

ADAMS BROADWELL JOSEPH & CARDOZO

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
LAURA E. HORTON
MARC D. JOSEPH
RACHAEL E. KOSS
JAMIE L. MAULDIN
ELLEN L. WEHR

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

tenslow@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660

FAX: (650) 589-5062

April 11, 2016

VIA E-MAIL AND HAND DELIVERY MAIL

Kern County Board of Supervisors
1115 Truxtun Avenue, 5th floor
Bakersfield, CA 93301
(661) 868-3601
board@co.kern.ca.us
clerkofboard@co.kern.ca.us

Ross Fehrman
Kern County Planning Department
2700 "M" Street, Suite 100
Bakersfield, CA 93301
FehrmanR@co.kern.ca.us
planning@co.kern.ca.us

**Re: APRIL 12 BOARD HEARING (2:00 P.M.) ITEM 4 - Supplemental
Comments on the Final Consolidated Environmental Impact Report
for the Willow Springs Solar Array Project (PP10232) (State
Clearinghouse No. 2010031023) – Response to Supplemental
Response to Comments (Attachment "A" to Staff Report)**

Dear Supervisors and Mr. Fehrman:

We are writing on behalf of **Kern County Citizens for Responsible Solar** in opposition to approval of the Willow Springs Solar Project on the grounds that the EIR for the Project fails to comply with the requirements of CEQA. Kern County Citizens for Responsible Solar is an unincorporated association of individuals¹ and groups, including **California Unions for Reliable Energy** that may be adversely

¹ Individual members of Kern County Citizens for Responsible Solar include Rosamond residents, Gary Wilcox and Daniel Wilbour, Mojave residents Gaston Moore, Lorreta Moore and Emilio Pino, and Tehachapi residents Josh Hernandez and Neal Herman.

affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project.

We previously provided comments dated April 13, 2015 on the Project's Draft Environmental Impact Report ("Draft EIR"), comments dated June 24, 2015 on the Project's (uncertified) Final Environmental Impact Report ("Final EIR"), comments dated October 19, 2015 and November 6, 2015 on the Project's first Partially Recirculated Draft EIR ("1st RDEIR"), comments dated January 19, 2016 on the Second Partially Recirculated Draft Environmental Impact Report ("2nd RDEIR") and comments dated March 9, 2016 on the Final Consolidated Environmental Impact Report ("FCEIR"). We hereby resubmit these prior comments and there attachments to the Board for its April 12, 2016 hearing on the Project.

In addition, we are submitting new, supplemental comments by biologist Scott Cashen in response to "Attachment A" to the Staff Report for the Project, which is titled "Response to Comments from Adams Broadwell Joseph & Cardozo on the Final Consolidated EIR (March 9, 2016)." Most of the arguments and claims made in this Response to Comments were already addressed in our March 9, 2016 Comment Letter and in the expert comments of Scott Cashen and Petra Pless that accompanied that letter. However, the Attachment "A" Response to Comments also contains several new factual claims and arguments related to biological resources that were not a part of the record that was before the Planning Commission. Biologist Scott Cashen has reviewed these new claims and arguments and has found that they are based largely on speculation, incorrect assumptions and factual claims that are not supported by the record. Mr. Cashen's response is attached as Exhibit 1 to this letter and hereby submitted into the record.

We are also resubmitting the March 10, 2016 comments of Dr. Petra Pless in order to ensure that the correct version of her comments is in the record. An incomplete draft version of her comments had been inadvertently submitted with our March 9, 2016 comment letter. A corrected, "Revised" version was subsequently submitted the same day by Dr. Pless. We resubmit it here in order to ensure the correct version is before the Board.

As set forth in our March 9, 2016 comment letter and the expert comments of Dr. Pless and Mr. Cashen, the FCEIR fails to disclose or meaningfully evaluate significant Project impacts related to biological resources and air quality. It also continues to rely on inadequate mitigation measures to reduce potentially significant impacts to less than significant levels, fails to evaluate feasible

April 11, 2016

Page 3

mitigation for impacts determined to be significant and unavoidable, fails to support many of its findings with substantial evidence, and fails to adequately respond to comments.

For example, the FCEIR's analysis of PM10 emissions fails to take into account existing background PM10 emissions and fails to take into account emissions from wind erosion even after dust control measures are applied. As shown in the attached comments of Dr. Pless, the EIR's assumption that dust control emissions are 100% effective is not supported by substantial evidence. The South Coast Air Quality Management District provides an extensive list of fugitive dust mitigation measures and their control efficiency for various fugitive dust sources.² For watering of disturbed areas in 2-hour intervals, the SCAQMD determined a 61% PM10 control efficiency. For the application of chemical soil stabilizers on inactive, disturbed areas to reduce windblown dust, the SCAQMD determined up to 80% PM10 control efficiency. Even unrealistically assuming that the entire Project would be stabilized during a moderate to high wind event, the attached comments of Dr. Pless show that dust emissions from even these stabilized areas due to wind erosion would exceed the EKCAPCD's significance threshold of 15 tons/year. Project PM10 emissions during construction activities will be significant. The FCEIR fails to identify this significant and unavoidable impact.

The FCEIR's analysis of biological impacts is also inadequate and not supported by substantial evidence. For example, the California Department of Fish & Wildlife recommends mitigating loss of Swainson's Hawk habitat by providing compensatory habitat *within Antelope Valley* at a *minimum* 2:1 ratio. The EIR proposes a 1:1 ratio and allows mitigation land to be located in the Central Valley, where it will provide no benefit to the directly affected hawk population. The County lacks substantial evidence to support its determination that this mitigation will reduce direct impacts to the affected Swainson's Hawk population to below a level of significance.

The EIR also lacks evidence to support its finding that the site does not contain important foraging habitat for the ferruginous hawk. This area contains what has been called the single most important wintering area for this hawk. Numerous sightings of groups of up to 25 of these hawks have been recorded on the

² SCAQMD, CEQA, Air Quality Analysis Handbook, Mitigation Measures and Control Efficiencies, Fugitive Dust; <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies/fugitive-dust>.

Project site, which is highly unusual and suggests the presence of a communal roost. These sightings of large groups of ferruginous hawk on the Project site were corroborated by the applicant's own consultants who recorded 23 sightings of these hawks in surveys conducted *after* the majority of the species had already left the area for their breeding grounds.

The EIR lacks evidence to support its finding that the site does not contain important foraging habitat for the mountain plover. The Antelope Valley provides critical wintering grounds for the plover, yet no surveys were conducted during the time the mountain plover is present in Antelope Valley.

The EIR claims that there is a low likelihood of the desert kit fox to occur on the Project site despite their own expert reporting a sighting on the site.

The EIR's analysis of impacts to imperiled plant species lacks evidence because the surveys failed to follow protocols such as visiting reference sites to confirm blooming periods. The Staff Report claims, for the first time, that the biologists did visit reference sites, but provides no information as to which reference sites were visited, when they were visited, or what species were found to be blooming during the visits.

The EIR lacks evidence that the Project would not affect the Tehachapi Pocket Mouse. It incorrectly claims that the mouse only occurs in the foothills and has not been seen in Kern County since 1998. Yet the County's own biological consultant reported trapping and identifying this species at two locations just five miles from the Project in 2011 as part of surveys for the Catalina Renewable Energy Project.

The EIR also improperly assumes that its mitigation for loss of Swainson's hawk habitat would also mitigate potential impacts to numerous other species, including the prairie falcon, northern harrier, Cooper's hawk, ferruginous hawk and loggerhead shrike. As discussed in Mr. Cashen's attached supplemental comments, this assumption lacks substantial evidence. Compensatory habitat for Swainson's hawk that meets the requirements set forth in the FCEIR would not necessarily provide compensatory habitat for these species. Without setting forth additional conditions on what sort of compensatory habitat may be acquired, the County lacks substantial evidence to assume that mitigating for loss of Swainson's hawk habitat would also mitigate potential impacts to these other species.

Numerous other inadequacies are also set forth in our March 9, 2016 comments. The FCEIR must be withdrawn and revised because its numerous deficiencies preclude meaningful public comment. The omission of key information regarding the Project's environmental setting and potential impacts denied the public an "opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom."³ Under these circumstances, recirculation is required.

The Project is one of approximately 48 approved or proposed solar power plants that will cumulatively convert over 35,000 acres of agricultural land and special status species habitat to an industrial use.⁴ While these projects will employ solar technology, each one will unavoidably tax the State's limited water, land, air, and biological resources to a potentially significant cumulative extent. In addition, many of the projects are on agricultural land that has provided substantial employment to Kern County residents - employment opportunities that will not be replaced by the meager operational staff required to operate these land intensive solar projects.

Due to the unprecedented scope of large scale development projects taking place in this region, it is essential that the County's EIR adequately identify and analyze the Project's foreseeable direct, indirect and cumulative impacts. It is also imperative that any and all feasible mitigation measures be presented and discussed. Indeed, CEQA requires nothing less. The EIR must be revised to resolve its inadequacies and must be recirculated for public review and comment.

Sincerely,



Thomas A. Enslow

TAE:lj
Attachments

³ *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 131; CEQA Guidelines § 15088.5.

⁴ http://www.co.kern.ca.us/planning/pdfs/renewable/solar_projects.pdf