particularly true in the area of erosion and sedimentation. As expert geologist Rhymes confirms:

> "The project site sits directly in between two large solar projects; The Big Maria Vista Solar Project to the north which has a BLM ROW request for 23,040 acres and facility use of 1,200 acres and the Blythe Solar Power Project which has a BLM ROW request for 9,400 acres and a facility use of 5,595 acres (PSPP, 2009). In addition, the project site lies within a 25-mile radius of about 107,067 total acres of BLM ROW requested land and at least 26,000 acres of facility use for solar power related projects. The cumulative impact of these projects on the erosion, drainage patterns and sheet flow has the potential for causing significant impacts on the hydrology of the area and the ecosystem cumulatively.
>
> Section 6.3.10.2 of the DEIR indicates the following sites were included in the assessment of cumulative impacts with regards to water quality, erosion and sedimentation: enXco, McCoy, BSPP, Blythe Airport Solar I Project, Desert Quartzsite, Gypsum Solar, Palo Verde 2, Rio Mesa. Blythe PV Project) and other projects (e.g., Blythe Energy Project Transmission Line, City of Blythe projects, DPV2, CRS, Desert Southwest Transmission Line, Eagle Mountain, Landfill Project, Palo Verde Mesa Solar Project, RCL00161R1, BGR100258, and CUP03602). However, the DEIR (Section 6.30.10.2) responds to this by stating "However, insufficient details are known about the extent and location of any new pervious surfaces; the volume and location of grading or other earth-moving

activities; and the size of new facilities' footprints to allow for a meaningful and informative cumulative analysis and, for the purposes of this analysis, we decline to speculate as to the significance of potential cumulative effects on erosion and sedimentation." The DEIR goes on to state in the subsequent paragraph that: "The combined impacts of the Project plus the cumulative projects would not result in a significant cumulative effect with respect to water quality degradation, erosion, and sedimentation. Therefore, the Project would not have a cumulatively considerable contribution to such impacts and significant cumulative impacts would not occur."

My original comment letter (Bauer, Sept. 2013) indicated that this was not adequate and that the project and the public deserved and full and fair analysis of this impact. FEIR responds to this comment (O3-57) with "However, specifics about the extent and location of any new pervious surfaces; the volume and location of grading or other earth-moving activities; or the size of new facilities' footprints is not available. Under these circumstances, and consistent with the Court's decision in *Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Cal.4th 1112, 1137, the Draft EIR declines to speculate as to the significance of potential cumulative effects on erosion and sedimentation. . .

The surrounding solar facilities, like the proposed project, have large areas of disturbed soil. The large surface area disturbed by surrounding solar projects is significant in that these facilities can have more of an impact on drainage patterns than smaller footprint construction projects. Assessing the combined impacts and patterns of these large altered areas in close proximity to one another seems to fall under the very purpose of the CEQA environmental review process. Furthermore, construction details of these adjacent facilities are available and should not be considered speculative and therefore the combined impact of the proposed project and the neighboring facilities can be assessed and the FEIR fails to do so." Exhibit B hereto.

V. THE DEIR DOES NOT ADEQUATELY ANALYZE OR MITIGATE FOR IMPACTS ON BIOLOGICAL RESOURCES.

Expert biologist Cornett has reviewed the response to comments in the FEIR concerning biological impacts, and concluded (in the very limited time that the County gave to FEIR reviewers) that the responses regarding deficiencies in the DEIR were unacceptable because they either did not deal specifically with the DEIR comments, or because the issues were ignored all or in part. Exhibit A hereto.

In particular, expert Cornett notes that:

"**Response 03-29. The project proponent refuses to provide any information whatsoever on the qualifications of the persons conducting fieldwork.**

The project proponent failed to include the qualifications of the individuals conducting fieldwork or authoring the biological technical report in the DEIR or the FEIR. The issue was brought forward in my comment letter on the DEIR dated September 5, 2013, and reiterated by Gideon Kracov, Attorney at Law, in his letter dated September 30, 2013. Nevertheless, the project proponent continues to refuse to provide this information as no statement of qualifications was provided in their Response to Comments. I must therefore conclude the project proponent has elected to not provide the information because field workers were not qualified and this fact would have revealed information that would seriously undermine the credibility of the BRTR and FEIR.

The project proponent also failed to use county-approved biologists, as they are required to do, to conduct field surveys for biological resources. In their Response to Comments (03-29) they argue that biologists conducting field surveys and writing reports were covered because Tetra Tech EC, is an approved firm and, therefore, any other individual or company they subcontract with is "approved" as well. This is not correct. The County clearly states on their Environmental Programs website that "the Environmental Programs Division (EPD) of the

Riverside County Planning Department requires that all biological consultants, both firms and **individuals**, who prepare biological reports for review by the County, have an executed agreement on file with the Department."[2] None of the individuals, including Alice Karl, are employees of Tetra Tech and therefore must be approved by the County of Riverside before participating in the development of a report.

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[2] http://www.rctlma.org/epd/documents/BioConsultantsList.pdf

Response 03-30. Project proponent fails to justify the complete absence of standard protocol night surveys.

Many desert animals, including several sensitive species, are active at night to reduce water loss through evaporative cooling and to minimize detection by prey or predators. Night surveys are standard procedure among professional field biologists working in desert environments. However, project biologists elected to deviate from accepted standards and not conduct a single night survey. This omission further undermines the credibility of the report and may have resulted in the failure to detect the presence of several sensitive species including the kit fox and Couch's spadefoot toad.

In an attempt to justify this glaring omission, the project proponent in their responses to comments suggest neither the County, BLM nor federal and state resource agencies required nocturnal surveys. Specifically, they refer to the Draft EIR, Appendix C-5 and the Biological Opinion of the U.S. Fish & Wildlife Service.[3] However, this document says nothing about nocturnal surveys and does not indicate that they are not required. As the resource agencies are well qualified to set parameters on biological field surveys, their decision to not visit this issue in their Opinion most likely reflects their assumption that professional and qualified field biologists would conduct such standard surveys.

In responding to this issue, the project proponent continues by stating that "daytime surveys are adequate to identify aquatic breeding habitat for Couch's spadefoot, potential dens for desert kit fox and roosting habitat for special-status bats."[4] This response makes no effort to explain why this is true. The project site is located in a hyperarid desert and so of course there are no permanent aquatic habitats. But Couch's spadefoot toads in this region rely on ephemeral pools to breed.[5] Such pools are typically associated with wash environments of which there are many more within the project boundaries than is stated in the FEIS (December, 2012). A very limited assessment of potential temporary pools was

[3] Responses to Comments, page 2-182.

[4] Responses to Comments, page 1-182.

[5] Stebbins, R. C. 2003. Western Reptiles and Amphibians. Houghton Mifflin, Boston, Massachusetts.

undertaken but no follow up surveys were conducted because it was concluded that it did not rain in the summer of 2011.[6] Additional surveys were apparently planned for 2012, a year in which summer thundershowers were relatively frequent and widespread, but I found no documents indicating that such surveys for the toad were undertaken. Without an accurate assessment of potential breeding pool locations and not a single nocturnal survey for the species, appropriate mitigation measures cannot be designed. Thus, impacts to Couch's spadefoot toad as a result of the project could be significant. A sincere effort must be made to map potential breeding habitat for the toad, particularly in the northwestern portion of the project site where suitable habitat likely exists but which was completely ignored during the surveys.

The BRTR does not discuss the significance of foraging habitat for the kit fox. Because the entire project site is clearly foraging habitat for kit foxes, nighttime surveys for this small predator should have been conducted as they are most often active at night. Much of the project site is hard-packed alluvial deposits which precludes the creation of fox footprints leaving nighttime surveys as the only practical method by which foraging habitat could have been assessed. Again, the project proponent fails to respond to an important issue and mitigation is designed around kit fox burrow presence rather than areas of foraging habitat. As a result there may be significant impacts to protected kit foxes over a broad region which includes the project site.

Response 03-31. Project proponent fails to explain why wildlife corridor studies were not conducted.

Project proponent fails to explain why routine wildlife corridor studies were not conducted for such a large project which includes habitat for both medium- and large-sized mammals. They simply reiterate what they did but ignore what they did not do. The response states that "The distribution of these species was discussed in the . . ." and "No bighorn sheep were observed in the McCoy Mountains." But such responses and conclusions are not a substitute for the sweeping of washes and roads for animal tracks or the placement of infrared-triggered cameras in washes to record wildlife movements. These standard practices are designed to

[6] BRTR, page 39.

strengthen the kind of incidental observations made while walking transects. Without the use of formal field detection methods the results are incidental and conclusions are speculative at best. The report leaves the public with no real evidence for or against the presence of wildlife corridors with the possibility that project impacts to sensitive mammals may be significant.

Response 03-32. In this instance the project proponent does respond to my comment regarding the little pocket mouse, but fail to correctly characterize the issue.

One of the purposes of a biological survey is to determine the presence or absence of sensitive species or subspecies. The ranges of the various subspecies of little pocket mouse are only partially known, at best, and both the California Department of Fish & Wildlife and U.S. Fish & Wildlife Service have expressed concern regarding the status and survival of several subspecies.[7] For this reason, effective live-trapping of little pocket mice should always be conducted in the desert regions of California. It is not the abundance of a particular species in its habitat that is at issue in this case, but the severely restricted range of certain subspecies whose ranges are incompletely known.

As described in the previous response to comment, daytime surveys alone are inadequate to determine the significance of the site to special-status species such as the kit fox.

Response 03-33. Biological consultants should demonstrate independence when decisions of the USFWS deviate from the Service's own rules and result in additional harm to a listed species.

The USFWS elected to not require additional surveys on lands immediately south of the project site in spite of approved protocols that require such surveys. In my opinion, the Service erred in their decision, a decision that may result in an even more significant impact to the officially threatened desert tortoise. Truly independent biological consultants would have at least recommended that surveys be conducted in spite of the position of the USFWS. Without current surveys the true

[7] USFWS at http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A0BY; CDFW at http://www.dfg.ca.gov/wildlife/nongame/ssc/docs/mammal/species/33.pdf.

impact on the desert tortoise is unknown and mitigation may be insufficient.

The response curiously omits any mention of why tortoise evidence was almost absent north of the project site in similar habitat. Again, this supports the idea that protocols surveys were not conducted in the area as required since no attempt was made to respond to this observation.

Response 03-41. Since no focused bat surveys were conducted no conclusions can be reached regarding impacts and mitigation.

The project proponent responds at length as to why standard practices were not followed and focused bat surveys were not conducted. At the end of the day, without focused surveys no conclusions can be reached as to impacts and the necessity of mitigation. Incidental observations by apparently inexperienced or unqualified field workers can never be a substitute for formal surveys for any species or group of species. Curiously, bat roosts are most likely to be found along the western margin of the project site and beyond, yet no mention of efforts to find roosts in this area were included in the response.

Response 03-42. Surveys for ancient creosote rings must be undertaken before project approval.

The first mention of the existence of ancient creosote rings in any of the documents prepared for the McCoy Solar Energy Project are in the project proponent's response to my comment. "No creosote rings were identified during botanical surveys on the Project site" is their response.[8] This is not surprising since one must conclude that no one involved in the preparation of the biological studies was aware of their existence, much less conducting surveys for them. Now that the project proponent is aware of ancient creosote rings, they should conduct surveys for them with experienced biologists and reveal their findings to the public. If they are found, appropriate mitigation should be implemented. Without such surveys a significant resource could be forever lost as a result of the Project.

[8] Responses to Comments, page 2-185.

Response 03-44. The project proponent fails to respond to the impact of ocotillo removal on migrating birds.

As mentioned in my original comment letter, seventeen ocotillo plants (*Fouquieria splendens*) were found within the project boundaries.[9] The BRTR fails to mention that the project site is one of the most northwestern occurrences of this species and that blooming plants may provide critical energy resources for migrating hummingbirds and other avian species in years of below average precipitation.[10] As the northwestern outpost of *Fouquieria splendens*, the population on the project site should be considered critical to the survival of thousands of hummingbirds and other migrating bird species.[11] Nonetheless, the project proponent has elected to ignore this issue and not respond in any manner.

Response 03-46. No entity has shown that compensatory habitat is available.

In spite of much rhetoric and the use of such phrases as "initially demonstrated," "habitat modeling" and "suggests that the Project will be able to meet compensatory mitigation needs" no actual data has been provided that there is sufficient appropriate land available to accomplish all the compensation necessary to mitigate project impacts to a level of insignificance. I argue that there is insufficient land available. Demonstrate that I am incorrect before accepting the FEIS." Exhibit A hereto.

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[9] BRTR, page 30, C-40.

[10] Cornett, J. W. 2013. The Splendid Ocotillo, Educational Bulletin #13-2, Desert Protective Council, San Diego, CA.

[11] Buchmann, S. L. and G. P. Nabhan. 1997. *Forgotten Pollinators*. Island Press, Washington D. C.

VI. THE DEIR DOES NOT ADEQUATELY ANALYZE OR MITIGATE FOR IMPACTS ON HYDROGEOLOGY AND WATER RESPORCES.

Expert geologist Rhymes has reviewed the response to comments in the FEIR with regard to hydrogeology and water resource impacts, and concluded that the "project FEIR fails to accurately assess the projects natural relation to the Colorado River and incorrectly determines that there is no connection between the groundwater on-site and that from the Colorado River. In order the legally extract water from beneath the project site the FEIR needs to include means to legally acquire this water and as shown above a mechanism already exists for this and these means should be included in the FEIR and the public review process." Exhibit B hereto.

A. The FEIR Does Not Adequately Address The Applicant's Right To Extract Water From The Groundwater Aquifer

In particular, expert Rhymes questions the FEIR conclusion in water supply:

> "As indicated in the DEIR and again in the FEIR the applicant has no plans to extend municipal services for water to the project site and will therefore need to install 2-3 wells to extract groundwater from the underlying aquifer. However, as included in the FEIR in Chapter 2.5, the Metropolitan Water District of Southern California (MWD) in a letter dated October 1, 2013 (FEIR, page 2-55) and the Colorado River Board of California (CRB) in a letters dates September 27, 2013 and January 31, 2013 both contend that the water below the site is Colorado River water and requires the acquisition of entitlement rights or other legal mechanisms to extract this water from the underlying aquifer. However, the applicant asserts that the water pumped from the site is not hydraulically connected to Colorado River water . . .
>
> [I]t was determined by the USGS, and that based the USGS 2008 Accounting Surface report (USGS, 2008), that the water beneath the site is hydraulically connected to that of the Colorado River. This is further reiterated in BLM's DEIS (McCoy DEIS, 2012) [12] for this very project "the PVMGB is tributary to the lower Colorado River, and is part of the Colorado River aquifer." In addition, as shown on Figure 6 of the USGS report (USGS, 2008) the project site shows and accounting surface between approximately 252-256 feet above mean seal level (amsl) and the DEIR in Section 2.4.9 shows that "the [project] wells would pump groundwater from the PVMGB, where the water table has been measured at or near 254 feet amsl." Based on this the project is right at the groundwater elevation

[12] FEIR Response to Comment A5-3 argues that BLM's contrary conclusions on water supply in connection with the FEIS "do not govern" the County's determinations, but this argument is misleading. As a matter of law under CEQA, "substantial evidence includes . . . expert opinion." Pub. Res. Code § 21080(e)(1); 14 Cal. Code Regs. § 15064(f)(5).

of the Colorado River aquifer accounting surface and any pumping below this would be subject to entitlement rights. Furthermore, since the elevation is within +/-0.84 feet at the 95-percent confidence level (USGS, 2008) the project is within the area and range of the Colorado River accounting surface and therefore subject to obtaining valid authority from the MWD and the CRB to extract this water from the underlying groundwater aquifer . . .

From the MWD letter dated October 1, 2013 'The entire project site overlies the Colorado River "Accounting Surface" area designated by U.S. Geological Survey (USGS) Scientific Investigation Report 2008-5113. The Accounting Surface is defined to represent the elevation and slope of the static water table in the river aquifer outside the flood plain and the reservoirs of the Colorado River that would exist if the water in the river aquifer were derived only from the river. The accounting surface extends outward from the edges of the flood plain or a reservoir to the subsurface boundary of the river aquifer. The USGS Report indicates that the aquifer underlying the lands is considered to be hydraulically connected to the Colorado River and groundwater withdrawn from wells located on these lands would be replaced by Colorado River water, in part or in total.'

The FEIR's comment response to this in A5-1 (Chapter 2.5) that indicates that the systems that govern the groundwater below the river are very complex is correct. Groundwater below the site may come from the mountains, the washes, direct precipitation and recharge but it may also come from the Colorado River and may also intercept water destined to recharge the Colorado River. Due to this connectivity to the Colorado River pumping from the site is subject to entitlement rights, and just as other nearby solar projects (Palen Solar Power Project, Blythe Solar Power Project, Desert Harvest Solar Project and Genesis Solar Power Project) have been requested to do so, a mechanism is in place to acquire this water legally through an existing Boulder Canyon Project Act (BCPA) Section 5 Contract Holder (BCP, 1928). Also as indicated in the MWD October 1, 2013 letter the Desert Harvest Solar Project which is further away from the Colorado River was required to include mitigation measures that requires the applicant to prepare a Colorado River Water Supply Plan prior to the onset of water-consuming construction activities which would be submitted to the BLM and the Colorado River Basin Regional Water Quality Control Board (RWQCB) for review and approval, as well as to the MWD for review and comment. As the McCoy site is closer to the Colorado River and also under BLM jurisdiction so too should it include these mitigation measures and the FEIR fails to do so.

In addition, as shown from the AECOM report Assessment of Proposed Groundwater Use – Results of Numerical Groundwater Modeling McCoy Solar Energy Project, Palo Verde Mesa, Riverside County, California (Aecom, 2011) Figures 1 and 2 in the DEIR show the basin sediments are the same and that groundwater flow is connected beneath the site and within the river basin thereby indicating that the aquifer beneath the site and the Colorado River basin are both within the Palo Verde Mesa Groundwater Basin and as such groundwater from the numerous sources mentioned above (mountain recharge, washes, precipitation, subsurface inflow and Colorado River water) are comingled within the Palo Verde Mesa Groundwater Basin. Recharge water from the mountains will flow towards the river via underground flow and may or may not be intercepted by the PVID drains and inflow water from the river may be pumped from the Project site . . .

The assertion in the FEIR (Chapter 2.6) that the PVID drains prevent any flow of water in, around, or under them is unfounded and needs to be further developed and presented if this will be the deciding issue as to whether the site's underlying water is connected to the Colorado River. Even if it were found to be true, these drains are man-made and can be added to, removed, and manipulated and their use in defining natural groundwater basin boundaries is questionable." Exhibit B hereto.

VII. THE DEIR DOES NOT ADEQUATELY ANALYZE OR MITIGATE FOR IMPACTS ON SURFACE WATER HYDROLOGY, DRAINAGE AND FLOODING.

Expert Rhymes' review of the FEIR concludes that there are several shortcomings with regard to surface water issues from this massive project.

A. The DEIR Fails To Accurately Assess The Permitting Requirements For Compliance Under The Clean Water Act

Expert Rhymes raises concerns about the FEIR's characterization of the McCoy Wash, which is part of the Colorado River Aquifer:

"As indicated in the Section 4.10.1.3 of the DEIR for this project "When sufficient flow is present, west to-east trending washes located on site eventually merge with McCoy Wash, which is located north and east of all proposed Project facilities." Also indicated a Department of Water Resources study (DWR, 2004) west- to-east trending washes are located on site and eventually merge with the McCoy Wash, which is a tributary of the Colorado River and the PVMGB is tributary to the lower Colorado River, and is part of the Colorado River aquifer.

Section 4.10.1.3 of the DEIR states "The major watercourse near the Project site is McCoy Wash (east of the site) which drains approximately 210 square miles of the Palo Verde Mesa, McCoy Mountains, Little Maria." . . .

However, later revisions to the DEIR stated that "When sufficient flow is present, west to east trending washes located on site eventually merge with McCoy Wash, which is located north and east of all proposed Project facilities, as described above. Low flows from the ephemeral washes that traverse the Project site in a west-to-east orientation transition into alluvial fans and abate into the landscape prior to connecting with the McCoy Wash (AECOM, 2011b)." As indicated in the Aecom report this conclusion was based on visual observations. . .

This reversal based on a visual observation is inadequate proof that waters from the site do not drain into the McCoy Wash. The Palo Verde Irrigation District confirms in their July 26, 2012 (PVID, 2012) comment letter on the FEIS for this project that: "during rain events, any water falling on the mesa that doesn't infiltrate runs into the Valley causing damages and either infiltrates to the valley groundwater, flows into a PVID canal, or flows into a PVID drain." If surface water from the Mesa can drain into the valley, it has the potential for impacting Waters of the U.S. There is sufficient evidence as indicated above showing that waters from the site, during periods of flooding or intense rainfall event, can drain to the McCoy wash and therefore they should be designated as water of the United States and subject to the Clean Water Act." Exhibit B hereto

B. The FEIR Does Not Adequately Assess The Risks From The Project On Existing Drainage Patterns, and the New Option 2 Gen-Tie Does Constitute Significant New Information Requiring Recirculation

Expert Rhymes concludes that the Project's impact on surface erosion and increased amount of runoff, including from new Option 2 gen-tie, is not adequately addressed in the FEIR. "When these patterns are altered, even slightly, the impacts to the surrounding ecological system can be great." Exhibit B hereto.

"My original comment letter dated September 12, 2013 (Bauer, 2013) relayed concerns that the DEIR did not adequately assess the impacts to the environment and local ecosystems from the altered drainage patterns caused by the project. The FEIR's response to this comment is "Measure 4.10-5 would require the Applicant to complete a site specific Comprehensive Drainage, Stormwater, and Sedimentation Plan for County review prior to construction to reduce the potential for the Project to result in altered stormwater flows (including drainage patterns), erosion, or sedimentation rates (such as the formation of rills and gullies) to a less than significant level." However, this leaves the evaluation and assessment of any impacts in question to a later date after the CEQA process is over. The sheet flow across the site that now exists could significantly be altered by the solar panels

and the associated infrastructure. The comment response acknowledges that altered hydrology, drainage patterns and increases in sedimentation and erosion could occur but the mitigation presented to manage this is again the submittal of a Comprehensive Drainage, Stormwater, and Sedimentation Plan to the County of Riverside for review. The objective of the CEQA review process is to review and make publicly available potential impacts from the project and this appears to defer this important piece of research and data to a later date long after the public is included in the review process.

In addition, my original comment letter (Bauer, Sept. 2013) indicated that the project did not mention or include a proposal to prepare a Conceptual Grading Plan. My original comment letter states "The DEIR makes no mention of a Conceptual Grading Plan which could be used to evaluate impacts from the project and mitigate impacts that are discovered. For instance, the DEIR makes no mention of where or when engineered channels would be located, which washes would be most affected and how they would be protected, but leaves it to a plan (Comprehensive Drainage, Storm Water, and Sedimentation Control Plan) to be worked out at a later date." The FEIS does not address this omission, which is a critical component to reviewing the impacts of the project on the environment and the community.

Furthermore as indicated in my original comment letter (Bauer, Sept. 2013) "The Applicant did have a Pre/Post-Development Hydrology Report prepared by Aecom for this project (Aecom, Nov. 2011), however this report failed to include the McCoy Wash in the calculations. Storm water from the site is located directly adjacent to the McCoy Wash and it is not shown in the DEIR that storm water from the site does not get conveyed to McCoy Wash. It appears from the maps presented in both of the Aecom's reports (Jan. and Nov. 2011) that storm water from the mountains would drain through the site and into McCoy Wash, especially during periods of intense rainfall, which is anticipated to get more severe with climate change. If the Aecom's Nov. 2011 report concludes that McCoy Wash cannot and will not receive any storm water run off from the project site, the scientific basis for such needs to be directly included in the DEIR or an appendix thereof and the DEIR fails to do this." As stated above it appears that the FEIR does not include the McCoy wash in its calculations and again without this data the FEIS fails to present a fair and full review for the public.

In addition, in the FEIR Chapter 2.6.4 Nextera Energy submits a letter proposing to move the gen-tie line approximately 1,100 feet west (called Option 2) on the Blythe Solar Plant Project site. This option has not been adequately included in the review process. The FEIR erroneously states "Option 2 is not "significant new information" and does not change the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA

Guidelines §15088.5(a))." This option moves the gen-tie line 1,200 feet west into an area of more significant ephemeral washes. The effects of a gen-tie line in this area on local drainage patterns have not been thoroughly included in this FEIR. The FEIR responds to this issue on page 2-209 of the FEIS "Hydrology and Water Quality. Option 2 would not substantially change the size or type of facilities to be constructed. It would be slightly longer and result in slightly more overall land disturbance, but would differ from Option 1 only over 1-mile section, and would result in similar potential impacts with respect to existing water quality standards and the potential for increasing erosion and/or flooding during construction, operation and maintenance, and decommissioning. For these reasons, Option 2 would not result in any change to the significance conclusions made for the Project in Draft EIR Section 4.10 or Section 6.3." This response does not constitute a thorough review. The models and studies completed for the original project should be updated to include this change and a corresponding impact assessment done prior to approving this revision and the current FEIS fails to do this." Exhibit B hereto.

C. The DEIR Does Not Adequately Address The Risk To The Environment From Flooding On The Project Site

Expert Rhymes concludes that the FEIR's analysis of flood risk is incomplete:

"My original comment (Bauer, Sept. 2013) expressed concerns that the Project DEIR did not address the risks and present mitigations sufficient enough to manage environmental threats in the event of a flood. As indicated in my referenced comment letter Genesis Solar Power Project, located 8 miles away from the project, failed in the planning and execution of their project resulting the release of hazardous chemicals into the fragile desert environment from significant flooding and lack of preparation (BAR, 2012). The FEIR for the McCoy project should include drawings showing where the areas most prone to flooding exist and include mitigations showing that vehicles, equipment and other hazards will not be placed in these areas. The FEIR responds to this by stating, "Figures depicting the proposed site layout have not been altered to include a delineation of areas of concentrated flow or of frequent flood flow areas; the latter would be delineated during final engineering."

As indicated, flooding in this area is a significant risk and when facilities are placed in areas of significant flows environmental damage can occur. The FEIR/DEIR fail to show that this will not happen as it defers the design until a later date when the public cannot review the documents to assess the risks. Comment A3-6 to the Riverside County Flood Control and Water Conservation District states that the "Draft EIR Figure 2-3 has not been revised to depict the post-mitigation site layout because like all Project information presented in Chapter 2, it describes the Applicant's proposal (pre-mitigation). Further, because

final design has not been completed, the final locations and elevations of such facilities are not known. Final site design would be consistent with the EIR's analysis and all mitigation measures and conditions of approval. Additionally, please note that, as described on Draft EIR page 4.10-6 and on Draft EIR Figures 4.10-5 through 4.10-8, areas of maximum concentrated flow, shown outlined in blue on these figures, correspond to areas of flow with water depths greater than 0.3 feet and do not necessarily depict severe and frequent flow areas." Thus, the FEIR still fails to include an adequate review and mitigation to ensure that significant environmental damages do not occur as a result of the project." Exhibit B hereto.

VIII. THE FEIR DOES NOT ADEQUATELY ANALYZE OR MITIGATE FOR HAZARDS AND HAZARDOUS MATERIALS

Expert Rhymes comments on the inadequate review of risks of lead and perchlorate in soil:

"Section 4.9.1.1 of the DEIR it states that: "Scattered trash and debris were observed in the gen-tie line corridor, particularly near I-10, that could include lead debris from shooting target practice." And as noted in the Project Final Environmental Impact Statement (McCoy DEIS, 2012) prepared for the Bureau of Land Management (BLM) for this project lead (Pb) debris was noticed in the gen-tie corridor . . .

As indicated in my original September 2013 comment letter (Bauer, 2013) "Lead overexposure is one of the most common overexposures found in industry and is a leading cause of workplace illness (OSHA, 2013). When lead is deposited in soil from anthropogenic sources, it does not biodegrade or decay and is not rapidly absorbed by plants, and thus it remains in the surface soils at elevated levels for extended periods of time. Lead is estimated to have a half-time of residence in soil of 1,000 years (EPA, 2001). Lead can also be brought home on worker's shoes and a child's exposure to lead is much more severe and significant that that of an adult due to their smaller body size, increase of floor contact and also increase in hand to mouth contact." . . .

The FEIR states in the response comment (Chapter 2.6.3) that the identification in lead in the soil from the shooting range is part of the UXO identification and training program, as well as the identification of perchlorates. Typical UXO identification training will includes the visual identification of munitions and unexploded ordnances. An example of an Unexploded Ordnance Identification, Training, and Reporting Plan (UXO ITRP) for a similar solar project which was

developed for SolarReserve, LLC for the Rice Solar Energy Project in September 2011 (SolarReserve, 2011) shows that training is given for the identification and management of hazards associated with UXOs or munitions or explosives of concern (MECs) when they are "visually or physically encountered." . . .

The hazards associated with degraded lead in soil and perchlorates are not something that typically can be seen with the naked eye. They require the collection of soil samples to confirm. The FEIR's response is inadequate in that a UXO plan does not include the proper identification of these hazards and therefore the impacts to the environment, the community and the workers from disturbing soils in these areas remain unknown. Therefore, prior to the FEIR being finalized a thorough investigation, which includes soil sampling, to determine the presence of soil contaminants, specifically lead and perchlorates needs to be done in areas where the these contaminants may exist. This is the only way to ensure that contaminated soil is adequately handled and that the environment, workers, their families and the public are protected." Exhibit B hereto.

IX. THE VALLEY FEVER ANALYSIS IS INADEQUATE

Expert geologist Rhymes concludes that additional, feasible measures, can be implemented to protect against Valley Fever:

"The Revised DEIR includes several mitigations set forth to reduce the exposure to Valley Fever. These mitigations listed in the Revised DEIR are somewhat of an improvement over the those detailed in the original DEIR, however my comment letter to these revisions dated December 11, 2013 (Bauer, Dec. 2013) points out that the DEIR does not indicate how the risk of contracting Valley Fever based on environmental conditions (wind, rain, work activity) will be assessed, if at all and this is again omitted in the FEIR. Therefore, the FEIR fails to adequately assess the risk from the disturbance of soil containing Coccidioides spores on the public and workers . . .

In addition, the Revised DEIR in Impact 4.3-4A (page 2-48) states "based on the types of occupations required for the Project (see for example, in DEIR Table 4.14-4 (p. 4.14-6)), the Project construction workforce could be drawn from as far away as Brawley and El Centro in Imperial County, California, or Cibola and Phoenix in Arizona (Draft EIR Section 4.17.5, p. 4.17-10). Even at the farthest reasonable commute, these workers already are living and working in areas that have the potential to have soils affected by the valley fever fungus. Accordingly, for a

substantial majority of Project workers, there would be no change in the baseline construction site health risk related to valley fever whether they report to work at the Project site or elsewhere in Riverside, San Bernardino, Imperial, or Los Angeles counties."

While it may be true that workers will be commuting from areas also endemically high in Valley Fever the baseline should still be set higher for work being conducted on solar projects over other projects employing workers involved in earthwork activities. This is because the large-scale utility solar project will disturb a greater percentage of surface soil, where Coccidioides spores reside, than for typical construction projects (parking lots, buildings, roadways). Few other projects require grading of such a large surface area than the large utility-scale solar installations. For this reason the exposure of workers involved in the McCoy Solar Project will be greater than that of another non-solar projects and the FEIR fails to assess these risks." Exhibit B hereto.

X. THE DEIR DOES NOT PROVIDE ADEQUATE INFORMATION ON MITIGATION MEASURES FOR THE PROJECT, FAILING TO INCLUDE OR DEFERRING KEY MITIGATION.

The DEIR omits or defers formulation of a host of mitigation measures, denying critical information to decisionmakers and the public as to whether the Project will in fact be able to adequately mitigate its environmental impacts. A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available). This approach helps "insure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug." *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. 14 Cal. Code Regs. § 15002(a)(2–3); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

Also, CEQA disallows deferring the formulation of mitigation measures to post-approval studies. 14 Cal. Code Regs. § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309. An agency may only defer the formulation of mitigation measures when

it possesses "'meaningful information' reasonably justifying an expectation of compliance." *Sundstrom* at 308; *see also Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only "for kinds of impacts for which mitigation is known to be feasible").

Here, by deferring the development of specific mitigation measures, the Applicant has effectively precluded public input into the development of those measures. CEQA prohibits this approach. As explained by the *Sundstrom* court:

> An EIR . . . [is] subject to review by the public and interested agencies. This requirement of "public and agency review" has been called "the strongest assurance of the adequacy of the EIR." The final EIR must respond with specificity to the "significant environmental points raised in the review and consultation process." . . . Here, the hydrological studies envisioned by the use permit would be exempt from this process of public and governmental scrutiny. *Sundstrom*, 202 Cal.App.3d at 308.

For example, the FEIR and DEIR fail to include many mitigation measures from the earlier McCoy Solar BLM approvals and Record of Decision, including measures relating to air quality (AIR-1), visual resources (VIS-4) and cultural resources (CUL 4.5-1, 4.5-3). Exhibit F hereto. These BLM mitigation measures are *per se* feasible, and therefore must be incorporated into the County CEQA approvals as well. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." 14 Cal. Code Regs. § 15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15092(b)(2)(A–B).

The FEIR and DEIR also fail to provide sufficient specificity regarding a host of mitigation measures. Too much mitigation deferral is allowed, and sufficient performance standards are not put in place. The DEIR does not come to terms with any of this, but more specificity must be included on measures including:

- Measure 6-1d – which structures will be allowed to remain in the ground, what is standard to be used to determine feasibility or "whenever possible"
- Measure 4.4-1f – performance standards are not yet developed, leaving them ambiguous
- Measure 4.4-2b – performance standards are not yet developed, leaving them ambiguous
- Measure 4.4-3b – performance standards are not yet developed, leaving them ambiguous

- Measure 4.4-4d – what is standard to be used to determine feasibility
- Measure 4.4-7 – performance standards are not yet developed, leaving them ambiguous
- Measure 4.10-1 – BMPs and performance standards are not yet developed, leaving them ambiguous
- Measure 4.10-4 – performance standards are not yet developed, leaving them ambiguous
- Measure 4.10-5 – performance standards are not yet developed, leaving them ambiguous

XI. THE EIR SHOULD BE REVISED AND RECIRCULATED.

In light of all this, recirculation of the Project CEQA documents is warranted. Recirculating an EIR prior to certification is required when "significant new information" comes to light concerning a Project. 14 Cal. Code Regs. § 15088.5(a)(1–2). "'Significant new information' requiring recirculation includes, for example, a disclosure showing that: (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance. (3) A feasible project alternative or mitigation measure considerably different from other previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it. (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." 14 Cal. Code Regs. § 15088.5; *see also Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130 ("*Laurel Heights II*") (citing *Mountain Lion Coalition v. Fish & Game Comm'n* (1989) 214 Cal.App.3d 1043).

VIII. CONCLUSION.

It is the County Board's role to make the final CEQA findings, and to make County Code §§ 18.28.f and 18.29.d findings for the requested use permits that the Project "will not be detrimental to the health, safety or general welfare of the community, and that conditions be imposed "to protect the health, safety or general welfare of the community." Commenters respectfully believe, for all the reasons set forth in this letter, that this rushed approval cannot satisfy these standards, and therefore this item should be continued, or denied at this time. Commenters respectfully insist that holding this hearing today, and acting on this Project, will violate CEQA's rules on informed decisionmaking and public participation.

As set forth herein, the FEIR and CEQA compliance for the Project have the following deficiencies:

I. Lack Of Clarity On AB 900 Compliance;

II. The Cumulative Impacts Discussion Of The Contiguous Blythe Solar Project Is Inadequate;

III. The FEIR Does Not Adequately Analyze Or Mitigate For Impacts On Biological Resources;

IV. The FEIR Does Not Adequately Analyze Or Mitigate For The Project's Impacts On Hydrology and Water Resources;

V. The FEIR Does Not Adequately Analyze Or Mitigate For The Project's Impacts On Surface Water Drainage And Flooding Risks;

VI. The FEIR Does Not Adequately Analyze Or Mitigate For Hazards and Hazardous Materials;

VII. The Valley Fever Analysis is Inadequate;

VIII. The FEIR Does Not Provide Adequate Information On Mitigation Measures For The Project, Deferring Key Mitigation; and

IX. Recirculation Is Necessary.

Commenters are very concerned that the FEIR did not give the extensive DEIR comments on the project the required review, or analyze them as carefully as needed. Incredibly, given the volume of comments received, the FEIR only recommends minor changes to barely 12 pages of the entire DEIR.

For the foregoing reasons, the County may not approve the Project as currently proposed. Commenters urge the County to decline to approve the Project and require the staff to go back and perform legally adequate environmental review for the Project and properly mitigate its significant impacts. Please continue to include this Office on the mailing list for all CEQA and local land use notices for the Project. Thank you for your attention to these comments.

Sincerely,

Gideon Kracov
Attorneys for LiUNA Local No. 1184

Attachments A-F