Attachment G

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EXHIBIT G-1

MONTEREY COUNTY BUSINESS COUNCIL

January 7, 2015

Monterey County Resource Management Agency
ATTN: John Ford, RMA Service Manager
Planning Department
168 West Alisal St, 2nd Floor
Salinas, CA 93901

Email: John Ford, Project Planner, FordJH@co.monterey.ca.us
Mike Novo, Planning Director, novom@co.monterey.ca.us
Delinda Robinson, Senior Planner, robinsond@co.monterey.ca.us

Re: MCBC Support for California Flats Solar Project (PLN120294)

Dear Ms. Robinson, Messrs. Ford and Novo, and Monterey County Planning Commission members:

I write on behalf of the Monterey County Business Council ("MCBC") to express MCBC's support for the California Flats Solar Project and respectfully request that the Planning Commission approve the proposed Combined Development Permit consisting of: 1) a Use Permit to allow the construction of a 280 Megawatt solar generating facility on an approximately 3,000 acre site including: photovoltaic (PV) solar modules, pad-mounted inverters and transformers, two substations (approximately 6 acres each), a switching station (approximately 6 acres), a 4,000 square foot operations and maintenance building, an approximately 155 acre utility corridor, other infrastructure needed to serve the proposed project. The applicant is also requesting to enter into a Development Agreement with the County under Monterey County Code Chapter 18.62.

MCBC supports the California Flats Solar Project as an important economic development project that appropriately incorporates the principles of climate protection and green job creation. The project will increase state and local tax revenues while supporting job creation by generating wages and benefits for upwards of 500 construction jobs and up to 10 ongoing operation and maintenance positions. Projected to provide over $200,000,000.00 in direct and indirect economic benefits for established Monterey County businesses, the project also provides Monterey County with an opportunity to be at the forefront of green job creation and renewable energy production in California. Once fully operational, the project will generate clean solar energy that will serve the needs of approximately 100,000 average homes per year, with the accompanying displacement of over 109,000 metric tons of carbon dioxide annually. Notably, the project's location of the existing power grid ensures that electricity will get to consumers without the added costs and environmental impacts of new power line construction. In turn, the design and location of the project's photovoltaic panels protects local flora and fauna while displacing over 152,000 metric tons of water consumption annually based on the average California grid. The project site was located to minimize environmental

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impact, is not visible from any public gathering points or major roads, and construction will incorporate appropriate mitigation for traffic, dust, habitat and species. In short, this is a model project for a low impact power plant that will produce renewable energy for decades to come.

It should be noted that MCBC has long been an advocate for clean energy. Beginning in 2007, MCBC convened roundtable discussions on solar PV permitting in order to bring fire and building officials together with industry experts to streamline an over-the-counter permitting process for systems that meet minimum criteria. In 2009, a formal Solar PV Permitting Task Force was formed to develop a draft model ordinance, which has been implemented since July 2010. Accordingly, the MCBC requests the Planning Commission approve this project so that Monterey County residents will enjoy the environmental and economic benefits from a model green energy and sustainable economic development project.

Very truly yours,

Brian E. Turlington
Executive Director

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#6

January 13, 2015

Via Overnight and Electronic Mail

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Re: Comments on the Final Environmental Impact Report for the California Flats Solar Project (PLN120294; SCH#2013041031)

Dear Mr. Ford:

We are writing on behalf of Monterey County Residents for Responsible Development to provide comments on the Final Environmental Impact Report ("FEIR") prepared by Monterey County ("County"), pursuant to the California Environmental Quality Act ("CEQA"),[1] for the California Flats Solar Project ("Project"). The Applicant seeks a Combined Development Permit ("CDP") to develop a 280-megawatt ("MW") solar facility on approximately 3,000 acres of land in unincorporated Monterey County. We previously provided comments on the Draft Environmental Impact Report ("DEIR") for the Project on September 22, 2014.

Based upon our review of the FEIR and the County's responses to comments on the DEIR, we conclude that the FEIR fails to comply with CEQA. We incorporate by reference our earlier comments on the DEIR. The County is required to recirculate the FEIR because it includes significant new information, the previous omission of which deprived the public of a meaningful opportunity to comment on significant impacts or feasible mitigation measures. In addition, the

[1] Pub. Resources Code, §§ 21000 et seq.

FEIR fails to present a complete project description and improperly piecemeals environmental review. Furthermore, the FEIR does not adequately describe the environmental setting with regard to biological resources and hazards. The FEIR also fails to adequately analyze the Project's impacts related to air quality, biological resources, hazards, and water resources; and fails to propose mitigation measures capable of reducing potentially significant impacts to less than significant levels. Finally, the FEIR fails to adequately respond to several of our comments, in violation of CEQA.

We have reviewed the FEIR and its appendices with assistance from technical consultants, whose comments and qualifications are attached as follows: Scott Cashen (**Attachment A**),[2] Matt Hagemann with the assistance of Jessie Jaeger (**Attachment B**),[3] and Tom Myers **(Attachment C)**.[4] We incorporate by reference all comments included in the expert documents.

I. STATEMENT OF INTEREST

Monterey County Residents for Responsible Development is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes Monterey County residents, such as Manuel Ramos, Robert Greene, and California Unions for Reliable Energy ("CURE") and its members and their families and other individuals that live and/or work in Monterey County (collectively, "Monterey County Residents"). The association was formed to advocate for responsible and sustainable solar development in Monterey County and nearby surrounding areas in order to protect public health and safety and the environment where the association members and their families live, work and recreate.

The individual members of Monterey County Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in Monterey County. They would be directly affected by the Project's environmental

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[2] *See* Letter from Scott Cashen, to Laura Horton re: Final Environmental Impact Report for the California Flats Solar Project, January 12, 2015 (hereinafter, "Cashen Comments"), **Attachment A.**
[3] *See* Letter from Matt Hagemann and Jessie Jaeger (SWAPE) to Laura Horton re: Final Environmental Impact Report for the California Flats Solar Project, January 7, 2015 (hereinafter, "Hagemann Comments"), **Attachment B.**
[4] *See* Letter from Tom Myers to Laura Horton re: Final Environmental Impact Report for the California Flats Solar Project, January 8, 2015 (hereinafter, "Myers Comments"), **Attachment C.**

and health and safety impacts. Individual members may also work constructing the Project itself. They will be first in line to be exposed to any health and safety hazards that may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

The organizational members of Monterey County Residents also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the union organization's members that they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses to locate in the region and people to live there. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for construction workers. The labor organization members of Monterey County Residents therefore have a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment.

II. CEQA REQUIRES THE COUNTY TO RECIRCULATE THE EIR

A lead agency is required to recirculate an FEIR when "significant new information" is added to the FEIR after public notice is given of the availability of the DEIR, but before certification.[5] The CEQA Guidelines define "significant new information" as changes in the project or environmental setting, as well as additional data or other information that deprives the public of a meaningful opportunity to comment on significant impacts or feasible mitigation measures.[6] Specifically, new information is significant when:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- 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;
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the

[5] Pub. Resources Code, § 21092.1; Cal. Code Regs. tit. 14, § 15088.5 ("CEQA Guidelines").
[6] CEQA Guidelines, § 15088.5(a).

environmental impacts of the project, but the project's proponents decline to adopt it; or

- The draft FEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment was precluded.[7]

The failure to recirculate an FEIR after significant new information has been added turns the process of environmental evaluation into a "useless ritual" which could jeopardize "responsible decision-making."[8] One of the purposes of CEQA is to inform the public and its responsible officials of the environmental consequences of their decisions ***before*** they are made. Thus, the FEIR "protects not only the environment but also informed self-government."[9] Both the opportunity to comment and the preparation of written responses to those comments are crucial parts of the FEIR process.

In this case, recirculation is required because the FEIR includes several reports with detailed analyses pertaining to biological resources and hazards that were not previously included in the DEIR. Among the additional information is the Phase I Environmental Site Assessment ("ESA"), as well as survey reports, including the 2014 Special Status Plant Survey Report; the 2012 CRLF Survey Memorandum; the 2013 Raptor Nest Survey Report; the 2014 Baseline Avian Activity Survey Report; the 2012 CTS Site Assessment; the 2013 Wet Season Branchiopod Survey Report; and the 2012 CRLF Site Assessment. These reports contain significant new information requiring recirculation of the EIR.

Matt Hagemann explains in his comments that the previously undisclosed presence of oil and gas wells, which were only disclosed after the County provided public notice of the availability of the DEIR, constitutes significant new information because of the potential health and environmental risks from such wells.[10] Although the presence of these wells was suspected, as discussed in our DEIR comments, it was not until the County included the Phase I ESA in the FEIR that their existence was confirmed. As explained by Mr. Hagemann, "abandoned wells may act as conduits for contamination to move from the surface to underlying soil

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[7] CEQA Guidelines, § 15088.5(a); see also *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1129.
[8] *Sutter Sensible Planning v. Sutter County Bd.* (1981) 122 Cal.App.3d 813, 822.
[9] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).
[10] Hagemann Comments, p. 1 – 2.

and groundwater."[11] Furthermore, "[o]lder abandonments may also allow for seepage of gas to the surface through poorly sealed wells, posing health and safety risks to constr[u]ction workers."[12] The potentially significant impacts from these wells were not addressed at all in the DEIR. Thus, the FEIR's disclosure of these wells after the public review period reveals new potentially significant environmental impact, triggering the requirement for recirculation under the first category.

In addition, Mr. Cashen states that new 2014 survey data for golden eagles identifies "an additional 18 previously unidentified golden eagle nests and an additional 3 previously unidentified bald eagle nests within 10 miles of the Project site."[13] Mr. Cashen explains that the new information is significant under the second category because a substantial increase in the severity of environmental impacts to golden eagles was revealed in the FEIR.[14] Furthermore, the FEIR proposes an additional measure (the Bird and Bat Conservation Strategy, discussed below) to reduce impacts to golden eagles, but that measure falls short as mitigation.[15] The high density of golden eagles and new mitigation should have been disclosed in the DEIR or recirculated for adequate public review. Furthermore, supporting information is missing from the reports. We requested the missing information from the County regarding the eagle surveys and other surveys, but have not yet received a response.[16] Because the County failed to recirculate the FEIR for the required time under CEQA, the public has not had adequate time to procure and review the new information referenced in the FEIR.

Furthermore, Mr. Cashen found that the new surveys revealed several new rare plant species that were detected in and around the Project area, thus revealing more severe impacts to those species than previously disclosed.[17] In addition, the small-flowered morning glory, which the DEIR acknowledged is "extremely rare in the Central Coast region,"[18] was found in the new data to be much more abundant in the Project area than the DEIR described, thus impacts to that specific species

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[11] *Id.*
[12] *Id.*
[13] Cashen Comments, p. 2.
[14] *Id.*, at 7.
[15] *Id.*, at 1 – 2.
[16] Email from Laura Horton, Adams Broadwell Joseph & Cardozo, to John Ford, Monterey County Resources Management Agency, re: Follow-up Request for Documents under CEQA for the California Flats Solar Energy Facility, December 31, 2014.
[17] Cashen Comments, p. 18.
[18] DEIR, p. 4.4-86.

could be more severe as well.[19] This information is pertinent to assessing significant impacts to rare plants.

CEQA is clear that "[a] decision not to recirculate an EIR must be supported by substantial evidence in the administrative record."[20] The FEIR states that *amendments* to its text "serve as clarifications and amplifications on the content of the EIR" and that "[n]one of the changes would warrant recirculation of the EIR pursuant to CEQA Guidelines section 15088.5."[21] However, as explained above, the various reports added to the FEIR contain significant new information showing that the Project will result in new or more severe impacts and that new mitigation measures are required to reduce those impacts to less than significant. The new information presented in those reports is not properly reflected in the FEIR amendments. Thus, the County's assessment that recirculation is not triggered because the text amendments are not significant is unsupported. The County must recirculate the FEIR for at least a 30-day public comment period in order to meet CEQA requirements for adequate public review of significant new information.

III. THE FEIR FAILS TO INCLUDE AN ADEQUATE PROJECT DESCRIPTION

The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."[22] Only through an accurate view of the project may affected outsiders and public decisionmakers balance the proposal's benefit against its environmental costs.[23] Furthermore, the requirements of CEQA cannot be avoided by chopping a large project into many small parts or by excluding reasonably foreseeable future activities that may become part of the project.[24] CEQA prohibits such a "piecemeal" approach and requires review of a project's impacts as a whole.[25] Before approving a project, a lead agency must assess the environmental impacts of all reasonably

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[19] Cashen Comments, p. 20.
[20] CEQA Guidelines § 15088.5.
[21] FEIR, p. 4-1.
[22] *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.
[23] *Id.*, at 192-193.
[24] Pub. Resources Code § 21159.27 (prohibiting piecemealing); *see also, Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370.
[25] CEQA Guidelines, § 15378(a); *Burbank- Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

foreseeable phases of a project.[26] "The significance of an accurate project description is manifest where," as here, "environmental impacts may be disguised or minimized by filing numerous, serial applications."[27]

The California Supreme Court held that an EIR must treat activities as part of the project where the activities at issue are "a reasonably foreseeable consequence of the initial project and the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects."[28] Both elements are met here. We previously commented that the Project description in the DEIR was inadequate based on several issues, some of which the FEIR addressed. However, the description and analysis of decommissioning is still severely lacking in the FEIR and is improperly piecemealed in violation of CEQA.

In particular, the FEIR fails to provide a complete description of the decommissioning phase of the Project and states that "decommissioning would be subject to CEQA review prior to implementation [and] potential impacts would be assessed at that time consistent with applicable policies, thresholds and standards in place at the time."[29] The decommissioning phase consists of dismantling and repurposing, salvaging/recycling, or disposing of the solar energy improvements, and revegetation on the approximately 3,000 acre Project site. As explained in our DEIR comments, these decommissioning activities are a part of the "whole of the project," and as a matter of common sense they will result in environmental impacts, including impacts to air quality, biological resources, water and solid waste capacity.

The FEIR, however, remains inadequate in its discussion of decommissioning, and underestimates these potentially significant impacts by failing to adequately investigate and mitigate the impacts in light of their "speculative" nature.[30] The Conceptual Restoration Plan for Project Decommissioning provided in the DEIR simply describes the steps the Applicant thinks it may take during decommissioning, rather than analyzing the significance

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[26] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396-397 (EIR held inadequate for failure to assess impacts of second phase of pharmacy school's occupancy of a new medical research facility).
[27] *Arviv Enterprises v. South Valley Area Planning Commission* (2002) 101 Cal.App.4th 1333, 1346.
[28] *Laurel Heights*, 47 Cal.3d at 396.
[29] FEIR, p. 2-325 – 2-326.
[30] *Id.*, at 2-325 – 2-326.

of specific impacts. Given that the County is apparently aware of the specific steps necessary to decommission the Project, it gives no credible reason why it should not assess the impacts of those decommissioning steps now. Any possibility of future changes in "policies, thresholds, and standards"[31] should not prevent analysis of known future Project activities.

The County must assess all phases of the Project including the decommissioning phase, which is acknowledged as part of the Project, in this project-level CEQA review. The FEIR defers detailed analysis and CEQA review of the decommissioning phase to an unknown future date. Thus, the Project description is inadequate and CEQA review for the Project is improperly piecemealed. This is contrary to CEQA and the FEIR must therefore be revised and recirculated to include a detailed analysis of decommissioning impacts.

IV. THE FEIR FAILS TO ADEQUATELY DESCRIBE THE ENVIRONMENTAL SETTING

CEQA requires lead agencies to include a description of the physical environmental conditions in the vicinity of a project as they exist at the time environmental review commences.[32] "This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."[33] Baseline calculations must be supported by substantial evidence, which the CEQA Guidelines define as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion."[34] "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." "[U]nsubstantiated opinion or narrative [and] evidence which is clearly inaccurate or erroneous . . . is not substantial evidence."[35]

A. The FEIR Fails to Adequately Describe the Existing Baseline for Biological Resources.

We previously commented that many of the plant and wildlife surveys conducted to establish the EIR's environmental baseline were substantially flawed.

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[31] *Id.*
[32] CEQA Guidelines, § 15125(a); *see* also *CBE v. SCAQMD* (2010) 48 Cal.4th 310, 321.
[33] CEQA Guidelines, § 15125(a).
[34] CEQA Guidelines, §15384.
[35] Pub. Resources Code, § 21082.2(c).

In its response to comments, the County maintains that protocol level surveys, which we argued were necessary to establish an accurate biological baseline in this situation, are not required under CEQA.[36] The FEIR cites to *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383 to support its position.

In *Association of Irritated Residents*, the appellant environmental groups argued that protocol level surveys were necessary for detecting the San Joaquin kit fox. The court characterized their argument as being based on the "assumption that CEQA compels compliance with the survey guidelines as a matter of law."[37] However, here we are not asserting that protocol level surveys are required as a matter of law, but rather that the surveys conducted for the Project were so flawed that they failed to establish an accurate environmental setting as required under CEQA. Implementing protocol level surveys would likely have cured many of the defects, but the lack of protocol surveys alone is not the basis of our comments.

Mr. Cashen explains in his comments that an accurate environmental setting has not been established for several species including rare plants, California tiger salamander ("CTS"), San Joaquin pocket mouse, and special-status kangaroo rats, among others.[38] Even if protocol level surveys are not required under CEQA as a matter of law, Mr. Cashen provides ample scientific information and references to support his expert opinion that in the absence of reliable methods for demonstrating presence or absence of species, the FEIR has failed to meet CEQA requirements for establishing an accurate baseline and certainly lacks any evidence that its description of the environmental setting is sufficient to enable an analysis of the Project's impacts.

B. The FEIR Fails to Adequately Describe the Existing Baseline for Hazards.

We previously commented that the DEIR did not adequately analyze the potential for hazards on the Project site, namely oil and gas wells and pesticides. We further commented that a Phase I ESA was necessary to determine an accurate setting with regard to these hazards. In response, the County provided the results of a Phase I ESA, which did identify oil and gas wells, discussed further below.

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[36] FEIR, 3-2.
[37] *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396.
[38] *See* Cashen Comments.

However, the Phase I ESA did not discuss the potential for pesticides. Response 12.B.4 restates information in the DEIR regarding discussions with the Monterey County Agricultural Commissioner (a simple reference was made to that discussion, without further information).[39] The FEIR does not include an evaluation, supported by substantial evidence, of past pesticide use which, as Mr. Hagemann suggests, "may have involved the use of DDT, DDE, or Dieldrin."[40] Instead the FEIR states,

> Based on historical and current land use on the project site, no residual pesticides, herbicides, or other contaminants are anticipated to be found in the soil and/or groundwater. The likelihood that construction workers, operational staff, and/or adjacent sensitive receptors could be exposed to substantial quantities of residual agricultural chemicals in on-site soils is remote.[41]

Mr. Hagemann's analysis shows that the County's conclusion is "unsubstantiated by any sampling data."[42] The County bases its assumption on a conversation with the Monterey County Agricultural Commissioner, which the public cannot review, despite the fact that crops have been and still are grown on and around the Project site. As Mr. Hagemann recommended in our DEIR comments and does so again here, soil sampling must be done in areas known to have been cultivated in order to determine if pesticide residuals exist in soils at concentrations hazardous to health.[43] Otherwise, the FEIR fails as an informational document under CEQA.

V. THE FEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS RELATED TO AIR QUALITY, BIOLOGICAL RESOURCES, HAZARDS, AND WATER RESOURCES

Under CEQA, a significant impact is "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project. . ."[44] Significant impacts must be mitigated to the maximum extent possible. The deferral of formulation of specific mitigation measures is permissible only where the adopted mitigation measure: (1) commits the agency to a

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[39] FEIR, p. 2-383 – 2-384.
[40] Hagemann Comments, p. 2.
[41] FEIR, p. 2-384.
[42] Hagemann Comments, p. 2.
[43] *Id.*

realistic performance standard to ensure that the impact will be reduced; and (2) disallows the occurrence of physical changes to the environment unless the performance standard is or will be satisfied.[45]

A. The FEIR Fails to Adequately Analyze and Mitigate the Project's Potentially Significant Impacts to Air Quality

We previously commented that the DEIR did not adequately analyze significant impacts due to diesel particulate matter ("DPM") emissions. Specifically, we commented that the Project results in a health risk that exceeds CEQA thresholds. Further, we commented that air quality mitigation measures proposed in the DEIR were inadequate and would not reduce air quality impacts to less than significant levels.

In its response to comments, the County maintains that DPM emissions do not result in a health risk that exceeds CEQA thresholds. As one basis for this contention, the County states that the calculations presented by Mr. Hagemann are flawed in several ways, including using incorrect tonnage of total exhaust DPM emissions.[46] The FEIR concludes that when the flaws in Mr. Hagemann's analysis are corrected, the Project would not pose a significant health risk due to DPM emissions. Furthermore, the County maintains that the Project's air quality impacts have been mitigated to the maximum extent possible. The County's rationale fails as a matter of law and is unsupported by substantial evidence.

1. Health Impacts from DPM Emissions

Mr. Hagemann reviewed the FEIR and in accordance with the County's response to our comments, he recalculated the potential health risk to the sensitive receptors near the Project site. Mr. Hagemann's screening level health risk assessment was based on the mitigated annual exhaust PM10 value of 2.22 tons/year, a figure he obtained from the CalEEMod output tables in Appendix C.1 of the DEIR.[47] However, the FEIR states that this value is incorrect because it includes off-site PM10 emissions, which would not contribute to health risks at the residential receptors.[48] The FEIR then determines that "total on-site diesel

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[44] CEQA Guidelines §15282.
[45] Michael H. Remy et al., Guide to CEQA (2007 11th Ed), at p. 551 (collecting authorities).
[46] FEIR, p. 2-385.
[47] Hagemann Comments, p. 3.
[48] FEIR, p. 2-385.

emissions are estimated at a maximum of 2.0 tons/year."[49] The FEIR further states that Mr. Hagemann's calculated emission rate of 2.22 tons/year is incorrect because this value is anticipated to occur over a two year period, not one year.[50]

Mr. Hagemann's revised calculation uses the County's suggested total of 2.0 tons/year, but his calculations still assume a construction period of 365 days.[51] His assumption of a 12-month construction period was taken directly from the "Construction Period" table in Appendix C.1 of the DEIR.[52] However, Mr. Hagemann does note that "even if a construction duration of two years (730 days) was utilized, the cancer risk results would remain the same."[53] The revised estimates show, just as with his first health risk analysis, construction emissions of DPM would exceed applicable CEQA thresholds and thus would have a significant and unmitigated impact.[54] Specifically, Mr. Hagemann found that excess cancer risk to adults, children, and infants during Project construction are 4.01, 23.2, and 77.2 in one million, respectively.[55] The risk for children and infants exceed Monterey Bay Unified Air Pollution Control District ("MBUAPCD") and San Luis Obispo County Air Pollution Control District ("SLOAPCD") significance thresholds of 10 in one million.

The new estimate for children is in fact even higher than Mr. Hagemann's original assessment. He explains this heightened risk by pointing to new information in the FEIR, which he then incorporated into his health risk assessment. The new information indicates that emissions would not be concentrated over the southern portion of the site as previously thought, but rather, over the middle and northern portions of the site.[56] This results in a greater concentration of DPM emissions and higher cancer risk to nearby sensitive receptors.

The County has not provided an adequate reason for failing to conduct its own detailed health risk assessment. The FEIR states that the California Air Resources Board's Air Quality and Land Use Handbook (April 2005) "does not

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[49] *Id.*
[50] *Id.*
[51] Hagemann Comments, p. 4.
[52] DEIR, Appendix C.1, p. 61.
[53] Hagemann Comments, p. 4, FN 3.
[54] *Id.*, at 3 – 8.
[55] *Id.*, at 7.
[56] *Id.*, at 7, FN 10.

include short-term construction activity among the list of sources that may be incompatible with nearby sensitive land uses."[57] However, as Mr. Hagemann points out, in 2012 the Office of Environmental Health Hazard Assessment ("OEHHA") released a Revised Technical Support Document for Exposure Assessment and Stochastic Analysis, which describes the types of projects that warrant the preparation of a health risk assessment. Construction of the Project will produce emissions of DPM, a human carcinogen, through the exhaust stacks of construction equipment for approximately twelve months. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.

Therefore, as explained by Mr. Hagemann, "an assessment of health risks to nearby residential receptors from Project construction should be included in a revised CEQA evaluation for the Project."[58] Otherwise, the FEIR fails to analyze potentially significant health impacts and thus violates CEQA.

2. Air Quality Mitigation Measures

The County also maintains that the DEIR incorporated the maximum feasible mitigation measures recommended by MBUAPCD and SLOAPCD. The County further maintains that the FEIR provides adequate mitigation measures to reduce significant impacts to less than significant levels.[59] However, Mr. Hagemann's analysis shows that the FEIR did not incorporate all feasible mitigation measures, as suggested in our DEIR comments, including use of construction equipment with Tier 4 engine technology and sampling to ensure that PM10 levels do not exceed 50 µg/m3.[60] According to Mr. Hagemann, "Tier 4 engines for construction equipment are commercially available and therefore should be included as mitigation in a revised FEIR."[61] Furthermore, he states that "[m]onitoring upwind and downwind PM10 emissions, to ensure they do not exceed 50 ug/m3, is a common requirement and should be added to the mitigation measures that are included in a revised FEIR."[62]

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[57] FEIR, p. 2-387.
[58] Hagemann Comments, p. 5.
[59] FEIR, p. 2-384.
[60] Hagemann Comments, p. 9.
[61] *Id.*
[62] *Id.*

Mr. Hagemann proposes additional mitigation specifically to address the significant impacts resulting from DPM emissions. These include:

- Institute a Heavy-Duty Off-Road Vehicle Plan (C-4). The Project Applicant should provide a detailed plan that discusses a construction vehicle inventory tracking system to ensure compliance with construction mitigation measures. The system should include strategies such as requiring hour meters on equipment, documenting the serial number, horsepower, manufacture age, fuel, etc. of all onsite equipment and daily logging of the operating hours of the equipment.
- Implement a construction vehicle inventory tracking system (C-5). The Project Applicant should provide a detailed plan that discusses a construction vehicle inventory tracking system to ensure compliances with construction mitigation measures. The system should include strategies such as requiring engine run time meters on equipment, documenting the serial number, horsepower, manufacture age, fuel, etc., of all onsite equipment and daily logging of the operating hours of the equipment.[63]

Mr. Hagemann's analysis demonstrates that the Project still presents a significant and unmitigated health risk from construction DPM emissions. In addition, the DEIR and FEIR did not incorporate maximum feasible mitigation to further reduce the significant and unavoidable air quality impacts and did not incorporate any mitigation specific to DPM emission impacts. The County must revise the FEIR to include an adequate analysis of the Project's significant air quality impacts and recirculate it for public review. If the County refuses to do so, the County is in violation of CEQA.

B. The FEIR Fails to Adequately Analyze and Mitigate the Project's Impacts to Biological Resources

We previously commented that the County lacked substantial evidence to support its findings in the DEIR regarding the Project's impacts on biological resources. As explained above, we specifically commented that the County failed to adequately describe the environmental setting, against which impacts are measured under CEQA. We demonstrated, with analysis from Mr. Cashen, Dr.

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[63] *Id.*, at 8.

Morrison, and Dr. Vernon Bleich, that the DEIR failed to disclose and analyze potentially significant impacts to species including golden eagles, CTS, western pond turtle, San Joaquin pocket mouse, and rare plants, among other species. Further, we commented that proposed mitigation measures for significant impacts to sensitive species were insufficient, vague, and improperly deferred in many aspects.

In its response to comments, the County argues that the FEIR proposes adequate mitigation to reduce any significant impacts to biological resources to less than significant levels. The FEIR also states for the first time that the Applicant will prepare a Bird and Bat Conservation Strategy ("BBCS") "to reduce risk to eagles and other raptors, among other avian and bat species."[64] As Mr. Cashen's analysis shows, the County still fails to support its contentions with substantial evidence. Thus, the FEIR remains inadequate under CEQA.

1. Eagles

Impacts to golden and bald eagles resulting from the Project will be much more significant than described in the DEIR and FEIR. The FEIR states that "analyses of eagle activity on and adjacent to the project site indicates a low level of eagle take risk."[65] However, Mr. Cashen provides substantial evidence that "[t]his statement contradicts scientific information and the evidence in the record."[66] Moreover, the County "did not examine cumulative impacts to golden eagles" and the DEIR and FEIR do not provide adequate mitigation for impacts to golden eagles.[67]

The FEIR reveals, for the first time, the Applicant's proposed BBCS, suggesting that the BBCS would describe and outline management measures and monitoring protocols that would be implemented on the Project site. The FEIR states:

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[64] FEIR, p. 2-534.
[65] *Id.*, at 2-354.
[66] Cashen Comments, p. 5 (citing DEIR, Table 4.4-4, pp. 4.4-73, -98, and -99; DEIR, Appendix E.2, pp. 57 and 58. *See also* FEIR, Appendix E.17, pp. ii, 6, 17 through 19, and 32; FEIR, Appendix E.18, pp. iii, 19, and 34; Marzluff JM, ST Knick, MS Vekasy, LS Schueck, TJ Zarriello. 1997. Spatial use and habitat selection of golden eagles in southwestern Idaho. The Auk 114(4):673-687; Thelander CG, California Department of Fish and Game. 1974. Nesting territory utilization by golden eagles (Aquila chrysaetos) in California during 1974. Wildlife Management Branch Administrative Report No. 74-7 (November 1974). 22 pp.)
[67] Cashen Comments, p. 6 – 7.

> [T]he applicant has incorporated a new Applicant Proposed Measure to monitor avian use of the site, conduct post-construction avian mortality monitoring and identify conservation measures to minimize impacts. These efforts would be memorialized in a Bird and Bat Conservation Strategy (BBCS) prepared in collaboration with [U.S. Fish and Wildlife Service] and would include an Avian Mortality Monitoring Program (AMMP) to monitor operational effects of the project on avian species. The development of a BBCS would further reduce potential operational impacts to avian species by providing additional data and additional conservation measures in response to that data.[68]

The BBCS is not an enforceable mitigation measure.[69] Yet, the FEIR does clearly state that the BBCS will "address any potential impacts to golden eagles,"[70] indicating that the County relies on the BBCS to reduce significant impacts to golden eagles. Given the critical role of the BBCS in reducing significant impacts, Mr. Cashen explains that the BBCS is severely lacking in any information and evidence that the BBCS would reduce impacts. According to Mr. Cashen, the FEIR fails to provide essential information in the BBCS.[71] Mr. Cashen further states that "[a]t a minimum, the County must establish the existence of 'management measures' that could feasibly be implemented to reduce the risk to eagles,"[72] which the BBCS does not do.

The information that is missing from the BBCS, and thus evades public review, includes:

(a) goals of the BBCS and the performance standards for evaluating its success;

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[68] FEIR, p. 2-598.
[69] CEQA Guidelines § 15126.4(a)(2) (mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments); Pub. Res. Code § 21081.6(b); CEQA Guidelines § 15091(d); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (where the court concluded there was "no substantial evidence in the record to support a finding that the mitigation measures have been 'required in, or incorporated into'" the project); *see also,* Cashen Comments, p. 1.
[70] FEIR, p. 2-353.
[71] Cashen Comments, p. 2.
[72] *Id.*, at 5.

(b) monitoring regime, including sampling techniques, frequency, and duration;
(c) methods that will be used to account for observer bias and carcass removal;
(d) statistical methods that will be used to analyze the data;
(e) contingency or remedial action measures that would be triggered if performance standards are not achieved; and,
(f) enforcement mechanism that ensures performance standards are met.[73]

Mr. Cashen further states that "[p]erhaps most importantly, the FEIR fails to establish that 'additional conservation measures' even exist, and that they could feasibly be implemented to reduce operational impacts in response to the monitoring data."[74]

The Applicant acknowledges that the loss of foraging habitat can cause take and/or the abandonment of nesting territories, and "it is highly likely that the foraging home ranges of several breeding pairs overlap the Project site and access road/Hwy 41 improvement areas."[75] The Applicant further acknowledges that the Cholame Hills west of the Project site are unsuitable for foraging eagles (due to vegetation density), as are the agricultural croplands in the Cholame Valley.[76] As a result, Mr. Cashen explains that "[d]evelopment of the Project would greatly reduce the amount of foraging habitat available to the eagles," which is "likely to be especially severe to the eagles that nest west of the Project site because those eagles already have limited foraging locations."[77]

Furthermore, the Applicant's consultant concluded a *minimum* of 20 pairs of golden eagles resided within a 10-mile radius of the Project site during the 2013 breeding season.[78] As Mr. Cashen notes, the number of eagles surveyed suggests that "the Project could directly or indirectly impact approximately 8.5% of the estimated 235 breeding pairs of golden eagles that occur in Bird Conservation Region 32, and an even greater proportion of the population within the 'Central

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[73] *Id.*, at 2.
[74] *Id.*
[75] *Id.*, at 6; FEIR, Appendix E.17, p. 3 and DEIR, Appendix E.1, p. 95.
[76] Cashen Comments, p. 6.
[77] *Id.*
[78] DEIR, Appendix E.1, p. 95.

Coast Ranges' portion of that region."[79] Data shows that the Central Coast Ranges region, which encompasses the Project site, has the highest abundance of golden eagle nesting territories in the State of California.[80] Further data provided by the Applicant indicate the Project area has one of the highest densities of nesting golden eagles in the State.[81] Clearly, this Project will have significant implications on eagle conservation that are unaddressed by the County's FEIR.

According to Mr. Cashen, the County provides no scientific basis for the conclusion that nested compensatory mitigation would help reduce impacts to a less-than-significant level.[82] The County or Applicant have not conducted a Habitat Equivalency Analysis, nor has it ensured "that the nested compensatory mitigation would offset impacts to the specific territories (or pairs) affected by the Project."[83] In addition, the County intends to "address any potential impacts to golden eagles"[84] by preparing the BBCS, which is inadequate mitigation as explained above. Furthermore, as we discussed in our previous comments, the compensatory mitigation and habitat monitoring plan lack basic information for public review and do not contain specific performance criteria to measure the adequacy of the mitigation.

Mr. Cashen notes several additional defects in the eagle nest survey report submitted by the Applicant.[85] He concludes that given the clear evidence in the record, impacts to golden eagles are much more significant than indicated in the DEIR or FEIR, and the County has failed to propose adequate measures to mitigate those impacts to less than significant levels.

2. Avian Collisions

We previously commented on several flaws with the County's analysis of the collision risk that the Project's solar arrays posed to birds. The County responded

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[79] Cashen Comments, p. 6.
[80] *Id.*, at 6 – 7 (citing Thelander CG, California Department of Fish and Game. 1974. Nesting territory utilization by golden eagles (Aquila chrysaetos) in California during 1974. Wildlife Management Branch Administrative Report No. 74-7 (November 1974). 22 pp; DEIR, Appendix E.1, p. 93.).
[81] Western EcoSystems Technology, Inc. 2014. California Flats Solar Project: 2014 Eagle Nest Survey Report. FEIR, pp. 2-555 and -556.
[82] Cashen Comments, p. 7.
[83] *Id.*
[84] FEIR, p. 2-353 – 354.
[85] Cashen Comments, p. 3 – 5.

that "[t]he DEIR and supporting biological technical reports assessed the potential for impacts to listed and special status avian species, raptors, and other nesting birds protected under the MBTA. These analyses were based on standard protocol for establishing existing environmental conditions and assessing potential impacts to these species."[86] As explained by Mr. Cashen, "[t]he County's response contradicts evidence in the administrative record."[87] In particular, neither the County nor the Applicant conducted a Potential Impact Index, Habitat Equivalency Analysis, or Risk Assessment, which are all necessary for assessing impacts to avian species.[88] The County and the Applicant did not even prepare substantially equivalent analyses. Thus, the County's analysis of the collision risk that the Project's solar arrays posed to birds is unsupported by substantial evidence.

The mitigation measures proposed in the DEIR and FEIR for avian impacts are directed at minimizing impacts associated with construction of the Project. However, no measures mitigate the potentially significant impacts associated with *operation* of the Project, according to Mr. Cashen.[89] The FEIR attempts to justify this omission by stating that "little evidence is available to indicate that PV solar panels actually attract birds, no standard for analysis of this issue has been established, and no regulatory agency guidance has been published on this issue."[90] However, Mr. Cashen explains that the U.S. Fish and Wildlife Service ("USFWS") has issued guidelines for evaluating the impacts of solar facilities and has also issued guidelines on the approach that should be implemented to monitor migratory bird take at solar power facilities.[91] Mr. Cashen also provides references and evidence for bird injury and mortality at solar facilities at least partially due to birds mistaking PV solar panels as water.[92] There is additional evidence that solar facilities attract insects, which in turn attract insect-eating birds that collide with solar panels and other infrastructure.[93] Therefore, the FEIR's claim that there is little evidence and no standards is rebutted by the information that has been provided to the County.

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[86] FEIR, p. 2-370.
[87] Cashen Comments, p. 7.
[88] *Id.*, at 8.
[89] *Id.*
[90] FEIR, p. 2-370.
[91] U.S. Fish and Wildlife Service. 2011. Monitoring Migratory Bird Take at Solar Power Facilities: An Experimental Approach. 9 pp.
[92] Cashen Comments, p. 8.
[93] *Id.*

In addition, the County misinterpreted information we provided on bird mortality at solar sites, and ignored other information regarding bird deaths at similar project sites.[94] The County also failed to disclose or analyze Project impacts to two species on the California Department of Fish and Wildlife Watch List ("CDFW"): the long-billed curlew and the California horned lark.[95] Mr. Cashen has demonstrated through scientific information, some of which was ignored or misinterpreted by the County, that the Project's significant impacts to avian species have not been adequately analyzed or mitigated, in violation of CEQA.

3. Other Avian Species

Regarding the burrowing owl, the Project will require the "passive relocation" of burrowing owls off the Project site.[96] As we discussed in our previous comment letter, CDFW guidelines indicate passive relocation is a potentially significant impact that must be disclosed and analyzed in CEQA documents.[97] Specifically, Mr. Cashen states that "passive relocation can result in mortality, reduced reproductive output, territory abandonment, and ultimately a decline in the population."[98] Mr. Cashen explains that the preparation of a Burrowing Owl Exclusion Plan does not relieve the County from this obligation, which remains unresolved by the FEIR.[99] Mr. Cashen concludes that " [t]he FEIR not only allows impacts to occur prior to the acquisition of mitigation lands, but it also fails to ensure the mitigation lands are managed for the benefit of burrowing owls according to Department-approved management, monitoring and reporting plans."[100]

Regarding the tricolored blackbird, the California Fish and Game Commission recently approved an emergency listing of the tricolored blackbird under the California Endangered Species Act. Tricolored blackbirds have been observed on the Project site, and they have the potential to nest there.[101] The DEIR and FEIR failed to provide any analysis specific to this species, which could be

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[94] *Id.*
[95] *Id.*, at 10.
[96] DEIR, p. 4.4-136 and Figure 4.4-8.
[97] California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation, p. 10.
[98] Cashen Comments, p. 15.
[99] *Id.*
[100] *Id.*, at 16.
[101] DEIR, p. 4.4-73 and Appendix E.1, p. 105.

significantly impacted by habitat loss, fragmentation, and heightened depredation due to the Project.[102]

4. California Tiger Salamander

We previously commented on the flawed methods that were used to establish existing conditions pertaining to the CTS. The FEIR does not justify the reliability of the data on the CTS, but instead states that "[t]his information is only necessary to support a negative finding for CTS on a project site."[103] However, as Mr. Cashen points out, "the County *has made* a negative finding."[104] The FEIR states: "[i]n this case, the project has excluded the potential for CTS breeding on the project site based on the lack of breeding habitat."[105] That is, unless the County provides the information needed to justify the reliability of the data collected during years with <70% of the average rainfall, the County cannot conclude there is no breeding habitat for CTS based on that data. As Mr. Cashen explains, the issue is "confounded"[106] because the CTS site assessment, which was excluded from the DEIR but included with the FEIR, states:

> The possible pond at the northwest corner of the proposed Solar Generation Facility may provide breeding habitat for CTS if it contains standing water. However, because this possible pond was dry during the site visits, its suitability as CTS breeding habitat could not be assessed at this time and depends on if and to what extent it contains standing water during a year of normal rainfall.[107]

The photo of the pond shows a pier, which is evidence that it contained water, and presumably may continue to contain water during wet years, according to Mr. Cashen.[108] Mr. Cashen further notes that although the County has asserted that protocol level surveys are not required under CEQA, "the absence of standardized field survey methods (i.e., adherence to the USFWS and CDFW survey protocol) impairs adequate and consistent impact assessment during regulatory review processes, which in turn reduces the possibility of effective mitigation, as is the case

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[102] Cashen Comments, p. 16.
[103] FEIR, p. 2-356.
[104] Cashen Comments, p. 11.
[105] FEIR, p. 2-356.
[106] Cashen Comments, p. 11.
[107] FEIR, Appendix E.19, p. 7.
[108] *Id.*, at 11, Photo 7; Cashen Comments p. 12.

with this Project."[109] Therefore, the FEIR has not adequately analyzed and mitigated significant impacts to the CTS.

5. Western Pond Turtle

According to Mr. Cashen, "[t]he Project area supports a relatively abundant population of western pond turtles."[110] The DEIR stated that "[i]ndirect impacts to western pond turtles include long-term decline in population viability within the project site over the life of the project."[111] The DEIR further concluded that the Project would have a significant impact on the species through increased mortality and the loss of aquatic and upland nesting habitats.[112]

We maintain from our previous comments that this level of impact would have relatively severe consequences for the species.[113] The County's only response to this concern was that "Mitigation Measure B-1(t) in Section 4.4, *Biological Resources,* provides avoidance and mitigation for western pond turtle."[114] Mr. Cashen explains that the referenced mitigation measure "is limited to preconstruction clearance surveys of pond turtles within 200 feet of suitable aquatic habitat sometime prior to initiation of construction activities."[115] He further states that the "EIR does not specify the timing of the preconstruction surveys, nor does it account for the turtles that may occur more than 200 feet from aquatic habitat (the DEIR acknowledges pond turtles may nest more than 0.25 mile away from aquatic habitat)."[116] Whereas the mitigation measure may be useful in salvaging some turtles, Mr. Cashen states that "it does not mitigate the decline in population viability, the loss of habitat, or the increased mortality that is likely to occur due to increased traffic levels."[117] As a result, the adverse effects that the Project would have to western pond turtles remain unmitigated.

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[109] Cashen Comments, p. 12.
[110] *Id.*
[111] DEIR, p. 4.4-115.
[112] *Id.*, at 4.4-116.
[113] California Natural Diversity Database (CNDDB). 2015. RareFind 5 [Internet]. California Department of Fish and Wildlife ("CDFW") [2015 January 6]. *See also* Jennings MR, MP Hayes. 1994. Amphibian and Reptile Species of Special Concern in California. Final Report to the California Department of Fish and Game. 260 pp.
[114] FEIR, p. 2-359.
[115] Cashen Comments, p. 12.
[116] *Id.*; DEIR, p. 4.4-115.
[117] Cashen Comments, p. 13.

6. San Joaquin Pocket Mouse

We previously commented that adequate trapping was not conducted to determine the presence of the San Joaquin pocket mouse. We further commented that the DEIR failed to acknowledge that if the pocket mice in the Project area represent part of a metapopulation structure, loss of the subpopulation could negatively impact overall species viability and diversity. The FEIR responded to our comments by stating the species is not known from BSA or the Cholame Valley, and that pocket mouse burrows were not detected during the full-coverage ground surveys.[118] Mr. Cashen notes that these statements conflict with the DEIR, which states:

> [D]uring small mammal trapping efforts on 6 August 2013, a single San Joaquin pocket mouse was observed foraging above ground. The area in which the pocket mouse was observed contained several quarter-sized burrows, indicating that several individuals were occupying the area. The project site contains suitable habitat for this species; however, the San Joaquin pocket mouse occurrence is likely limited to those areas with friable soils, and they are likely absent from areas with very heavy clay or serpentine soils. As such, the population of San Joaquin pocket mice in the BSA is expected to be small.[119]

The FEIR further states that "[i]mpacts at the metapopulations level are possible for all species, not just San Joaquin pocket mouse; however, a metapopulation analysis of non-listed special status species is far outside of the standard and accepted analyses required to evaluate potential impacts to special status species under CEQA."[120] However, CEQA requires that *all* species be assessed for the significance of the project impacts on their survival, not just listed species.[121] Furthermore, according to Mr. Cashen, without metapopulation or other additional analysis, the County has no basis for its conclusion that the Project would "reduce a relatively small amount of habitat that is regionally abundant for

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[118] FEIR, p. 2-362.
[119] DEIR, p. 4.4-95.
[120] FEIR, p. 2-362.
[121] CEQA Guidelines § 15065(a) ("A lead agency shall find that a project may have a significant effect on the environment . . . where there is substantial evidence, in light of the whole record, that . . . [t]he project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community . . .").

this species" or for its conclusion that "consequently, this permanent habitat conversion would not substantially reduce the number of this species or restrict its range."[122] Indeed, Mr. Cashen states that "neither the DEIR nor the FEIR provides any evidence to justify that conclusion."[123]

Based on the available evidence, Mr. Cashen concludes that the Project could still "cause the extirpation of the San Joaquin pocket mouse from the Project site."[124] This constitutes a significant impact that was not adequately disclosed, analyzed, or mitigated in the DEIR and FEIR.

7. Special-Status Kangaroo Rat Species

Our previous comment letter highlighted flaws with the Applicant's small mammal trapping efforts, including the failure to adhere to the USFWS protocol. The County responded by stating that "[p]rotocol-level surveys for kangaroo rats are not required to evaluate potential impacts to special status kangaroo rat species and the surveys completed were robust and appropriate for establishing baseline environmental conditions and evaluating potential impacts with regards to kangaroo rats."[125] However, Mr. Cashen explains that "[t]his is a spurious argument, because the County never evaluated potential impacts to special-status kangaroo rat species. Instead, it simply concluded their absence."[126]

The giant kangaroo rat (federally and state listed as endangered), Tipton kangaroo rat (federally and state listed as endangered), and short-nosed kangaroo rat (California Species of Special Concern) have been documented in the vicinity of the Project site, according to Mr. Cashen.[127] The FEIR suggests that the full-coverage ground surveys, spotlight surveys, and camera surveys provided additional evidence that special-status kangaroo rat species are absent from the Project site.[128] Mr. Cashen notes that these types of surveys are not reliable means for establishing the absence of special-status kangaroo rat species. The Applicant's Biotic Report itself supports Mr. Cashen's conclusions, stating that "[a] large number of burrows

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[122] DEIR, pp. 4.4-95 and -96.
[123] Cashen Comments, p. 13.
[124] *Id.*, at 14.
[125] FEIR, p. 2-365.
[126] Cashen Comments, p. 14.
[127] DEIR, Figure 4.4-6 and Appendix E.8, p. i.
[128] FEIR, p. 2-365.

were identified as those of an *unconfirmed species* of kangaroo rat..."[129] Indeed, the USFWS survey protocol indicates that "[l]ive-trapping is the only method for reliable identification of kangaroo rats in the San Joaquin Valley."[130] The County here ignores data that suggests the presence of kangaroo rats, and fails to properly assess the presence of the species and potential impacts. The County therefore fails to support its findings regarding kangaroo rats with substantial evidence.

8. Rare Plants

We previously commented, and explained above, that surveys to detect rare plants in the Project site were severely lacking. Furthermore, impacts to several plant species, including the small-flowered morning glory, were not adequately analyzed or mitigated. Mr. Cashen's comments demonstrate that the 2014 plant surveys, which were released after the close of the public comment period on the DEIR, provide new information regarding the presence and abundance of certain species that was not previously identified in the DEIR.

In addition, Mr. Cashen shows that the County failed to establish an accurate environmental setting for rare plants because the survey methods used were severely lacking. Finally, Mr. Cashen's analysis shows that the new information reveals even more potentially significant impacts to rare plants than previously admitted in the DEIR.[131] Therefore, the FEIR has not adequately identified, analyzed, or mitigated the Project's significant impacts on rare plants.

C. The FEIR Fails to Adequately Analyze and Mitigate the Project's Impacts From Hazards.

We previously commented that the DEIR failed to adequately describe the existing setting regarding the presence of hazards on the Project site. Specifically, we commented that a Phase I ESA should be completed to identify any hazards on the site. Mr. Hagemann, through his own analysis of the Project site, found that the DEIR had overlooked two hazards. First, he found that the Project site likely contained several oil and gas wells. Second, he found that the Project site could contain pesticides, given agricultural activity on and around the site, that were not analyzed in the DEIR.

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[129] DEIR, Appendix E.1, p. 16. [emphasis added].
[130] USFWS. 2013. Survey protocol for determining presence of San Joaquin kangaroo rats. U.S. Fish and Wildlife Service ("USFWS"), Sacramento Field Office. March 2013. p. 2.
[131] Cashen Comments, p. 17 – 22.

In its response to comments, the County provides a Phase I ESA that was previously undisclosed in the DEIR, even though it had been completed in February of 2014.[132] The Phase I ESA confirmed Mr. Hagemann's findings regarding the oil and gas wells. The FEIR states that "three petroleum wells have been drilled on the site; however, all three wells have been plugged and abandoned" and therefore would not be an environmental impact.[133] However, as Mr. Hagemann points out, "[t]he Responses provide no information about the date of the abandonment of the three petroleum well and no information about the manner of the well abandonment is disclosed."[134]

According to Mr. Hagemann, well abandonment practices have not historically been as protective as current practices. Thus, "abandoned wells may act as conduits for contamination to move from the surface to underlying soil and groundwater. Older abandonments may also allow for seepage of gas to the surface through poorly sealed wells, posing health and safety risks to constr[u]ction workers."[135] Given these issues, the presence of the oil and gas wells could result in a potentially significant impact that was not adequately analyzed in either the DEIR or FEIR.[136]

Mr. Hagemann proposes several steps to mitigate significant impacts from abandoned well to ensure the wells are safe and impacts to public health and the environment are mitigated to a less than significant level. These steps include "(1) locating the wells in the field; (2) documenting the abandonment techniques and the dates of abandonment; and (3) re-abandoning the wells, if necessary, to prevent risks to worker health and safety and to seal off a potential route for contamination to travel from the surface to deeper levels in the subsurface."[137]

Finally, as discussed above, the Phase I ESA did not disclose pesticide use on the Project site. Therefore, the FEIR fails to adequately analyze and mitigate potentially significant impacts resulting from not only the oil and gas wells but the presence of pesticides as well. The County must revise the FEIR to address these significant impacts from hazards and recirculate the EIR for public review. Otherwise, the County is in violation of CEQA.

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[132] FEIR, p. 2-383.
[133] *Id.*
[134] Hagemann Comments, p. 2.
[135] *Id.*, at 2.
[136] *Id.*
[137] *Id.*

D. The FEIR Fails to Adequately Analyze and Mitigate the Project's Impacts to Water Resources

We previously commented that the DEIR failed to adequately evaluate the significance of the Project's impacts on water resources, specifically potential flooding and erosion impacts in the Project area. Dr. Myers highlighted several flaws in the DEIR's hydrology calculations. Dr. Myers also demonstrated that the County's finding of less than significant impacts was not supported by substantial evidence. We also commented that the County improperly incorporated mitigation measures as part of the Project, finding that the measures would reduce impacts to less than significant levels, without actually analyzing the significance of the impacts. This is inconsistent with the holding in *Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645. Further, we commented that the Project proposes development within 50 feet of the top of a watercourse, in clear violation of Monterey County Code ("MCC") 16.16. Our comments showed that the Project could not meet the meet the criteria for the exception in the law based on Dr. Myers' analysis.

In its response to comments, the County maintains that impacts HYD-4 and HYD-5 are less than significant and "disagrees with the contention that calculations were inaccurate."[138] As one basis for this contention, the County provides a brief updated hydrology report prepared by the Wallace Group.[139] Furthermore the County discusses an Applicant Proposed Measure ("APM") to address flooding and erosion impacts and states that it will comply with Sections 16.12.060 and 16.12.070 of the Monterey County Code, which require a final drainage report.[140] The FEIR states that the Monterey County Water Resources Agency ("MCWRA") "will review and approve the design-level drainage analysis, thus ensuring that the drainage analysis incorporates the required [flood-risk and erosion avoidance measures]."[141] The FEIR goes on to state that "[b]ecause this is an existing requirement, and because meeting this requirement would ensure that impacts remain less than significant, additional mitigation is not required to reduce the impact."[142] The County's rationale fails as a matter of law and is unsupported by substantial evidence.

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[138] FEIR, p. 2-337.
[139] FEIR, Appendix Q.
[140] FEIR, p. 2-336.
[141] *Id.*
[142] *Id.*

1. Hydrology Calculations

Dr. Myers' review of the FEIR finds that the County "simply failed to respond to issues regarding the accuracy of the roughness coefficient estimate (Comment 12.C.4), the initial abstraction (12.C.5), and the resulting effect on erosion (12.C.6 and .7)."[143] Thus, Dr. Myers' comments in the DEIR regarding flaws and shortcomings in the original analysis still apply. Dr. Myers demonstrates in his FEIR comments that the County still does not provide substantial evidence to support its flow estimates and generally fails to provide adequate responses to his comments.[144] For example, he states that the County "not only fails to respond to the comment [12.C.5], but makes scientifically incorrect statements regarding the process of runoff."[145] Regarding the Wallace Group report in Appendix Q, Dr. Myers states that "Appendix Q is fraught with simple errors and cannot be used [to] claim the DEIR estimates were correct. Additionally, it provides no references to the methods used."[146] Dr. Myers' analysis further shows that flooding and erosion potential is still underestimated and presents a potentially significant impact that is not adequately addressed or mitigated.[147]

2. Minimization/Mitigation of HYD-4 and HYD-5

The County's assertion that APM 11 and compliance with County Code will ensure that impacts are less than significant is still not acceptable under the *Lotus* case. The FEIR states,

> The project description has been revised to incorporate Applicant Proposed Measure (APM) 11, which states that the applicant will prepare a design level drainage analysis that will ensure that project facilities are not placed in areas where they would be subject to significant flood or erosion hazards or affect the existing capacity of affected watercourses.[148]

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[143] Myers Comments, p. 2.
[144] *See* Myers Comments.
[145] *Id.*, at 3.
[146] *Id.*
[147] *Id.*, at 2.
[148] FEIR, p. 2-336.

This is simply the same requirement that was included as a mitigation measure in the DEIR; repackaged as an APM. The APM includes the same flood-risk and erosion avoidance measures discussed in the DEIR and is still lacking information necessary for adequate public review. The FEIR relies on the future design level drainage analysis and the measures therein to ensure flooding and erosion impacts remain less than significant, without adequately analyzing the impacts as significant in the first place. As explained in our previous comments, this violates CEQA, as held by the Court in *Lotus*. In addition, as Dr. Myers points out, the drainage information provided in the DEIR and FEIR is inadequate and does not allow full public review of the Project's hydrology impacts.[149] APM 11 unnecessarily defers the development of the final drainage plan, which will include "further modeling based on project-level detail"[150] and will be submitted to the County for review and approval.[151] Furthermore, as currently proposed, the measures do not adequately reduce the impacts to less than significant levels.

The County further responds to our comment on the Project's MCC 16.16 violation by referring to a letter from the MCWRA.[152] As a preliminary matter, the letter was not included in the FEIR or Appendices and the County did not respond to our request for access to the letter.[153] Furthermore, the MCWRA is a County agency, governed by the same County Board of Supervisors as the Resource Management Agency.[154] Thus, the County is attempting to substantiate its claims in the DEIR with a letter from itself. This is not an adequate response to our comments. The FEIR states that "MCWRA contends that the DEIR adequately evaluates development within 50 feet of the top of a watercourse by providing accurate hydraulic analysis for the project and requiring substantial compliance with MCC 16.16." In addition, the FEIR states that "MCWRA will not approve development within 50 feet of the top of bank of a watercourse unless it can be proven the development would be safe from flow-related hazards and not

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[149] Myers Comments, p. 5.
[150] FEIR, p. 2-388.
[151] *Id.*, at 2-476.
[152] The FEIR cites to: Chardavoyne, David E., Monterey County Water Resources Agency. California Solar Flats (PLN 120294) DEIR response to comments on flooding hazards. October 2, 2014.
[153] *See* Letter from Laura Horton, Adams Broadwell Joseph & Cardozo, to John Ford, Monterey County Resources Management Agency, re: Request for Documents under CEQA for the California Flats Solar Energy Facility, December 24, 2014, **Attachment D**. We also sent a follow-up request via email to Mr. Ford for further documents and information on December 31, 2014. Neither Mr. Ford nor any other County staff responded to these communications.
[154] Monterey County Water Resources Agency Act, Section 15(a), *available at* http://www.mcwra.co.monterey.ca.us/about/documents/MCWRA%20Agency%20Act.pdf.

significantly reduce the capacity of the drainage or watercourse."[155] Therefore, the FEIR concludes that "compliance with MCC 16.16 *would reduce the impacts to a less than significant level* by establishing otherwise unknown watercourse velocities and depths for development and requiring compliance with local floodplain recommendations."[156]

The County is relying on a future demonstration of compliance with an exception in a local law as mitigation for an impact that it did not properly evaluate as significant, which is inconsistent with *Lotus* and other case law.[157] In addition, the County uses the MCWRA's letter, which is not disclosed to the public, as a basis for its response to our comments. The County's statement that a County agency will ensure that environmental impacts will not occur in the future does not meet the requirements of CEQA. Furthermore, Dr. Myers demonstrates that the County's findings regarding erosion and flooding are not supported by evidence in the record. Therefore, the County cannot show that the Project as proposed in this CEQA review would even meet the criteria for an exception to MCC 16.16, which requires that:

1. The proposed development will not significantly reduce the capacity of existing rivers or watercourses or otherwise adversely affect any other properties by increasing stream velocities or depths, or diverting the flow; ***and***
2. The proposed new development will be safe from flow related erosion and will not cause flow related erosion hazards or otherwise aggravate flow related erosion hazards.[158]

Thus, the County improperly relies on measures incorporated into the Project description, as well as on discretionary exceptions in the County Code, to claim that the Project will result in less than significant impacts to water resources. The County also improperly assumes that the County itself, behind closed doors, will ensure compliance with the law. Not only are the County's assertions counter to the

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[155] FEIR, p. 2-336.
[156] *Id.*
[157] Cases discussing compliance with other laws as mitigation include *Citizens Opposing a Dangerous Environment v. County of Kern* (2014) 228 Cal.App.4th 360 and *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884. In both cases, compliance with other laws was incorporated as a mitigation measure for impacts *after* the impacts had already been identified and analyzed as significant.
[158] MCC 16.16.050 (K).

purpose of CEQA, but compliance with MCC 16.16 cannot be shown based on the calculations and analysis in the DEIR and FEIR.

VI. THE COUNTY FAILED TO ADEQUATELY RESPOND TO COMMENTS

"The evaluation and response to public comments is an essential part of the CEQA process."[159] CEQA requires the lead agency to evaluate and respond to all environmental comments it receives on draft EIRs within the public review period.[160] The lead agency's written responses must specifically explain its reasons for rejecting suggestions received in comments. "There must be a good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice."[161] The County violated CEQA by failing to adequately respond to various comments made in our letter and expert attachments. These comments include:

- Comments 12.A.37 and 12.A.38 disputed the methodology for evaluating whether some special status plants species should be considered significant core populations. They also explained that the DEIR does not address how the presence of the various special-status plants in the Project area relates to the statewide (or nationwide) range of each species. The County's responses fail to address our concerns, particularly with regard to how impacts on such large populations would affect each species in terms of its overall abundance (i.e., whether impacts resulting from the Project put species survival in jeopardy of extinction as it relates to its overall distribution).
- Comment 12.B.2 was concerned with several issues regarding hazards including the nondisclosure in the DEIR of oil and gas wells on the Project site, and their potential impacts. The FEIR merely discloses that "three petroleum wells have been drilled on the site; however, all three wells have been plugged and abandoned." As Mr. Hagemann states, the County's response provides "no information about the date of the abandonment of the three petroleum well and no information about the manner of the

[159] CEQA Guidelines § 15088.
[160] *See* Pub. Resources Code § 21091(d)(2)(A).
[161] CEQA Guidelines § 15088(c).

well abandonment is disclosed."[162] Thus, the County failed to provide an adequate response to the specific concerns over potential impacts from the wells.

- Comment 12.B.4 asked for additional information to support the conclusion that no residual pesticides or herbicides are anticipated to be found in the soil and/or groundwater. The County's response merely reiterated the same information in the DEIR, and failed to provide an adequate response to concerns over the lack of pesticide sampling.[163]
- Comment 12.C.4 was primarily concerned with the roughness coefficient used in the DEIR in estimating the time of concentration for flow from a watershed. Dr. Myers states that the FEIR "does not address most of the specific points made in the original comment."[164] Specifically, "[t]he response did not discuss the adequacy of the choice of "n" or provide photographs to justify the values that had been used" in the DEIR, among other issues.[165]
- Comment 12.C.5 indicated that the DEIR used an incorrect initial abstraction value based on the curve number. Dr. Myers states that the FEIR "does not address the comment or whether the value used was correct but simply suggests that it does not matter. . ." and also fails to address other specific points he raised in his comment.[166] Furthermore, the FEIR references the Wallace Group study, which Dr. Myers states is "fraught with simple errors" and difficult to review, thus an inadequate responsive document. Dr. Myers asserts that additional responses to comments are similarly lacking.[167]

VII. CONCLUSION

The Project presents significant environmental issues that must be addressed prior to Project approval. The FEIR should have been recirculated for a full public review period, based on the release of significant new information, as required by CEQA. The FEIR's description and analysis of the decommissioning phase is

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[162] Hagemann Comments, p. 2.
[163] *Id.*
[164] Myers Comments, p. 2.
[165] *Id.*
[166] *Id.*, at 3.
[167] *Id.*, at 3 – 4.

inadequate and improperly piecemealed. The FEIR fails to adequately establish the existing baseline upon which to measure impacts related to biological resources and hazards. The FEIR also fails to identify, analyze, and mitigate potentially significant impacts associated with air quality, biological resources, hazards, and water resources. Finally, the FEIR failed to adequately respond to several of our comments. Therefore, the FEIR fails to comply with the requirements of CEQA.

Sincerely,

Laura E. Horton

LEH:clv

Attachments

ATTACHMENT A

Scott Cashen, M.S.—Independent Biological Resources and Forestry Consultant

January 12, 2015

Ms. Laura E. Horton
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on the Final Environmental Impact Report Prepared for the California Flats Solar Project

Dear Ms. Horton:

I, with assistance from Dr. Michael Morrison and Dr. Vernon Bleich, submitted an extensive comment letter regarding the Draft Environmental Impact Report ("DEIR") prepared by the County of Monterey ("County") for the California Flats Solar Project ("Project") proposed by California Flats Solar, LLC ("Applicant"). The comment letter established our professional qualifications and described the actions we took to evaluate the DEIR and the underlying analyses. I incorporate our earlier comments by reference.

The subsequent comments address the County's responses to issues raised in our previous comment letter. I also provide comments pertaining to the Project's Final Environmental Impact Report ("FEIR") and appendices, including the numerous additional survey reports submitted by the County and Applicant.

WILDLIFE RESOURCES

Bird and Bat Conservation Strategy

The FEIR indicates the Applicant has decided to prepare a Bird and Bat Conservation Strategy ("BBCS") to minimize impacts to birds and bats.[1] The FEIR states:

> "the applicant has incorporated a new Applicant Proposed Measure to monitor avian use of the site, conduct post-construction avian mortality monitoring and identify conservation measures to minimize impacts. These efforts would be memorialized in a Bird and Bat Conservation Strategy (BBCS) prepared in collaboration with USFWS and would include an Avian Mortality Monitoring Program (AMMP) to monitor operational effects of the project on avian species. The development of a BBCS would further reduce potential operational impacts to avian species by providing additional data and additional conservation measures in response to that data."[2]

Despite these statements, the FEIR does not incorporate the BBCS as a required mitigation measure. As a result, it is unclear whether the BBCS was a factor in the County's impact assessment, and to what extent the County considers the BBCS

[1] Bird and Bat Conservation Strategies (BBCS) were formerly known as Avian Bat Protection Plans (ABPP).

[2] FEIR, p. 2-598.

mitigation needed to reduce significant impacts of the Project. Nevertheless, the FEIR does not provide evidence substantiating the conclusion that the BBCS would "further reduce potential operational impacts to avian species." Indeed, the FEIR does not provide the:

(a) goals of the BBCS and the performance standards for evaluating its success;

(b) monitoring regime, including sampling techniques, frequency, and duration;

(c) methods that will be used to account for observer bias and carcass removal;

(d) statistical methods that will be used to analyze the data;

(e) take thresholds for remedial actions;

(f) additional conservation measures (or actions) that would be triggered if take thresholds are exceeded; and,

(g) enforcement mechanism that ensures performance standards are met.

Perhaps most importantly, the FEIR fails to establish that "additional conservation measures" even exist, and that they could feasibly be implemented to reduce operational impacts in response to the monitoring data. This is important because the value of the BBCS as a mitigation tool is contingent on the ability to implement additional conservation measures in response to the monitoring data.

Golden Eagle

Existing Conditions

The FEIR provided the *2014 Eagle Nest Survey Report* prepared by Western EcoSystems Technology, Inc. ("WEST"). According to the report, WEST detected an additional 18 previously unidentified golden eagle nests and an additional 3 previously unidentified bald eagle nests within 10 miles of the Project site.[3] To date, a total of 47 golden eagle and 4 bald eagles nest sites have been detected within 10 miles of the Project.[4] This led WEST to conclude the Project area has one of the highest densities of nesting golden eagles in the state.[5] This constitutes significant new information that was not disclosed in the DEIR.

The FEIR also provided the *2014 Baseline Avian Activity Survey Report* prepared by H.T. Harvey and Associates ("HTH").[6] HTH conducted modified point-count surveys to document avian activity on and around the Project site between March 2013 and March

[3] Western EcoSystems Technology, Inc. 2014. California Flats Solar Project: 2014 Eagle Nest Survey Report. FEIR, pp. 2-554.

[4] *Ibid.*

[5] Western EcoSystems Technology, Inc. 2014. California Flats Solar Project: 2014 Eagle Nest Survey Report. FEIR, pp. 2-555 and -556.

[6] FEIR, Appendix E.18.

2014. Two hundred 20-minute surveys were conducted across eight count stations.[7] HTH detected golden eagles during all seasons and at most of the eight point-count stations.[8] Overall, 16 golden eagles were detected within 800 meters of the count stations (additional eagles were detected beyond 800 meters but not included in the analyses).[9] This equates to an average of 0.08 golden eagle detections per 20-minute count. Erickson et al. (2002) summarized golden eagle use at 27 study areas within 13 Wind Resource Areas ("WRA") in the western United States.[10] Golden eagle use at the Project site was higher than 21 (78%) of the study areas, and 10 (77%) of the WRAs examined by Erickson et al. (2002). These comparisons refute WEST's claim that mean eagle use rate at the Project site is "within the lower range of mean use rates compared to other Projects."[11] Based on their survey data, HTH properly concluded that golden eagles "are relatively abundant in the Project area."[12]

I have the following comments on WEST's *Eagle Use Survey Interim Report*, which was submitted with the FEIR:

1. The report indicates eagle use surveys began in March and would continue through December 2014. However, the report is limited to eagle use data from March 10 through June 24, 2014. Birds of prey in general are widely spaced, rapid-moving, and wide-ranging.[13] In addition, raptor movements and activity patterns are highly variable, especially during migration.[14] These factors make raptors difficult to detect and count.[15] The USFWS recommends surveys across all seasons for a minimum of two years to evaluate a project's risk to eagles.[16] For these reasons, WEST's data provide little value in assessing eagle use of the Project site.
2. The report fails to provide the rationale for excluding perched birds from the eagle use data (which are expressed as eagle *observations* per hour).[17] Collopy and Edwards (1989) reported that during the nesting season, male eagles perched

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[7] *Ibid*, p. 13.

[8] *Ibid*, p. iii.

[9] *Ibid*, p. iii and 10.

[10] Erickson W, G Johnson, D Young, D Strickland, R Good, M Bourassa, K Bay, K Sernka, WEST Inc. 2002. Synthesis and Comparison of Baseline Avian and Bat Use, Raptor Nesting and Mortality Information from Proposed and Existing Wind Development. Final report prepared for the Bonneville Power Administration, Portland, Oregon. 124 pp. [Attachment 1]

[11] FEIR, p. 2-572.

[12] *Ibid*, Appendix E.18, p. 32.

[13] Fuller MR, JA Mosher. 1981. Methods of Detecting and Counting Raptors. Studies in Avian Biology 6:235-246.

[14] *Ibid.*

[15] *Ibid.*

[16] U.S. Fish and Wildlife Service. 2011 Jan. Draft Eagle Conservation Plan Guidance. Appendix C: Stage 2—Site-Specific Assessment Recommended Methods and Metrics. [Attachment 2]

[17] FEIR, p. 2-567.

an average of 78% and females 85% of the daylight hours.[18] The data presented in WEST's report were collected during the nesting season. As a result, the exclusion of perched birds from the dataset misrepresents eagle "use" of the Project site.

3. WEST's report claims that the mean eagle use rate at the Project site is "within the lower range of mean use rates compared to other Projects."[19] WEST's claim cannot be validated because the report does not identify the projects used for the comparison, nor does it cite the source(s) of information that were used.[20] However, based on data published by Erickson (WEST's Senior Statistician), it appears WEST compared mean eagle use at the Project site during the spring and summer (i.e., March 10 - June 24) to the mean use at other sites across all seasons (i.e., the average of all four seasons). This distorted WEST's comparison. Based on WEST's data, and the data provided in Erickson et al. (2002), the mean eagle use rate at the Project site is within the *upper* range of mean use rates during the spring (10th highest out of 28 sites) and during the summer (7th highest out of 28 sites) compared to other projects.[21] However, even this comparison underestimates the rank of the Project site compared to other sites due to the bias inherent in standardizing WEST's data (which was collected during 3-hour surveys). Indeed, Erickson et al. (2002) states: "avian use from a 40-minute survey like Foote Creek Rim (WY) standardized to 20 minutes is likely conservative, since one would expect fewer new observations on average later in the survey, especially for stationary bird observations (e.g., perched)."[22] Furthermore, this statement suggests perched birds were not excluded from the analysis conducted for other projects. Thus, it appears WEST distorted its comparison even further by excluding perched birds from the Project's dataset, but not from the other datasets.

4. None of the survey points appear to have been located within the proposed solar field (although a couple were on the border).[23] This further diminishes the ability to use the data to assess eagle use over the majority of the proposed Project site (predominately a solar field).

5. The report provides inconsistent information on the number of survey points. Page 1 of the reports states surveys were conducted from 10 observation points, which is consistent with what is depicted on Figure 1. However, Page 3 of the report suggests surveys were conducted at 12 observation points. Page 4 indicates points CF10-CF12 were not added until April 7, which suggests there were only 9

[18] Collopy MA, TC Edwards Jr. 1989. Territory size, activity budget, and role of undulating flight in nesting golden eagles. Journal of Field Ornithology 60(1):43-51. [Attachment 3]

[19] FEIR, p. 2-572.

[20] *Ibid*, pp. 2-572 through -574.

[21] Erickson W, G Johnson, D Young, D Strickland, R Good, M Bourassa, K Bay, K Sernka, WEST Inc. 2002. Synthesis and Comparison of Baseline Avian and Bat Use, Raptor Nesting and Mortality Information from Proposed and Existing Wind Development. Final report prepared for the Bonneville Power Administration, Portland, Oregon. Table 11.

[22] *Ibid*, p. 14.

[23] FEIR, p. 2-566.

observation points from March 10 through April 7.

6. The report provides no information on how distance or bird height was estimated. It is well known that estimating distance is extremely difficult, especially beyond 200 m. This is especially problematic when observing over uneven terrain. No information is provided on observer training or error among observers.

Impacts Analysis

The FEIR indicates the BBCS would address any potential impacts to golden eagles, and that it would describe and outline management measures and monitoring protocols that would be implemented on the Project site to reduce risk to eagles (and other species).[24] It is unclear whether the FEIR is suggesting additional analyses and mitigation are needed (and have been deferred to the BBCS), or simply that the BBCS would reiterate the analyses and mitigation provided in the FEIR and supporting documents. At a minimum, the County must establish the existence of "management measures" that could feasibly be implemented to reduce the risk to eagles.

The FEIR states: "analyses of eagle activity on and adjacent to the project site indicates a low level of eagle take risk."[25] This statement contradicts scientific information and the evidence in the record.[26]

USFWS guidelines state a risk assessment should examine: (1) site-specific threats, and (2) cumulative impacts.[27] The site-specific risk assessment should address the potential for take based on:

a. Burning from concentrated light at solar arrays.
b. Transmission line, power line, meteorological tower, or guy line collision.
c. Electrocution potential.
d. Territory abandonment.
e. Nest and roost site disturbances.
f. Habitat loss and fragmentation.

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[24] *Ibid*, pp. 2-353 and -354.

[25] *Ibid*, p. 2-354.

[26] DEIR, Table 4.4-4, pp. 4.4-73, -98, and -99. *See also* DEIR, Appendix E.2, pp. 57 and 58. *See also* FEIR, Appendix E.17, pp. ii, 6, 17 through 19, and 32. *See also* FEIR, Appendix E.18, pp. iii, 19, and 34. *See also* Marzluff JM, ST Knick, MS Vekasy, LS Schueck, TJ Zarriello. 1997. Spatial use and habitat selection of golden eagles in southwestern Idaho. The Auk 114(4):673-687. [Attachment 4] *See also* Thelander CG, California Department of Fish and Game. 1974. Nesting territory utilization by golden eagles (Aquila chrysaetos) in California during 1974. Wildlife Management Branch Administrative Report No. 74-7 (November 1974). 22 pp. [Attachment 5]

[27] U.S. Fish and Wildlife Service, Pacific Southwest Region. 2010. Region 8 Interim Guidelines for the Development os a Project-Specific Avian and Bat Protection Plan for Solar Energy Plants and Related Transmission Facilities. 15 pp.

g. Disturbance due to ongoing human presence at the facility.[28]

The DEIR did not examine cumulative impacts to golden eagles, which is supposed to occur at the natal dispersal distance of the species (140 miles).[29] However, the DEIR acknowledged that at the site-specific level, the Project poses all of the aforementioned threats except burning from concentrated light at solar arrays.[30] It further acknowledged that some of the threats would cause a relatively high risk of take. For example, it acknowledged the voltage levels associated with the Project's transmission lines pose an "increased risk," and that large birds especially would be susceptible to electrocution.[31]

As the Applicant's consultant acknowledged, the loss of foraging habitat can cause take and/or the abandonment of nesting territories, and "it is highly likely that the foraging home ranges of several breeding pairs overlap the Project site and access road/Hwy 41 improvement areas."[32] The consultant further acknowledged that the Cholame Hills west of the Project site are unsuitable for foraging eagles (due to vegetation density), as are the agricultural croplands in the Cholame Valley.[33] Development of the Project would greatly reduce the amount of foraging habitat available to eagles. This consequence is likely to be especially severe to the eagles that nest west of the Project site because those eagles already have limited foraging locations.[34] Ultimately, it is inconceivable that the loss of over 2,600 acres of foraging habitat in close proximity to multiple nest sites would pose a "low risk" of take.

The USFWS has concluded that data within a 10-mile radius of a nest provides adequate information to evaluate many project-level impacts.[35] The Applicant's consultant concluded a *minimum* of 20 pairs of golden eagles resided within a 10-mile radius of the Project site during the 2013 breeding season.[36] The USFWS estimates 235 breeding pairs of golden eagles reside in Bird Conservation Region 32 (which encompasses most of the Coast Ranges, Central Valley, and south coast).[37] This suggests the Project could directly or indirectly impact approximately 8.5% of the population within Bird Conservation Region 32, and an even greater proportion of the population within the "Central Coast Ranges" portion of that region. This would have significant implications on eagle conservation, because the "Central Coast Ranges" region has the highest

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[28] *Ibid*, p. 5.

[29] US Fish and Wildlife Service, Division of Migratory Bird Management. 2009. Final Environmental Assessment, Proposal to Permit Take. Provided Under the Bald and Golden Eagle Protection Act. Washington: Dept. of Interior. p. 37. [Attachment 6]

[30] DEIR, pp. 4.4-98, -99, and -103 through -106.

[31] *Ibid*, p. 4.4-105.

[32] FEIR, Appendix E.17, p. 3 and DEIR, Appendix E.1, p. 95.

[33] FEIR, Appendix E.17, p. 6.

[34] *Ibid*, Figure 2.

[35] US Fish and Wildlife Service, Division of Migratory Bird Management. 2009. Final Environmental Assessment, Proposal to Permit Take. Provided Under the Bald and Golden Eagle Protection Act. Washington: Dept. of Interior. p. 38.

[36] DEIR, Appendix E.1, p. 95.

[37] *Ibid*, p. 93.

abundance of golden eagle nesting territories in the State of California.[38] In other words, the Project has the potential to impact >8.5% of the eagles in the state's most important eagle region. The County has not disclosed or analyzed the magnitude of this impact, nor has it ensured the impact would be adequately mitigated.

Mitigation Measures

The USFWS recommends habitat equivalency analysis ("HEA") to quantify appropriate compensation acreage and ensure habitat services are replaced by like services.[39] Habitat services are generally defined by a metric (e.g., species density) that represents the functionality of the habitat (e.g., ability of the habitat to provide nest sites, prey populations, cover, etc.).[40] The County failed to conduct the "Habitat Equivalency Analysis" needed to evaluate impacts to golden eagles and develop appropriate mitigation.[41] Instead, it simply has assumed that the proposed avoidance measures and nested compensatory mitigation would reduce impacts to a less-than-significant level. The DEIR and FEIR provide no scientific basis for that assumption, especially because they do not ensure the nested compensatory mitigation would offset impacts to the specific territories (or pairs) affected by the Project. In addition, the County intends to "address any potential impacts to golden eagles" by preparing the BBCS, which is inadequate mitigation as explained above.[42]

Given the evidence in the record, it is clear that impacts to golden eagles are much more significant than indicated in the DEIR, and that the County has failed to propose adequate measures to mitigate those impacts to less than significant levels.

Avian Collisions

Our previous comment letter addressed several flaws with the County's analysis of the collision risk that the Project's solar arrays pose to birds. The County responded with the statement: "[t]he DEIR and supporting biological technical reports assessed the potential for impacts to listed and special status avian species, raptors, and other nesting birds protected under the MBTA. These analyses were based on standard protocol for establishing existing environmental conditions and assessing potential impacts to these species."[43] The County's response contradicts evidence in the administrative record.

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[38] Thelander CG, California Department of Fish and Game. 1974. Nesting territory utilization by golden eagles (Aquila chrysaetos) in California during 1974. Wildlife Management Branch Administrative Report No. 74-7 (November 1974). 22 pp. *See also* DEIR, Appendix E.1, p. 93.

[39] U.S. Fish and Wildlife Service, Pacific Southwest Region. 2010. Region 8 Interim Guidelines for the Development os a Project-Specific Avian and Bat Protection Plan for Solar Energy Plants and Related Transmission Facilities. 15 pp.

[40] *Ibid.*

[41] U.S. Fish and Wildlife Service, Pacific Southwest Region. 2010. Region 8 Interim Guidelines for the Development os a Project-Specific Avian and Bat Protection Plan for Solar Energy Plants and Related Transmission Facilities. 15 pp.

[42] FEIR, p. 2-353 – 354.

[43] *Ibid*, p. 2-370.

The "standard protocol" for assessing impacts to avian species is outlined in the *Region 8 Interim Guidelines for the Development of a Project-Specific Avian and Bat Protection Plan for Solar Energy Plants and Related Transmission Facilities* (USFWS 2010; Attachment 6). Most notably, neither the County nor the Applicant conducted a Potential Impact Index, Habitat Equivalency Analysis, or Risk Assessment.

The FEIR points to Mitigation Measures B-1(m), B-1(n), B-1(r), B-1(s), B-1(ee), B-1(ff) and B-1(gg) as measures that would reduce impacts to migratory birds.[44] Each of the aforementioned measures is directed at minimizing impacts associated with construction of the Project; none mitigate the potentially significant impacts associated with *operation* of the Project. The FEIR attempts to justify this omission by stating: "little evidence is available to indicate that PV solar panels actually attract birds, no standard for analysis of this issue has been established, and no regulatory agency guidance has been published on this issue."[45] This statement is incorrect. As discussed in the previous paragraph, the USFWS has issued guidelines for evaluating the impacts of solar facilities. It has also issued guidelines on the approach that should be implemented to monitor migratory bird take at solar power facilities.[46] Whereas the County is correct that "little evidence is available to indicate that PV solar panels actually attract birds," there is strong evidence that suggests bird injury and mortality at solar facilities is at least partially due to birds mistaking PV solar panels as water.[47] There is additional evidence that solar facilities attract insects, which in turn attract insect-eating birds that collide with solar panels and other infrastructure.[48]

The FEIR references the McCrary et al. (1986) study at Solar One in an additional attempt to suggest solar facilities do not have a significant impact on birds. It states: "[t]hat study concluded that the mortality effect on local bird populations at the approximate 80 acre site was minimal."[49] The FEIR's statement is misleading. McCrary et al. (1986) concluded the impact of facility on birds *appears* minimal—not that is *was* minimal.[50] Moreover, the FEIR neglected to report McCrary et al.'s subsequent conclusion, which was that the greater magnitude of future projects designed to produce hundreds of megawatts "may produce non-linear increases in the rate of avian mortality when compared to Solar One and extrapolations from this study should be made with

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[44] *Ibid*, p. 2-370.

[45] *Ibid.*

[46] U.S. Fish and Wildlife Service. 2011. Monitoring Migratory Bird Take at Solar Power Facilities: An Experimental Approach. 9 pp. [Attachment 7]

[47] Kagan RA, TC Viner, PW Trail, EO Espinoza. 2014. Avian Mortality at Solar Energy Facilities in Southern California: A Preliminary Analysis. National Fish and Wildlife Forensics Laboratory. p. 12.

[48] *Ibid. See also* Horváth G, Blahó M, Egri Á, Kriska G, Seres I, et al. (2010) Reducing the maladaptive attractiveness of solar panels to polarotactic insects. Conservation Biology 24:1644–1653 + electronic supplement.

[49] FEIR, p. 2-370.

[50] McCrary MD, RT McKernan, RW Schreiber, WD Wagner, TC Sciarrotta. 1986. Avian Mortality at a Solar Energy Power Plant. Journal of Field Ornithology 57(2):135-141. [Attachment 8]

caution."[51]

Incredibly, the FEIR neglected to mention the preliminary results from the comparably sized (250 MW) California Valley Solar Ranch, which is being monitored by the Applicant's consultant. Between 16 August 2012 and 15 February 2013 (6 months), 197 dead birds were detected at the California Valley Solar Ranch, which was only partially constructed and operational at the time.[52] Almost all of the fatalities were detected within the solar arrays or along the gen-tie line; only 3 were located within the control plots. Fatalities included 2 short-eared owls, 2 burrowing owls, and 2 loggerhead shrikes—all of which are California Species of Special Concern. The actual number of fatalities was undoubtedly higher because the monitoring reports did not include the results of the bias-correction trials, carcass removal trials, or data analyses accounting for sampling effort. In my opinion, the impacts that have been detected at the California Valley Solar Ranch (among other facilities) are not "minimal" or "speculative" as the FEIR suggests.[53]

The FEIR states: "[a] total of 61 avian deaths were recorded at the Desert Sunlight facility, and none of these species were state or federally listed."[54] This statement is incorrect. A dead Yuma clapper rail (federally endangered) was found at the facility on May 8, 2013.[55]

The FEIR argues that the Desert Sunlight Solar Farm is located directly in the path between two major desert water bodies (the Salton Sea and Lake Havasu), which presents specific environmental conditions different from those present at the proposed project where no similarly important movement route is present.[56] Neither the FEIR, nor the Desert Sunlight Solar Farm FEIS, provides evidence that there is abundant bird movement between the Salton Sea and Lake Havasu.[57] Indeed, considerably more of the birds banded at the Salton Sea travel through the general Project area than Lake Havasu (Figure 1).

The FEIR includes the Applicant's "Baseline Avian Activity" survey report. The report was completed in June, and as a result, it should have been included with the DEIR. The FEIR provides the following interpretation of the survey data:

> "the species most likely to have their habitat modified by installation of the solar

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[51] *Ibid.*

[52] H.T. Harvey & Associates. California Valley Solar Ranch Project First Quarterly Post-construction Avian and Bat Protection Plan Fatality Report: 16 August to 15 November 2012. [Attachment 9] *See also* Second Quarterly Post-construction Avian and Bat Protection Plan Fatality Report: 16 November 2012 to 15 February 2013. [Attachment 10]

[53] FEIR, p. 2-371.

[54] *Ibid*, p. 2-370.

[55] Kagan RA, TC Viner, PW Trail, EO Espinoza. 2014. Avian Mortality at Solar Energy Facilities in Southern California: A Preliminary Analysis. National Fish and Wildlife Forensics Laboratory. Table 2.

[56] FEIR, p. 2-371.

[57] Bureau of Land Management. 2011. Desert Sunlight Solar Farm Final Environmental Impact Statement. Appendix B to Appendix H. [Attachment 11]

> arrays in grassland habitat are horned larks, western meadowlarks, Savannah sparrows, and long-billed curlews, but each of these species is relatively common and abundant and unlikely to be substantially influenced by the habitat modification resulting from this project…The results of this study do not substantially change the evaluation of impacts to state or federally listed or other special status bird species, and no revisions to the DEIR have been made."[58]

These statements are not entirely correct. The long-billed curlew is a CDFW Watch List species and a USFWS Bird of Conservation Concern. It has a state rank of S2, which indicates it is: "Imperiled in the state because of rarity due to very restricted range, very few populations (often 20 or fewer), steep declines, or other factors making it very vulnerable to extirpation from the state."[59] California's interior valley region is one of the most important areas in the world for migrating and wintering long-billed curlews.[60] Urbanization and changing agricultural practices are threats to the species.[61] The DEIR did not disclose or analyze Project impacts to the long-billed curlew.

The California horned lark is a CDFW Watch List species and it has a state rank of S3, which indicates it is: "Vulnerable in the state due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors making it vulnerable to extirpation from the state."[62] The DEIR did not disclose or analyze Project impacts to the California horned lark.

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[58] FEIR, pp. 2-371 and -372.

[59] California Department of Fish and Wildlife, California Natural Diversity Database (CNDDB). September 2014. Special Animals List. 66 pp. [Attachment 12]

[60] PRBO Conservation Science. 2008. A Threatened Shorebird Relies on California's Central Valley. Observer 152. Available at: <http://www.pointblue.org/observer/index.php?module=browse&browse_issue_num=152&browse_article_num=200&chooseIssue=1>.

[61] *Ibid.*

[62] California Department of Fish and Wildlife, California Natural Diversity Database (CNDDB). September 2014. Special Animals List. 66 pp.

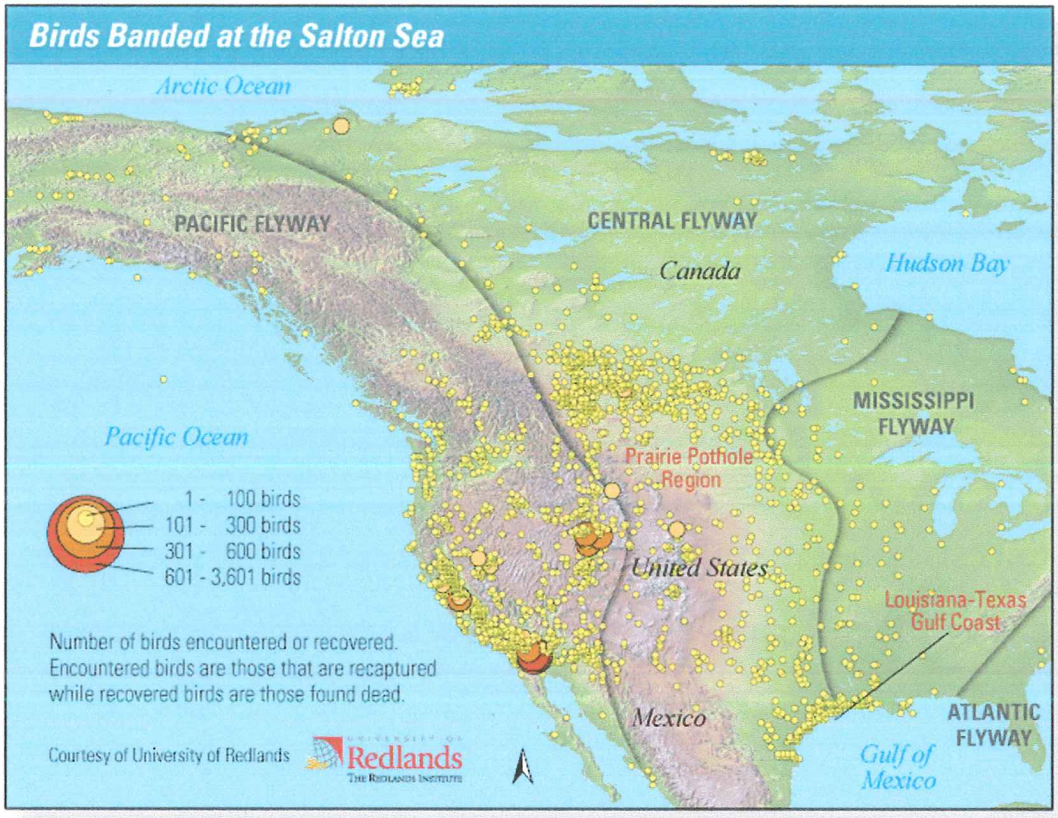

Figure 1. Location of birds banded at the Salton Sea.[63]

California Tiger Salamander

We submitted several comments discussing the flaws with the methods that were used to establish existing conditions pertaining to the California tiger salamander ("CTS"). We also referenced the USFWS and CDFW's (2003) survey guidelines, which identify the need to justify the reliability of data from surveys conducted during years with <70% of the average rainfall. The FEIR does not justify the reliability of the data. Instead, the County responded with the statement that: "[t]his information is only necessary to support a negative finding for CTS on a project site."[64] However, the County *has made* a negative finding; the FEIR states: "[i]n this case, the project has excluded the potential for CTS breeding on the project site based on the lack of breeding habitat."[65] Unless the County provides the information needed to justify the reliability of the data collected during years with <70% of the average rainfall, it cannot conclude there is no breeding habitat for CTS based on that data. This issue is confounded because the CTS site assessment, which was excluded from the DEIR but included with the FEIR, states:

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[63] Available at: <http://pubs.usgs.gov/fs/2007/3097/pdf/fs20073097.pdf>

[64] FEIR, p. 2-356.

[65] *Ibid.*

"[t]he possible pond at the northwest corner of the proposed Solar Generation Facility may provide breeding habitat for CTS if it contains standing water. However, because this possible pond was dry during the site visits, its suitability as CTS breeding habitat could not be assessed at this time and depends on if and to what extent it contains standing water during a year of normal rainfall."[66] The photo of the pond shows a pier, which is evidence that it contained water, and presumably may continue to contain water during wet years.[67]

The FEIR further argues that: "specific focused protocol surveys for all species is not necessary to evaluate impacts under CEQA."[68] To the contrary, the absence of standardized field survey methods (i.e., adherence to the USFWS and CDFW survey protocol) impairs adequate and consistent impact assessment during regulatory review processes, which in turn reduces the possibility of effective mitigation, as is the case with this Project. Moreover, the FEIR fails to explain how the Applicant will be able to meet CEQA requirements, and the California Endangered Species Act requirement for "full mitigation," if it does not have a reliable estimate of the number of the CTS that might be impacted by the Project. Similarly, it is unclear how the USFWS would be able set a take threshold or conduct the analyses required in a Biological Opinion without reliable information on CTS in the Project area.

Western Pond Turtle

The Project area supports a relatively abundant population of western pond turtles. According to the DEIR: "[i]ndirect impacts to western pond turtles include long-term decline in population viability within the project site over the life of the project."[69] The DEIR further concluded that the Project would have a significant impact on the species through increased mortality and the loss of aquatic and upland nesting habitats.[70] These impacts would have relatively severe consequences on conservation of the species, especially given the historic and continual decline of the statewide population.[71] The County's only response to this concern was that: "Mitigation Measure B-1(t) in Section 4.4, *Biological Resources,* provides avoidance and mitigation for western pond turtle."[72] That mitigation measure is limited to preconstruction clearance surveys of pond turtles within 200 feet of suitable aquatic habitat sometime prior to initiation of construction activities. The County has not specified the timing of the preconstruction surveys to ensure they are effective, nor has it accounted for the turtles that may occur more than 200 feet from aquatic habitat (the DEIR acknowledges pond turtles may nest more than

[66] *Ibid*, Appendix E.19, p. 7.

[67] *Ibid*, p. 11, Photo 7.

[68] *Ibid*, p. 2-355.

[69] DEIR, p. 4.4-115.

[70] *Ibid* and 4.4-116.

[71] California Natural Diversity Database (CNDDB). 2015. RareFind 5 [Internet]. California Department of Fish and Wildlife [2015 January 6]. *See also* Jennings MR, MP Hayes. 1994. Amphibian and Reptile Species of Special Concern in California. Final Report to the California Department of Fish and Game. 260 pp. [Attachment 13]

[72] FEIR, p. 2-359.

0.25 mile away from aquatic habitat).[73] Whereas the mitigation measure may be useful in salvaging some turtles, it does not mitigate the decline in population viability, the loss of habitat, or the increased mortality that is likely to occur due to increased traffic levels.[74] As a result, potentially significant impacts to western pond turtles remain unmitigated.

San Joaquin Pocket Mouse

The FEIR responded to our comments about the San Joaquin pocket mouse by stating the species is not known from the BSA or the Cholame Valley, and that pocket mouse burrows were not detected during the full-coverage ground surveys.[75] These statements conflict with the DEIR, which indicates:

> "during small mammal trapping efforts on 6 August 2013, a single San Joaquin pocket mouse was observed foraging above ground. The area in which the pocket mouse was observed contained several quarter-sized burrows, indicating that several individuals were occupying the area. The project site contains suitable habitat for this species; however, the San Joaquin pocket mouse occurrence is likely limited to those areas with friable soils, and they are likely absent from areas with very heavy clay or serpentine soils. As such, the population of San Joaquin pocket mice in the BSA is expected to be small."[76]

We commented that *if* the pocket mice in the Project area represent part of a metapopulation structure (as suggested in the DEIR), the loss of the subpopulation on the Project site could negatively impact overall species viability and diversity. The FEIR responded to our comment by stating: "[i]mpacts at the metapopulations level are possible for all species, not just San Joaquin pocket mouse; however, a metapopulation analysis of non-listed special status species is far outside of the standard and accepted analyses required to evaluate potential impacts to special status species under CEQA."[77] Without metapopulation or other additional analysis, the County has no basis for its conclusion that the Project would "reduce a relatively small amount of habitat that is regionally abundant for this species; consequently, this permanent habitat conversion would not substantially reduce the number of this species or restrict its range."[78] Indeed, neither the DEIR nor the FEIR provides any evidence to justify that conclusion. The soil types in the Project region are comparable to those on the Project site.[79] Therefore, if soils providing suitable habitat are limited on Project site, they are not regionally abundant. This is supported by the California Natural Diversity Database ("CNDDB"), which does not contain any documented occurrences of the species within approximately

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[73] DEIR, p. 4.4-115.

[74] Gibbs JP, WG Shriver. 2002. Estimating the Effects of Road Mortality on Turtle Populations. Conservation Biology 16(6):1647-1652. [Attachment 14]

[75] FEIR, p. 2-362.

[76] DEIR, p. 4.4-95.

[77] FEIR, p. 2-362.

[78] DEIR, pp. 4.4-95 and -96.

[79] USDA Natural Resources Conservation Service. Web Soil Survey. Available at: <http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. (Accessed 2015 Jan 6).

13 miles of the Project site.[80] Based on the available evidence, we maintain that the Project could cause extirpation of the San Joaquin pocket mouse from the Project site. This constitutes a significant impact that was not adequately disclosed, analyzed, or mitigated in the DEIR and FEIR.

Special-Status Kangaroo Rat Species

The giant kangaroo rat (federally and state listed as endangered), Tipton kangaroo rat (federally and state listed as endangered), and short-nosed kangaroo rat (California Species of Special Concern) have been documented occurring in the vicinity of the Project site.[81] Our previous comment letter highlighted flaws with the Applicant's small mammal trapping efforts, including the failure to adhere to the USFWS protocol.[82] The County responded with the statement: "[p]rotocol-level surveys for kangaroo rats are not required to evaluate potential impacts to special status kangaroo rat species and the surveys completed were robust and appropriate for establishing baseline environmental conditions and evaluating potential impacts with regards to kangaroo rats."[83] This is a spurious argument because the County never evaluated potential impacts to special-status kangaroo rat species. Instead, it simply concluded their absence.[84]

The FEIR subsequently suggests that the full-coverage ground surveys, spotlight surveys, and camera surveys provided additional evidence that special-status kangaroo rat species are absent from the Project site.[85] Those types of surveys are not reliable means for establishing the absence of special-status kangaroo rat species. The Applicant's Biotic Report supports this conclusion. It states: "[a] large number of burrows were identified as those of an *unconfirmed species* of kangaroo rat..."[86] As reported in the USFWS survey protocol: "[l]ive-trapping is the only method for reliable identification of kangaroo rats in the San Joaquin Valley."[87]

Burrowing Owl

The Project will require the "passive relocation" of burrowing owls off the Project site.[88] As we discussed in our previous comment letter, CDFW guidelines indicate passive relocation is a potentially significant impact that must be disclosed and analyzed in

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[80] California Natural Diversity Database (CNDDB). 2015. RareFind 5 [Internet]. California Department of Fish and Wildlife [2015 January 6].

[81] DEIR, Figure 4.4-6 and Appendix E.8, p. i.

[82] USFWS. 2013. Survey protocol for determining presence of San Joaquin kangaroo rats. U.S. Fish and Wildlife Service, Sacramento Field Office. March 2013. [Attachment 15]

[83] FEIR, p. 2-365.

[84] DEIR, p. 4.4-77 and Table 4.4-4.

[85] FEIR, p. 2-365.

[86] DEIR, Appendix E.1, p. 16. [emphasis added].

[87] USFWS. 2013. Survey protocol for determining presence of San Joaquin kangaroo rats. U.S. Fish and Wildlife Service, Sacramento Field Office. March 2013. p. 2.

[88] DEIR, p. 4.4-136 and Figure 4.4-8.

CEQA documents.[89] Specifically, passive relocation can result in mortality, reduced reproductive output, territory abandonment, and ultimately a decline in the population. Instead of disclosing these impacts to the public and decision makers, the FEIR argues passive relocation is a standard measure for mitigating potential impacts to burrowing owls, and that the preparation of a Burrowing Owl Exclusion Plan would address impacts resulting from passive relocation.[90] The County's response is misleading and does not resolve the issues we raised.

First, passive relocation does not mitigate potential impacts to burrowing owls. CDFW's Staff Report on Burrowing Owl Mitigation states:

> "[e]xclusion in and of itself *is not a take avoidance, minimization or mitigation method.* Eviction of burrowing owls is a potentially significant impact under CEQA. The long-term demographic consequences of these techniques have not been thoroughly evaluated, and the fate of evicted or excluded burrowing owls has not been systematically studied…Therefore, exclusion and burrow closure are not recommended where they can be avoided. The current scientific literature indicates consideration of all possible avoidance and minimization measures before temporary or permanent exclusion and closure of burrows is implemented, in order to avoid take."[91]

Second, implementation of a Burrowing Owl Exclusion Plan does not address impacts resulting from passive relocation; it may reduce them, but not necessarily to a level that can be considered less-than-significant. At least two dead burrowing owls have already been detected at the California Valley Solar Ranch facility in San Luis Obispo County.[92]

Third, in accordance with CDFW guidelines, burrowing owls should not be excluded from burrows unless or until the Applicant:

1. develops a Burrowing Owl Exclusion Plan that is approved by the CDFW;
2. secures off-site compensation habitat and constructs artificial burrows in close proximity (< 100 m) to the eviction sites;
3. mitigates the impacts of temporary exclusion according to the methods outlined by CDFW (pp. 11-13 in the Staff Report);
4. conducts site monitoring prior to, during, and after exclusion of burrowing owls from their burrows; and,

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[89] California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation, p. 10. [Attachment 16]

[90] FEIR, p. 2-368.

[91] California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. p. 10. [emphasis added].

[92] H.T. Harvey & Associates. California Valley Solar Ranch Project First Quarterly Post-construction Avian and Bat Protection Plan Fatality Report: 16 August to 15 November 2012. p. 6.

5. documents excluded burrowing owls using artificial or natural burrows on an adjoining mitigation site.[93]

The mitigation proposed in the FEIR fails to satisfy most of these conditions, which further reduces the likelihood impacts to burrowing owls would be mitigated successfully. For example, CDFW's Staff Report states:

> "[h]abitat should not be altered or destroyed, and burrowing owls should not be excluded from burrows, until mitigation lands have been legally secured, are managed for the benefit of burrowing owls according to Department-approved management, monitoring and reporting plans, and the endowment or other long-term funding mechanism is in place or security is provided until these measures are completed."[94]

The FEIR not only allows impacts to occur prior to the acquisition of mitigation lands, but it also fails to ensure the mitigation lands are managed for the benefit of burrowing owls according to Department-approved management, monitoring and reporting plans.

Tricolored Blackbird

On 3 December 2014 the California Fish and Game Commission approved an emergency listing of the tricolored blackbird under the California Endangered Species Act.[95] Tricolored blackbirds have been observed on the Project site, and they have the potential to nest there.[96] The DEIR and FEIR fail to provide any analysis specific to this species, which could be significantly impacted by habitat loss, fragmentation, and heightened depredation due to the Project.[97]

Wildlife Movement Corridors

The Biotic Report indicated the Project proponent would complete a wildlife corridor analysis and conduct several additional surveys.[98] Although the FEIR provided full or partial reports for the additional surveys, it failed to provide the wildlife corridor analysis. Whereas the DEIR and FEIR contain some analysis pertaining to San Joaquin kit fox and pronghorn movement corridors, it does not contain any analysis pertaining to the other sensitive wildlife species that would (or could) be affected by the Project. These include the California red-legged frog, California tiger salamander, western pond turtle, western spadefoot, San Joaquin coachwhip, San Joaquin pocket mouse, and American badger. Because these species have different movement patterns and requirements than the San

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[93] California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation, pp. 10 and 11.

[94] *Ibid*, p. 12.

[95] California Fish and Game Commission. Staff Summary, Meeting of December 3, 2014, p. 6. Available at: <http://www.fgc.ca.gov/meetings/2014/dec/120314summary.pdf>.

[96] DEIR, p. 4.4-73 and Appendix E.1, p. 105.

[97] H.T. Harvey & Associates. 2013. California Valley Solar Ranch Avian Activity Surveys Report: October 2011–October 2012. p. 35.

[98] DEIR, Appendix E1, p. 17.

Joaquin kit fox and pronghorn, the County has no basis to assume that the analysis and mitigation provided for the latter two species captures the other sensitive wildlife species that would (or could) be affected by the Project.

The Applicant's biological resources consultant concluded: "[p]roject construction activities and the placement of permanent structures associated with the SDAs (including fencing) in the northwestern portions of the Project site (where pronghorn are less likely to use the unfenced movement corridors), *would substantially interfere with pronghorn movement between the Cholame Valley and the Carrizo Plain.*"[99] This significant impact remains unmitigated because the County has not established criteria that ensure the proposed mitigation (i.e., pronghorn-friendly fence design at mitigation sites) would benefit pronghorn movement between the Cholame Valley and the Carrizo Plain.

Mitigation Issues

We submitted numerous comments regarding the County's improper deferral of information fundamental to evaluating the proposed mitigation (e.g., comments 12.A.46 through 12.A.53). The FEIR has not resolved all of the issues we raised in our previous comment letter.[100] For example, the County still has not established success criteria for the proposed mitigation, or the remedial actions that should be implemented if the success criteria are not achieved.

BOTANICAL RESOURCES

Survey Were Inadequate

The FEIR includes the *2014 Special-status Plant Species Survey Report*. Overall the 2014 survey effort differs from the 2013 effort in that only 457 acres were surveyed at the protocol-level. Areas subject to protocol surveys in 2014 included:

> (1) the utility corridor;
>
> (2) expansions to the original impact area along the transmission line corridor;
>
> (3) locations adjacent to Highway 41, including a construction laydown area, the location of a future turn lane, and a truck receiving area off the access road;
>
> (4) a road crossing over Cottonwood Creek that was shifted slightly to the east compared to the prior design; and,
>
> (5) longer reaches of streams crossing the access road, to accommodate a more in-depth Project design.[101]

According to the survey report, additional focused (non-protocol) surveys for the federally listed species *Caulanthus californicus* and *Monolopia congdonii* were

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[99] *Ibid*, Appendix E2, p. 115. [emphasis added].

[100] FEIR, response to comments 12.A.46, 47, 50, and 53.

[101] *Ibid*, Appendix E.15, p. ii.

conducted in areas with suitable habitat across the "entire Project site."[102] In also states portions of the Project site were resurveyed for two CNPS listed species: *Convolvulus simulans* (rank 4) and *Caulanthus lemmonii* (rank 1B).[103] These statements conflict with the survey area depicted in Figure 4 of the report (and listed in Table 3), which suggests no (or very few) portions of the solar development area were surveyed in 2014. In addition, efforts to detect the aforementioned four species on the "Project site" were limited to a single survey by three botanists on May 2.[104] That level of effort (i.e., one day) was insufficient to conclude absence of the target species on the Project site. Even if the three botanists were only surveying suitable habitat where rare plants had been observed on the Project site in 2013, each botanist would have needed to survey 858 acres (i.e., 2,574 acres of California Annual Grasslands and Wildflower Fields), which is infeasible. Moreover, the survey was conducted too late in the year to reliably detect the presence of *Monolopia congdonii* on the Project site. By May 5, plants at the reference site were "dead and senesced."[105] Had the reference population check been conducted in April, it would have indicated the need for an April survey, instead of waiting until May when the species had dried and was less conspicuous on the landscape.[106]

The 2014 plant survey report provides a substantial amount of new information that was not disclosed in the DEIR. For example, the report indicates three new species were detected during the 2014 surveys:

- Douglas' fiddleneck (*Amsinckia douglasii*) – Rank 4.2
- Elegant wild buckwheat (*Eriogonum elegans*) – Rank 4.3
- Showy madia (*Madia radiata*) – Rank 1B.1

The report first indicates these species were detected within the BSA, but not on the Project site.[107] However, it subsequently states *Eriogonum elegans* was found on the Project site *and* in the BSA.[108] Nevertheless, the presence of these species during 2014, but not during 2013, further demonstrates the 2013 surveys did not adequately establish baseline conditions on the Project site.

Although data from the 2014 surveys are useful, they do not resolve the issues we raised regarding the deficiencies of the 2013 surveys. For example, the 2013 reference population site visits resulted in no observations of:

- oval-leaved snapdragon (*Antirrhinyum ovatum*)
- La Panza mariposa lily (*Calochotus simulans*)

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[102] *Ibid*, p. 12.

[103] *Ibid.*

[104] *Ibid*, Table 5.

[105] *Ibid*, Appendix E.15, p. 26.

[106] *Ibid*, Table 6.

[107] *Ibid*, p. 29.

[108] *Ibid*, p. 45.

- Lemmon's jewel-flower (*Caulanthus lemmonii*)
- Rattan's cryptantha (*Cryptantha rattanii*)
- Cottony buckwheat (*Eriogonum gossypinum*)
- diamond-petaled poppy (*Eschscholzia rhombipetala*)
- trumpet-throated gilia (*Gilia tenuiflora* subsp. *amplifaucalis*)
- Panoche pepper-grass (*Lepidium jaredii* subsp. *album*)
- San Joaquin woollythreads (*Monolopia congonii*)
- Mason's neststraw (*Stylocline masonii*)

Although the 2014 rare plant survey report confirmed observations of oval-leaved snapdragon, Lemmon's jewelflower, and San Joaquin woollythreads at reference sites, the remaining species were not observed. As a result, there is no basis to conclude the species would have been evident and identifiable during the surveys. In addition:

1. Only two individual oval-leaved snapdragon plants were observed at the reference site in 2014. This indicates a year of low abundance and therefore a poor year to conduct protocol-level surveys.
2. The reference population for San Joaquin woollythreads was checked during the months of March and May, the month of April was missed, and upon inspection in May, plants were dead and senesced indicating that the optimal time to conduct the survey had passed.

Surveys for Federally Listed Species Did Not Adhere to the Survey Protocol

According to the 2014 survey report, the surveys for California jewelflower and San Joaquin woollythreads (both federally listed) were "floristic in nature, but did not employ preset transects."[109] The survey methods did not adhere to the survey guidelines endorsed by the USFWS.[110,111] The guidelines indicate that systematic surveys should be conducted for these two species, and that: "[f]or systematic searches, biologists should walk parallel transects spaced 5 to 10 meters (16 to 33 feet) apart throughout the entire site, regardless of subjective habitat evaluations." Because the 2014 surveys were not conducted in a systematic manner, and because the 2013 surveys did not employ the proper spacing of transects, both efforts were insufficient to conclude the species are absent and would not be impacted by the Project.[112]

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[109] *Ibid, p.* iii.

[110] Cypher, Ellen. 2002. Supplemental Survey Methods for San Joaquin Woollythreads. California State University, Stanislaus Endangered Species Recovery Program. July. http://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/rare_plant_protocol.pdf

[111] Cypher, Ellen. 2002. Supplemental Survey Methods for California jewelflower. California State University, Stanislaus Endangered Species Recovery Program. July. http://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/rare_plant_protocol.pdf

[112] DEIR, Appendix E.6, p. 23.

The County Inappropriately Excluded Species from Analysis

We commented that the DEIR was misleading in stating various special-status species were "absent" from the survey areas, especially given the deficiencies of the surveys. The FEIR defends the County's conclusion on absence, argues protocol surveys are not required to evaluate the potential for impacts, and alleges none of the new survey reports identified impacts that were not already identified in the DEIR.[113] The FEIR states:

> "[s]pecies were determined to be absent from the project site based on the lack of suitable habitat [*criterion 1*], lack of suitable microhabitat conditions (soil, aspect, physiography, etc.) [*criterion 2*], lack of observations during surveys for species known to be in bloom (based on review of reference populations) [*criterion 3*], or a combination of these factors."[114]

This rationale contradicts evidence in the record. The DEIR indicates the Project site has suitable habitat (*criterion 1*) for Rattan's cryptantha, cottony buckwheat, and diamond-petaled poppy.[115] The Project site also has suitable microhabitat (*criterion 2*) for these three species.[116] These three species were never detected at a reference site to confirm blooming (*criterion 3*), yet they were among the species that the County concluded were "absent" from the Project site.[117]

Highlighting the flaws with the County's arbitrary conclusions pertaining to absence is the DEIR's conclusion that small-flowered morning glory (*Convolvulus simulans*) was "absent" from the Project's access road.[118] However, according to the maps in the new survey report, this species was detected directly on the access road in 2014.[119] Furthermore, the 2014 surveys revealed small-flowered morning glory is considerably more abundant (25,175 plants) on the Project site (solar generating facility area) than what was disclosed in the DEIR (250 plants).[120] This constitutes important new information because small-flowered morning glory was not previously known to occur in Monterey County.[121] Potentially significant impacts to small-flowered morning glory were not analyzed in the DEIR or FEIR.

Rebuttal to Response 12.A.7

The FEIR incorrectly states that the 2014 plant survey report "provides a source of information for species presence and absence…that encompasses all impact areas."[122] As the FEIR acknowledges, some of the target species that could not be detected in 2013

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[113] FEIR, pp. 2-327 through 2-329, and 3-1 through 3-5.

[114] *Ibid*, p. 2-329.

[115] DEIR, Table 4.4-4.

[116] *Ibid*, Appendix E.6, p. 63 (which exlcudes species based on microhabitat).

[117] *Ibid*, Table 4.4-4 and Appendix E.6. *See also* FEIR, Appendix E.15.

[118] *Ibid*, Table 4.4-4.

[119] FEIR, Appendix E.15, Figure 6c.

[120] *Ibid*, p. 44 and DEIR, Table 4.4-5.

[121] *Ibid*, p. 49.

[122] FEIR, p. 3-5.

were abundant in 2014.[123] The presence and abundance of those species within the majority of the area that will be impacted by the Project remains unknown, because the 2014 surveys focused on: (1) the newly added direct impact areas including a buffer, (2) the BSA (outside of the Project site), and (3) the regional contextual surveys.

Rebuttal to Response 12.A.8

The response to our comment addresses the taxonomic issue, but does not change the fact that this species would not have been properly identified because *L. diabolensis* is closely related to, and difficult to distinguish from to *L. ramosissima*, which was listed as one of the plants detected within the BSA.[124] Due to the recent revisions acknowledged in the County's response, the botanists that conducted the surveys would not have had access to a dichotomous key to distinguish the two species. Consequently, we maintain the position that focused surveys for *L. diabolensis* need to be conducted to evaluate existing conditions and Project impacts.

Rebuttal to Response 12.A.9

The response to our comment does not change the fact that there could still be two more rare plant species occurring within the Project site that were not disclosed or analyzed in the DEIR.

Rebuttal to Response 12.A.37 and 12.A.38

The County's responses fail to address our concerns, especially with regard to how impacts on such large populations would affect each species in terms of its overall abundance (i.e., would impacts resulting from the Project put species survival in jeopardy of extinction as it relates to its overall distribution). As written in the DEIR, rare plant species are discussed only in the context of the vicinity of the Project area, ignoring the narrow distribution of some taxa occurring at the Project site.

Rebuttal to Response 12.A.54

The County's response highlights that a CEQA evaluation for CRPR 4 plant species is appropriate for type localities, peripheral populations, areas where they are uncommon or have sustained heavy losses, or where populations exhibit unusual morphology or occur on unusual substrates. The DEIR fails to evaluate the CRPR 4 plant species occurring on site in this context and the FEIR does not resolve this issue.

Furthermore, the County still has not provided scientific justification for the arbitrary significance thresholds established in the DEIR (i.e., impacts of greater than 10% to CRPR 1B and 30% to CRPR 4 species). The County cannot simply *assume* that impacts to 10% of the population (e.g., to a CRPR 1B species) would not cause the population to

[123] *Ibid*, p. 3-4.

[124] DEIR, Appendix E1, p. A-2.

drop below a self-perpetuating level. Rather, it must establish mitigation that *ensures* the population does not drop below a self-perpetuating level. As currently written, the FEIR allows the Applicant to eliminate over 25,000 round-leaved filaree plants and over 85,000 shining navarretia plants (for example), without any compensatory mitigation.[125] Clearly impacts of this magnitude would "reduce the number of occurrences or individuals," which the County acknowledges is the trigger for mitigation under CEQA. As a result, we maintain the Project would have significant, unmitigated impacts to special-status plant species.

The 2014 plant surveys provide new information regarding the presence and abundance of certain species that was not previously identified in the DEIR. The County failed to recirculate the FEIR and new surveys for a longer review period, thus we had only a limited amount of time to review both the FEIR and the new surveys. However, the information we were able to review confirms our previous comments that the County has failed to establish an accurate environmental setting for rare plants because the survey methods used were severely lacking. Furthermore, the new information reveals even more significant impacts to rare plants than previously admitted in the DEIR. Finally, many of our previous comments were not given an adequate response by the County. Therefore, the FEIR has not adequately identified, analyzed, or mitigated impacts to rare plants from this Project.

CONCLUSION

Based on the issues described in this letter, it is my professional opinion that the County needs to revise and re-circulate the Project's EIR.

Sincerely,

Scott Cashen, M.S.
Senior Biologist

[125] FEIR, Appendix E.15, Table 7.

ATTACHMENT B

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

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January 7, 2015

Laura Horton
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on the California Flats Solar Project Final Environmental Impact Report

Dear Ms. Horton:

We have reviewed the December 2014 California Flats Solar Project Final Environmental Impact Report (FEIR) which includes responses to comments ("Responses") we made on the August 2014 Draft Environmental Impact Report (DEIR).

We have found significant shortcomings in the Responses in the issue areas of Hazards and Hazardous Waste and Air Quality. Significant new information on the presence oil and gas wells was added to the FEIR and we maintain the need for mitigation to address this potential environmental and public health threat. Health risks potentially posed by former agriculture use also need to be more thoroughly evaluated in a revised FEIR. The Responses on Air Quality also fall short and we further substantiate our findings that construction air quality impacts will pose unacceptable health risks to nearby residents that exceed applicable CEQA thresholds of significance. The FEIR should be revised to address our comments and then recirculated to allow for review of the adequacy of the responses and of mitigation that is necessary.

Hazards and Hazardous Waste

In our DEIR comments, we noted that the Hazards and Hazardous Waste section of the DEIR was not substantiated by a Phase I Environmental Site Assessment (ESA). The significance of this omission, as we commented, was the failure to identify the presence of oil and gas wells on the Project site that may pose significant health and environmental risks, if disturbed, during earth-disturbing activities during construction.

In response (Response 12.B.2), the FEIR discloses that a Phase I ESA had been prepared for Project in February 2014 but that the Phase I had not been provided to the County until October 2014, or at least two months after the publication of the DEIR in August 2014. The Phase I, attached to the FEIR as

Appendix N, confirms our findings of the presence of oil and gas wells on the Project site. This is significant new information because it reveals a potentially significant and unmitigated impact that was not previously discussed. Furthermore, the public was not allowed an opportunity to comment on this environmental impact and ways to mitigate or avoid the impact.

Response 12.B.2 discloses "three petroleum wells have been drilled on the site; however, all three wells have been plugged and abandoned." The Responses provide no information about the date of the abandonment of the three petroleum well and no information about the manner of the well abandonment is disclosed.

Prior well abandonment practices were not as protective as current practices required by the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources which were updated in January 2011[1]; therefore, abandoned wells may act as conduits for contamination to move from the surface to underlying soil and groundwater. Older abandonments may also allow for seepage of gas to the surface through poorly sealed wells, posing health and safety risks to constriction workers.

The newly disclosed presence of the three petroleum wells on the Project site is a potentially significant impact that requires mitigation. A revised FEIR should eliminate potential health and environmental risks posed by the three petroleum wells by: (1) locating the wells in the field; (2) documenting the abandonment techniques and the dates of abandonment; and (3) re-abandoning the wells, if necessary, to prevent risks to worker health and safety and to seal off a potential route for contamination to travel from the surface to deeper levels in the subsurface.

Our DEIR comments also identified deficiencies in the evaluation of the potential for pesticide residuals to remain in Project soils at concentration that may pose risks to construction workers and nearby residents. Response 12.B.4 reiterates information about pesticide use from the Monterey County Agricultural Commissioner that was included in the DEIR but does not include an evaluation of past pesticide use which may have involved the use of DDT, DDE, or Dieldrin.

Response 12.B.4 goes on to state

> Based on historical and current land use on the project site, no residual pesticides, herbicides, or other contaminants are anticipated to be found in the soil and/or groundwater. The likelihood that construction workers, operational staff, and/or adjacent sensitive receptors could be exposed to substantial quantities of residual agricultural chemicals in on-site soils is remote.

This conclusion is unsubstantiated by any sampling data. As recommend in our DEIR comments, we recommend soil sampling in areas know to have been cultivated to determine if pesticide residuals exist in soils at concentrations hazardous to health. This conclusion is also unsupported by the February 2014 Phase I ESA which did not consider the potential environmental impacts, including residual pesticide contamination, by former agriculture use at the Project site.

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[1] ftp://ftp.consrv.ca.gov/pub/oil/publications/PRC04_January_11.pdf, Chapter 4. Development, Regulation, and Conservation of Oil and Gas Resources, Subchapter 1. Onshore Well Regulations, Article 3, Section 1723.7

The FEIR should be revised and recirculated to include a mitigation measure to require sampling for pesticides in areas on the Project site where agriculture was practiced. Any detections should be compared to regulatory screening levels to determine if conditions might pose a health hazard to construction crews or to nearby residents during earth-moving activities. If health hazards were to be found, additional mitigation for the excavation and export of contaminated soils should be included in the FEIR.

Air Quality

Recalculated Diesel Particulate Matter Emissions Exceed Thresholds

The FEIR evaluates the screening level health risk assessment we conducted for inclusion with our comment letter on the August 2014 DEIR. Response 12.B.6 concludes our assessment on health risks posed by diesel particulate matter (DPM) emissions from construction activities is flawed in its calculations (p. 2-385). On the basis of this response, we recalculated the potential health risk to the two nearby sensitive receptors and our revised estimates show that construction emissions of DPM would still have a significant and unavoidable impact on these nearby residences. A revised FEIR should be prepared and recirculated to include a more in-depth health risk assessment, along with mitigation measures as necessary, to ensure that excess cancer risks to nearby sensitive receptors do not exceed thresholds.

Our screening level health risk assessment, included with comments on the August 2014 DEIR, was based on the mitigated annual exhaust PM10 value of 2.22 tons/year, a figure we obtained from the CalEEMod output tables in Appendix C.1 of the DEIR[2]. The FEIR states that this value is incorrect because it includes off-site PM10 emissions, which would not contribute to health risks at the residential receptors (p. 2-385). As an alternative, the FEIR determines that "total on-site diesel emissions are estimated at a maximum of 2.0 tons/year" (p. 2-385). Therefore, the emission rate utilized in our updated health risk assessment, calculated below, is 2.0 tons/year.

The FEIR also states that our calculated emission rate of 2.22 tons/year is incorrect because this value is anticipated to occur over a two year period, not one year (p. 2-385). However, our assumption of 12 months of construction was taken directly from the DEIR, specifically from the "Construction Period" table found in Appendix C.1 (p. 61). An excerpt from the DEIR is shown below.

CONSTRUCTION PERIOD

Duration (months)	Development
12 months	Grading (site preparation/clearing/grading), Building Construction (system installation), Building Construction (startup/testing)

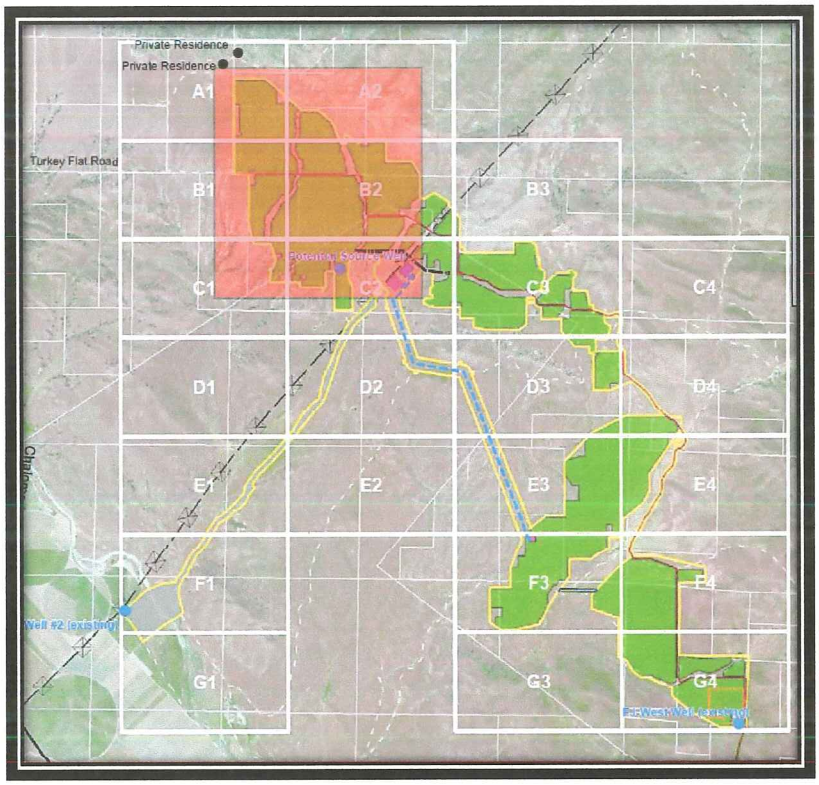
[2] http://www.co.monterey.ca.us/planning/major/California%20Flats%20Solar/DEIR_Vol_II_Appendices_08-2014/Appendix%20C1%20%20Air%20Quality%20and%20Greenhouse%20Gas%20Assessment.pdf

Although the construction phasing is anticipated to occur over 456 work days (Appendix C.1 p. 62), the duration of construction is anticipated to occur over 12 months (Appendix C.1 p. 62). Interpreting this information, we assumed that each construction phase would overlap with some phases of construction occurring concurrently. Therefore, the updated health risk assessment, calculated below, still assumes a construction period of 365 days.[3]

The FEIR states that only 10.3 percent of the solar generating facility area is within one mile of the nearest residential receptor (p. 2-386). Furthermore, the FEIR states that the only construction activities that would occur within a mile of the sensitive receptors are installation of "the solar modules, inverters, and collection systems," and that "actual construction emissions would be more heavily concentrated within the areas of greatest disturbance, such as the substations and switching station..." (p. 2-386). However, the FEIR fails to mention that improvements to the access road, such as widening it by 15 to 30 feet, resurfacing it, paving turnouts for emergency vehicles, etc. would occur throughout the entire Project site, including the section of the site within one mile of the sensitive receptors, and would contribute to DPM emissions (DEIR p. 2-16). Furthermore, a northern substation and a PG&E switching station are anticipated to be located roughly 2 miles away from the sensitive receptors, which were identified by the FEIR as areas with heavily concentrated construction emissions.

In an effort to address these issues, we made two assumptions in conducting an updated health risk assessment in the preparation of these comments: (1) the distance from the Project site to the sensitive receptors was adjusted to two miles, or roughly 3,200 meters; (2) the acreage was adjusted from the entirety of the Project site (roughly 3,000 acres) to the area of the Site within two miles of the sensitive receptors (roughly 1,800 acres), since the FEIR states that the bulk of construction emissions would occur in concentrated areas, such as the substation and switching station locations. Below is the area of the Project site that is roughly two miles away from the sensitive receptors.

[3] It should be noted that even if a construction duration of two years (730 days) was utilized, the cancer risk results would remain the same. The emission rate (g/s) is averaged over the duration of the construction period. Therefore, a two year duration would cut the emission rate in half. AERSCREEN is directly proportional to the emission rate, so the output concentration from the model at 3200 meters would also be cut in half. However, the cancer risk assessment is also averaged over the construction duration. So, although emissions are cut in half, the duration is doubled. This results in no change in the total excess cancer risk.



The FEIR states that the California Air Resources Board's *Air Quality and Land Use Handbook* (April 2005) "does not include short-term construction activity among the list of sources that may be incompatible with nearby sensitive land uses" (p. 2-387). In 2012, however, OEHHA released a *Revised Technical Support Document for Exposure Assessment and Stochastic Analysis*, which describes the types of projects that warrant the preparation of a health risk assessment. Construction of the Project will produce emissions of DPM, a human carcinogen, through the exhaust stacks of construction equipment for approximately twelve months. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.[4] This recommendation reflects the most recently promulgated health risk assessment policy, which will be integrated into the new OEHHA *Guidance Manual for the Preparation of Risk Assessments* to be released sometime early in 2015. As such, an assessment of health risks to nearby residential receptors from Project construction should be included in a revised CEQA evaluation for the Project.

As of 2011, the United States Environmental Protection Agency (USEPA) suggests AERSCREEN as the recommended screening air dispersion model due to improvements in simulating local meteorological conditions based on simple input parameters.[5] The model replaced SCREEN3, which is included in OEHHA[6] and CAPCOA[7] guidance as the appropriate air dispersion model for Level 2 health risk screening

[4] http://www.oehha.ca.gov/air/hot_spots/pdf/2012tsd/Chapter11_2012.pdf
[5] http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf
[6] http://oehha.ca.gov/air/hot_spots/pdf/HRAguidefinal.pdf
[7] http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf

assessments (HRSA). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

The Project's CalEEMod files indicate that mitigated on-site construction activities will generate approximately 2.0 tons, or 4,020 pounds, of DPM over the twelve month construction duration. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downwind concentrations from point, area, and volume emission sources. To account for the variability in construction equipment usage over the three phases of Project construction, we calculated an average DPM emission rate over the anticipated construction duration by the following equation.

$$Emission\ Rate\ \left(\frac{grams}{second}\right) = \frac{4020\ lbs}{365\ days} \times \frac{453.6\ grams}{lb} \times \frac{1\ day}{24\ hours} \times \frac{1\ hour}{3{,}600\ seconds} \approx \mathbf{0.058}\ {}^{g}/_{s}$$

Construction activity was simulated as a rectangular area source in AERSCREEN, with dimensions of 2699 meters by 2699 meters. A release height of three meters was selected to represent the height of exhaust stacks on construction equipment, and an initial vertical dimension of 1.5 meters was used to simulate instantaneous plume dispersion upon release. A rural, cultivated land meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generated maximum reasonable estimates of single-hour downwind DPM concentrations from the Project site. USEPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant may be estimated by multiplying the single-hour concentration by 10%.[8] The maximum single-hour downwind concentration in the AERSCREEN output was approximately 8.82 $\mu g/m^3$ DPM at 3200 meters downwind. The annualized average was estimated to be 0.882 $\mu g/m^3$.

We calculated excess cancer risks to adults, children, and infant receptors for each scenario using applicable HRA methodologies prescribed by OEHHA. OEHHA recommends the use of Age Sensitivity Factors (ASFs) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.[9] According to the revised guidance, quantified cancer risk should be multiplied by a factor of ten during the first two years of life (infant), and by a factor of three for the subsequent fourteen years of life (child aged two until sixteen). The results of our calculations are shown below.

[8] http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf
[9] http://oehha.ca.gov/air/hot_spots/pdf/2012tsd/Chapter11_2012.pdf

Parameter	Description	Units	Adult Exposure	Child	Infant
Cair	Concentration	ug/m3	0.882	0.882	0.882
DBR	Daily breathing rate	L/kg-day	302	581	581
EF	Exposure Frequency	days/year	350	350	350
ED	Exposure Duration	years	1	1	1
AT	Averaging Time	days	25550	25550	25550
	Inhaled Dose	(mg/kg-day)	3.6E-06	7.0E-06	7.0E-06
CPF	Cancer Potency Factor	1/(mg/kg-day)	1.1	1.1	1.1
ASF	Age Sensitivity Factor	-	1	3	10
	Cancer Risk		**4.01E-06**	**2.32E-05**	**7.72E-05**

The excess cancer risk to adults, children, and infants during Project construction are 4.01, 23.2, and 77.2 in one million, respectively.[10] Consistent with OEHHA guidance, exposure was assumed to begin in the infantile stage of life to provide the most conservative estimate of air quality hazards. The infantile exposure of 77.2 excess cancers in one million, and the child exposure of 23.2 excess cancers in one million exceed the District threshold of 10 in one million. Therefore, the Project will result in a significant impact due to the health risks associated with DPM emissions, which was not adequately assessed in either the DEIR or FEIR.

On the basis of our analysis, a refined health risk assessment should be prepared to estimate health impacts from Project construction emissions using site-specific meteorology and equipment usage schedules that are specific to the Project. A refined health risk assessment, disclosing air quality impacts, should be included in revised updated FEIR for the Project, to be recirculated prior to Project approval.

Additional Mitigation for Diesel Particulate Emissions Needs to be Included

Impact AQ-4 in the DEIR states that the Project would not expose sensitive receptors to substantial pollutant concentrations associated with toxic air contaminants, and defines this impact as less than

[10] It should be noted that the cancer risk calculated here is higher than the cancer risk calculations we included in DEIR comments. The FEIR stated that our calculations were flawed, because we assumed consistent emissions from the entire Project area. However, by doing so, we were conservative in our assumptions, because the Project emissions are less concentrated over a central location. The FEIR states that the Project emissions would be more concentrated around the area where the substation and switching station would be located, and would be less concentrated at panel installation locations. The main two stations are being built in the center of the site, or roughly 2 miles away from the sensitive receptors. South of these two stations is one smaller station, and then solar panel fields. Therefore, according to the FEIR comments, emissions would not be concentrated over the southern portion of the site, but rather, within the middle of the site. By concentrating the emissions over the northern portion of the project site, as suggested in the FEIR, and then using a distance of 2 miles away from this center, the DPM emissions become more concentrated, and ultimately lead to a higher cancer risk than we previously calculated.

significant (p. ES-11). Furthermore, it states that no mitigation measures are required. However, the health risk assessment, discussed in the previous section, demonstrates that DPM emissions have a significant impact on nearby sensitive receptors. Therefore, a revised and recirculated FEIR should be prepared to identify mitigation measures, as well as include an updated air quality assessment to ensure that the necessary mitigation measures are implemented to reduce DPM emissions to below thresholds.

Additional construction mitigation measures can be found in CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures,* which attempt to reduce Greenhouse Gas (GHG) levels, as well as reduce pollutants such as DPM.[11] Mitigation for construction DPM emissions should include consideration of the following measures that are proposed in CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures,* in an effort to reduce construction DPM emissions to below thresholds:

- Institute a Heavy-Duty Off-Road Vehicle Plan (C-4). The Project Applicant should provide a detailed plan that discusses a construction vehicle inventory tracking system to ensure compliances with construction mitigation measures. The system should include strategies such as requiring hour meters on equipment, documenting the serial number, horsepower, manufacture age, fuel, etc. of all onsite equipment and daily logging of the operating hours of the equipment.
- Implement a construction vehicle inventory tracking system (C-5). The Project Applicant should provide a detailed plan that discusses a construction vehicle inventory tracking system to ensure compliances with construction mitigation measures. The system should include strategies such as requiring engine run time meters on equipment, documenting the serial number, horsepower, manufacture age, fuel, etc. of all onsite equipment and daily logging of the operating hours of the equipment.

Additional mitigation measures that can be implemented to reduce DPM also include: (1) use of construction equipment with Tier 4 engine technology; and (2) sampling to ensure that PM10 levels do not exceed 50 $\mu g/m^3$.

These measures are more stringent and prescriptive than those measures identified in the FEIR, and provide methods and equipment features, that when combined together, optimize DPM reductions. The addition of these new measures, incorporated with the construction mitigation measures already in place, will reduce the total DPM emissions, potentially to a level that does not exceed thresholds. A revised DEIR should be prepared to include additional mitigation measures, as well as include an updated air quality assessment to ensure that the necessary mitigation measures are implemented to reduce DPM construction emissions to below thresholds.

[11] http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf

Additional Mitigation for Construction Emissions Needs to be Included

Our DEIR comments identified additional mitigation measures to address significant and unavoidable NOx and PM10 construction emissions. The FEIR only incorporates some of the recommendations we made, which include: (1) use of Tier 3 construction equipment; (2) limitations on visible dust emissions; (3) use of Best Available Control Technology (BACT) to reduce ozone precursor emissions from construction equipment; (4) dust suppression measures including watering; and (5) provisions to minimize track-out soil (FEIR p. 2-384). These mitigation measures for the Project still do not reduce the construction emissions to impacts below levels of significance.

The FEIR states that "the required mitigation is consistent with the requirements and recommendations of both MBUAPCD and SLOAPCD, and would reduce the Project's anticipated short-term construction emissions to the maximum extent feasible" (p. 2-384). However, we suggested additional mitigation measures, which were not implemented in the FEIR, to attempt to reduce construction emissions to below a level of significance. Consequently, the FEIR did not reduce the Project's construction emissions to the maximum extent feasible. Mitigation measures we identified, but were not implemented, include: (1) use of construction equipment with Tier 4 engine technology; and (2) sampling to ensure that PM10 levels do not exceed 50 $\mu g/m^3$. Tier 4 engines for construction equipment are commercially available[12] and therefore should be included as mitigation in a revised FEIR. Monitoring upwind and downwind PM10 emissions, to ensure they do not exceed 50 ug/m3, is a common requirement[13] and should be added to the mitigation measures that are included in a revised FEIR.

Sincerely,

Matt Hagemann, P.G., C.Hg.

Jessie Jaeger

[12] http://www.cat.com/en_US/support/operations/technology/tier-4-technology.html
[13] http://www.aqmd.gov/docs/default-source/rule-book/rule-iv/rule-403.pdf?sfvrsn=4, p. 6

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Geologic and Hydrogeologic Characterization
Industrial Stormwater Compliance
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
CEQA Review

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.
B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certification:

California Professional Geologist
California Certified Hydrogeologist
Qualified SSWPP Developer and Practitioner

Professional Experience:

Matt has 25 years of experience in environmental policy, assessment and remediation. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

Matt has worked closely with U.S. EPA legal counsel and the technical staff of several states in the application and enforcement of RCRA, Safe Drinking Water Act and Clean Water Act regulations. Matt has trained the technical staff in the States of California, Hawaii, Nevada, Arizona and the Territory of Guam in the conduct of investigations, groundwater fundamentals, and sampling techniques.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – present;
- Senior Environmental Analyst, Komex H2O Science, Inc (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of numerous environmental impact reports under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions and geologic hazards.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Stormwater analysis, sampling and best management practice evaluation at industrial facilities.
- Manager of a project to provide technical assistance to a comunity adjacent to a former Naval shipyard under a grant from the U.S. EPA.
- Technical assistance and litigation support for vapor intrusion concerns.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.
- Expert witness on two cases involving MTBE litigation.
- Expert witness and litigation support on the impact of air toxins and hazards at a school.
- Expert witness in litigation at a former plywood plant.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.
- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.

- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the dischrge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9. Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, Oxygenates in Water: Critical Information and Research Needs.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt currently teaches Physical Geology (lecture and lab) to students at Golden West College in Huntington Beach, California.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Coloradao.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal repesentatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukanaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examination, 2009-2011.

JESSIE MARIE JAEGER

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Los Angeles CA, 90049

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SUMMARY

Innovative, energetic, driven, and a results oriented leader, with proven success producing quality results in research, student government, and academia. A recipient of the UCLA Bruin Advantage Scholarship, Dean's List honoree, and a leader amongst peers, who uses ambition and passion to effectively develop the skills needed to assess and solve major environmental and conservation issues.

Skills include:

- Execution of Laboratory Techniques (DNA extraction, Tissue Cataloging etc.)
- Understanding of Statistical Models used in Ecology and Conservation Biology
- Experience with programs such as Excel, Microsoft Access, QuickBooks, ArcGIS, AERMOD, CalEEMod, AERSCREEN, and ENVI
- Knowledge of California policies and municipal codes
- Experience in Field Work, including capture of Amphibian species and water sampling within Ballona Watershed
- Steering Committee Coordination and Working Group Management
- Organizational Skills
- Effective Communication Abilities
- Customer Service Experience

PROFESSIONAL EXPERIENCE

SOIL WATER AIR PROTECTION ENTERPRISE, SANTA MONICA, CA **2014 – Present**
SWAPE Technical Consultation, Data Analysis, and Litigation Support

Project Analyst
http://www.swape.com/staff/jessie-jaeger/
Maintain and update national public water system database through use of Microsoft Excel and Access. Other responsibilities include cancer risk assessment calculations, in depth research of environmental issues such as fracking, Leaking Underground Storage Tanks (LUST) and their associated funding programs, groundwater contamination, Proposition 65 formaldehyde test methods, polychlorinated biphenyl (PCB) contamination within schools, and environmental modeling using AERMOD, CalEEMod, AERSCREEN, and ArcGIS.

- Expert understanding of Microsoft Excel and Access, with the ability to manipulate, analyze, and manage large sets of data. Expertise include the creation of queries via Access, utilization of Pivot Tables and statistical functions within Excel, and proficiency in formatting large datasets for use in final reports.
- Mastery of modeling programs such as CalEEMod, AERSCREEN, ArcGIS, as well as the ability to prepare datasets for use within these programs. For example, the conversion of addresses into geographical coordinates through the utilization of Geocode programs.
- Experience in the composition and compilation of final analytical reports and presentations, with proficiency in technical writing, organization of data, and creation of compelling graphics.
- Knowledge of federal and California EPA policies, such as CEQA, accepted methods, and reporting limits, as well as experience with city and county personnel and municipal codes.

UCLA H. BRADLEY SHAFFER LAB, LOS ANGELES, CA 2012 – 2014

Undergraduate Research Assistant

Responsible for phylogenetic prioritization within the Turtles of the World project (TOTW). Methods include obtaining 2-3 tissue samples of every species of turtle on earth, and sequencing them for ~20 independent genes. The results of the TOTW project are being used to create a phylogenetic tree of as many currently existing turtle species as possible. This will allow evolutionary biologists and herpetologists to better understand how turtle taxa are interrelated, and will aid in efforts to conserve threatened turtle species.

- Expert understanding of laboratory techniques, including the amplification of DNA through the method of polymerase chain reactions (PCR), extraction of DNA from tissue, cataloging of tissue samples etc.
- Proficiency in programs such as Excel, Google Earth, and Specify.
- Mastery of laboratory equipment usage, including but not limited to, Thermocyclers, Centrifuges, Nanodrop Machines, Autoclave Devices, and Vortexes.
- Experience in fieldwork, including capture of salamander, turtle, and newt specimens to add to the Shaffer Lab tissue database.

LOS ANGELES REGIONAL COLLABORATIVE, LOS ANGELES, CA 2011-2012
Climate Action and Sustainability, Institute of the Environment, UCLA

Work Group and Event Manager

Responsibility for organization of steering committee meetings, as well as for the organization of the working groups within the collaborative. Maintaining and updating the website, as well as sending out weekly newsletters on behalf of the Collaborative to its members.

- Organized the first Solar Planning working group within the steering committee, which consisted of representatives from universities, government agencies, and private sectors within LA County.
- Coordinated monthly steering committee meetings as well as assisted in the organization of Quarterly Meetings and Sustainability Forums.
- Managed membership, weekly newsletters, website updates, general assistance, and clerical duties.

UNDERGRADUATE STUDENTS ASSOCIATION COUNCIL, UCLA 2012-2013

Academic Wellness Director, Academic Affairs Commissioner (2013)
Student Groups Support Committee Member, Internal Vice President (2012)

USAC's programs offer an invaluable service to the campus and surrounding communities by providing an opportunity for thousands of students to participate in and benefit from these services. Two to three thousand undergraduates participate annually in the more than 20 outreach programs.

- Directed the organization of academic campus programs that provide tools and resources to manage the academic rigors experienced by university students.
- Oversight control of and responsibility for the Academic Wellness committee and all its members.
- Created a Universal Funding application for student groups that facilitates the process of requesting funds to support philanthropic activities.

EDUCATION

Bachelor of Science, Environmental Science
Minor in Conservation Biology
Senior Project, Ballona Watershed Phytoplankton and Water Quality Assessment
University of California Los Angeles, Los Angeles, CA

High School Diploma
Valedictorian, June 2010
Pioneer High School, Woodland, CA

ACCOMPLISHMENTS

Recipient, Bruins Advantage Scholarship, 2010-2014
Academic Honoree, Dean's List, 2013-2014
Life Member, National Honor Society & California Scholarship Federation, 2006-2010
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ATTACHMENT C

Thomas Myers, Ph.D.
Hydrologic Consultant
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January 8, 2015

Laura E. Horton
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
Subject: California Flats Solar Project – Review of FEIR Drainage Analysis and Response to Comments

Dear Ms. Horton:

I have reviewed the hydrologic aspects of the California Flats Solar Project Final Environmental Impact Report (hereinafter FEIR) prepared by the County of Monterey (hereinafter County). I paid particular attention to the responses made by the County to the comments I prepared and you submitted on the DEIR[1]. Specifically, these are comments 12.C.4 to 12.C.8 as presented in the FEIR.

I provided a brief description of my qualification and a copy of my CV with my previous letter.

Summary

My original comments were concerned with the fact that the original analysis assumed the roughness coefficient was too high. This caused the time of concentration to be too high, the flow velocities to be too slow, and ultimately the flow rates to be too low. Higher flow with lower depths will lead to much higher velocity. Higher velocity would lead to much higher erosion rates, including an increased potential for the ephemeral drainages that cross the site to erode and move, potentially undercutting the solar arrays. This would increase the area considered to be hazard level 3. Because it underestimates these factors, the FEIR provides inappropriate disclosure of the risks of erosion at the project site. The construction of solar arrays and modules will exacerbate the problem because their footings will, if placed where water flows, have the effect of hardening the streambanks. The FEIR's conclusion that impacts HYD-4 and HYD-5 are less than significant is not supported by the calculations in the record. My

[1] Letter from Tom Myers to Laura Horton, Adams, Broadwell, Joseph and Cardoza, Re: California Flats Solar Project – Review of FEIR Drainage Analysis, September 18, 2014.

analysis demonstrates that the Project could result in potentially significant impacts due to flooding and erosion that were not adequately addressed in the FEIR. The measures provided in the FEIR to minimize the impacts were based on inaccurate analysis and so are insufficient.

The responses primarily rely on a short new study prepared for the FEIS by Wallace Group (2014) and presented as Appendix Q in the FEIR. This new study essentially just uses a different technique and different judgment on parameters to estimate flow at point G to be lower than that estimate in the DEIR. Because the new estimate is lower than that presented in the DEIR, they consider the FEIR estimate to be "conservative". As described below, the new estimate relies on a simplified methodology that does not require the estimate of roughness coefficient. So, they have simply failed to respond to issues regarding the accuracy of the roughness coefficient estimate (Comment 12.C.4), the initial abstraction (12.C.5), and the resulting effect on erosion (12.C.6 and .7).

Review

Comment 12.C.4

This comment is primarily concerned with the roughness coefficient used by RBF (2013) in estimating the time of concentration for flow from a watershed. The comment suggested that the various "n" values were too high which could lead to longer times of concentration which in turn lowers the estimated flow rate. The comment referenced the guiding documentation for the method and also suggested that RBF provide photographs or other evidence that their choices were accurate.

The response did not discuss the adequacy of the choice of "n" or provide photographs to justify the values that had been used by RBF. Rather the response provided a flow estimate from a different consultant that used a different estimate method (Wallace Group 2014). The response suggests that just because the new consultant's estimate is less than that made by RBF, somehow RBF, and by analogy, the FEIR is "conservative".

The response also claims that "overall conclusions regarding flows are consistent with Wallace Group's field observations", but **there are no field observations referenced or provided**. My original comment suggested that the DEIR provide some photographic support of its "n" values but the response has not included such evidence.

Response 12.C.4 does not address most of the specific points made in the original comment.

Comment 12.C.5

My original comment indicated that the DEIR used an incorrect initial abstraction value based on the curve number. It was a simple error in that RBF (2013) selected an incorrect value from the guiding documentation. Response 12.C.5 does not address the comment or whether the value used was correct but simply suggests that it does not matter and referenced the new analysis completed by Wallace Group and reviewed in Comment 12.C.4. The response correctly states that the variable not be considered in isolation, but continues by stating the initial abstraction "primarily affect runoff volume" and has a small effect on peak flowrate. These statements are made without supporting evidence and simply depend on the size, shape, and other factors of the specific watershed. The response also equates initial abstraction to the "higher infiltration of initial rainfall". This is wrong; initial abstraction is the loss of rainfall to leaves and puddles, not to infiltration. The County therefore not only fails to respond to the comment, but makes scientifically incorrect statements regarding the process of runoff.

Appendix Q contains Wallace Group Supplemental Hydrology Calculations, but the description is incomplete and contains errors, so it is difficult to review. For example, they are completing an example watershed that drains to point G, and on the first page they state the channel length is 1392 feet whereas on the summary page they state it is 13,921 feet. Appendix Q is fraught with simple errors and cannot be used claim the DEIR estimates were correct. Additionally, it provides no references to the methods used.

Additionally, Appendix Q uses a simpler method for calculating time of concentration, the Lag CN method. According to NEL (2010), this method simply uses average basin slope and the curve number as a retardance factor. This "factor" is less scientifically relevant than the Mannings "n" used by RBF (2013). Although both are empirical, "n" specifically refers to roughness in open channel or sheet flow whereas the curve number is a factor of soil type, vegetation type, and land use.

Overall, the County's response is to refute my comment using a less scientifically based estimate. Response 12.C.5 does not address most of the specific points made in the original comment and is therefore not responsive to that comment.

Comment 12.C.6

This comment was an extension of the previous comment regarding the "n" value. Essentially, the comment just raises the question that if the assumed "n" is too high, the estimated flow velocity will be low and the risk factor considered in the DEIR ***may*** be underestimated. The response is completely off-the-mark; it is not relevant whether there were different "n" values used for channels and sheet flow. Also, the response "[a]s described in response to comment

12.C.5, . . . channel n-values are not overestimated" is not correct – their comment concerns initial abstraction, not "channel n-values".

Response 12.C.6 does not address most of the specific points made in the original comment and is therefore not responsive to the comment.

Comment 12.C.7

This comment indicated that the potential erosion could endanger the solar arrays. This was based on the fact that some of the factors as discussed in previous comments could have been wrong and also on the potential for natural erosion processes in ephemeral channels to cause the channels to move without regard to the project.

The response simply states that posts will not be placed in areas that have "hazard level 3" without addressing that those areas could be wrongly established based on the comments above. The same applies to the 4 to 24 inch scour statement; higher velocities which could result due to the uncertainties in estimates discussed in previous comments could cause there to be much more scour. Additionally, the response does not consider the natural erosion processes that occur due to sedimentation and erosion.

Response 12.C.7 does not address most of the specific points made in the original comment and the County has therefore failed to respond appropriately.

Comment 12.C.8

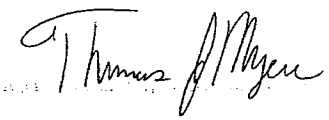
This comment claims that proposed mitigations cannot be effective if based on calculations that may have underestimated the impacts as outlined in my previous comments. The response simply is to restate the response for the previous comments and to claim the mitigations will be effective.

To repeat, mitigation will not protect the site if the impacts are underestimated. Because the County has not adequately responded to comments regarding how the impacts are underestimated, the Project could still present a potentially significant impact that has not been adequately addressed. In addition, there can be no faith placed in the applicant proposed measures provided to minimize impacts, including a future design level drainage analysis and flood-risk and erosion avoidance measures as described in FEIR pages 4-125 to 4-127 and discussed in the next comment.

Additional Comment

The FEIR has amended the mitigation for HYD5 to remove the requirement to prepare a design level drainage analysis and make it an applicant provided measure (FEIR p 4-124 and 4-127). There has been no updated detailed drainage analysis provided as part of the FEIR, therefore its' adequacy cannot be reviewed. The FEIR states in many places that this document will be used to prevent the placement of facilities in various locations based on flow velocity and depth (hazard zones). A design level document would have to include more detailed topographic mapping than any document provided as part of the DEIR so that it can map in detail the location of hazard zone 3; the mapping provided in the FEIR is at far too large a scale to be useful for design. Neither RBF (2013) nor Wallace Group (2014) was sufficiently detailed to qualify as a detailed design. A review by the County's water resources department, as indicated will occur (FEIR, p 4-127) does not substitute for public review or disclosure. Because the detailed drainage analysis has not been made available for the FEIR, the public is not being provide an opportunity to review it.

Sincerely,



Thomas Myers Ph.D.

Hydrologic Consultant

References

National Engineering Laboratory (NEL) 2010 Part 630 Hydrology National Engineering Handbook, Chapter 15 Time of Concentration. US Department of Agriculture, Natural Resources Conservation Service

RBF Consulting (RBF) (2013) California Flats Solar Project, Preliminary Drainage Report. Present as Appendix J.1 in California Flats Solar Project, Draft Environmental Impact Report

Wallace Group (2014) California Flats Solar Project Supplemental Hydrology Calculations. Appendix Q in the FEIR

Tom Myers, Ph.D.
Consultant, Hydrology and Water Resources
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Reno, NV 89523
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Curriculum Vitae

Objective: To provide diverse research and consulting services to nonprofit, government, legal and industry clients focusing on hydrogeology specializing in mine dewatering, contaminant transport, natural gas development, groundwater modeling, NEPA analysis, federal and state regulatory review, and fluvial morphology.

Education

Years	Degree	University
1992-96	Ph.D. Hydrology/Hydrogeology	University of Nevada, Reno Dissertation: Stochastic Structure of Rangeland Streams
1990-92		University of Arizona, Tucson AZ Classes in pursuit of Ph.D. in Hydrology.
1988-90	M.S. Hydrology/Hydrogeology	University of Nevada, Reno Thesis: Stream Morphology, Stability and Habitat in Northern Nevada
1981-83		University of Colorado, Denver, CO Graduate level water resources engineering classes.
1977-81	B.S., Civil Engineering	University of Colorado, Boulder, CO

Professional Experience

Years	Position	Duties
1993-Pr.	Hydrologic Consultant	Completion of hydrogeology studies and testimony focusing on mine dewatering, groundwater modeling, natural gas development, contaminant transport, NEPA review, and water rights for nonprofit groups and government agencies.
1999-2004	Great Basin Mine Watch, Exec Director	Responsible for reviewing and commenting on mining projects with a focus on groundwater and surface water resources, preparing appeals and litigation, organizational development and personnel management.
1992-1997	Univ of NV, Reno, Res. Assoc.	Research on riparian area and watershed management including stream morphology, aquatic habitat, cattle grazing and low-flow and flood hydrology.
1990-1992	U of AZ, Res. and Teach. Assistant	Research on rainfall/runoff processes and climate models. Taught lab sections for sophomore level "Principles of Hydrology". Received 1992 Outstanding Graduate Teaching Assistant Award in the College of Engineering
1988-1990	U of NV, Reno Res. Asst	Research on aquatic habitat, stream morphology and livestock management.
1983-1988	US Bureau of Reclamation Hydraulic Eng.	Performed hydrology planning studies on topics including floodplains, water supply, flood control, salt balance, irrigation efficiencies, sediment transport, rainfall-runoff modeling and groundwater balances.

Peer-Reviewed Publications

Myers, T., 2013. Remediation scenarios for selenium contamination, Blackfoot Watershed, southeast Idaho, USA. *Hydrogeology.* DOI 10.1007/s10040-013-0953-8

Myers, T., 2013. Reservoir loss rates from Lake Powell and their impact on management of the Colorado River. *Journal of the American Water Resources Association.* DOI: 10.1111/jawr.12081.

Myers, T., 2012. Potential contaminant pathways from hydraulically fractured shale to aquifers. *Ground Water* 50(6): 872-882. doi: 10.1111/j.1745-6584.2012.00933.x

Myers, T., 2009. Groundwater management and coal-bed methane development in the Powder River Basin of Montana. *J Hydrology* 368:178-193.

Myers, T.J. and S. Swanson, 1997. Variation of pool properties with stream type and ungulate damage in central Nevada, USA. *Journal of Hydrology* 201-62-81

Myers, T.J. and S. Swanson, 1997. Precision of channel width and pool area measurements. *Journal of the American Water Resources Association* 33:647-659.

Myers, T.J. and S. Swanson, 1997. Stochastic modeling of pool-to-pool structure in small Nevada rangeland streams. *Water Resources Research* 33(4):877-889.

Myers, T.J. and S. Swanson, 1997. Stochastic modeling of transect-to-transect properties of Great Basin rangeland streams. *Water Resources Research* 33(4):853-864.

Myers, T.J. and S. Swanson, 1996. Long-term aquatic habitat restoration: Mahogany Creek, NV as a case study. *Water Resources Bulletin* 32:241-252

Myers, T.J. and S. Swanson, 1996. Temporal and geomorphic variations of stream stability and morphology: Mahogany Creek, NV. *Water Resources Bulletin* 32:253-265.

Myers, T.J. and S. Swanson, 1996. Stream morphologic impact of and recovery from major flooding in north-central Nevada. *Physical Geography* 17:431-445.

Myers, T.J. and S. Swanson, 1995. Impact of deferred rotation grazing on stream characteristics in Central Nevada: A case study. *North American Journal of Fisheries Management* 15:428-439.

Myers, T.J. and S. Swanson, 1992. Variation of stream stability with stream type and livestock bank damage in northern Nevada. *Water Resources Bulletin* 28:743-754.

Myers, T.J. and S. Swanson, 1992. Aquatic habitat condition index, stream type, and livestock bank damage in northern Nevada. *Water Resources Bulletin* 27:667-677.

Zonge, K.L., S. Swanson, and T. Myers, 1996. Drought year changes in streambank profiles on incised streams in the Sierra Nevada Mountains. *Geomorphology* 15:47-56.

Representative Reports and Projects

Myers, T., 2014. Expert Report:: In the Matter of California Department of Parks and Recreation v.

Newmont Mining Corporation, et al. Prepared for the California Department of Justice, February 2014.

Myers, T., 2014. Groundwater Flow and Transport Modeling, NorthMet Mine and Plant Site. Prepared for the Minnesota Center for Environmental Advocacy.

Myers, T., 2014. Review of the Water Quality Modeling, NorthMet Mine and Plant Site, Minnesota. Prepared for Minnesota Center for Environmental Advocacy.

Myers, T. 2014. Technical Memorandum: Review of the Hydrogeologic Aspects of the Draft Environmental Impact Statement, Haile Gold Mine, Lancaster County, South Carolina. Prepared for Southern Environmental Law Center, May 8 2014.

Myers, T., 2014. Technical Memorandum: Review of the Supplemental Draft Environmental Impact Statement, NorthMet Mining Project and Land Exchange. Prepared for Minnesota Center for Environmental Advocacy. March 10, 2014

Myers, T. 2014. Technical Memorandum: Twin Metals and the Boundary Waters Canoe Area Wilderness, Risk Assessment for Underground Metals Mining. Prepared for Northeastern Minnesotans for Wilderness. August 8 2014

Myers, T. 2012-3. Participation in EPA Potential Impacts of Hydraulic Fracturing on Drinking Water Resources Study. US Environmental Protection Agency, Washington DC.

Myers, T., 2013. DRAFT: Chapter 5.1: Water Quality. Initiative for Responsible Mining.

Myers, T., 2013. DRAFT: Chapter 5.2: Water Quantity. Initiative for Responsible Mining.

Myers, T., 2013. Technical Memorandum: Comments on Encana Oil and Gas Inc.'s Application for the Madison Aquifer to be Exempt Wyoming Oil and Gas Conservation Commission Docket No. 3-2013. Prepared for Natural Resources Defense Council, Powder River Basin Council. June 12, 2013.

Myers, T. 2013. Technical Memorandum: Impact Analysis: Wishbone Hill Water Right Application. Prepared for Trustees for Alaska

Myers, T, 2013. Technical Memorandum: Review of Montanore Mine Dewatering Instream Flow Methodology. Prepared for Save our Cabinets, Earthworks. March 26, 2013

Myers, T. 2012. Technical Memorandum: Chuitna Coal Mine Project, Review of Arcadis DRAFT Hydrogeologic Conceptual Site Model Update and Associated Documents. Prepared for Cook Inletkeeper. May 11, 2012.

Myers, T., 2012. Technical Memorandum, Review of DRAFT: Investigation of Ground Water Contamination near Pavillion Wyoming Prepared by the Environmental Protection Agency, Ada OK. April 19, 2012.

Myers, T., 2012. Participation in: Keystone Center Independent Science Panel, Pebble Mine. Anchorage AK, October 1-5, 2012.

Myers, T., 2012. Technical Memorandum, Review and Analysis, Revised Draft, Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program, Well

Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs. Prepared for Natural Resources Defense Council.

Myers, T., 2012. Technical Memorandum, Review of the Special Use Permit PP2011-035-Camilletti 21-10, Groundwater Monitoring Requirements. Prepared for Routt County Board of Commissioners and the Routt County Planning Department. June 19, 2012.

Myers, T., 2012. Testimony at Aquifer Protection Permit Appeal Hearing, Rosemont Mine. Phoenix AZ, August and September, 2012.

Myers, T., 2012. Drawdown at U.S. Forest Service Selected Monitoring Points, Myers Rosemont Groundwater Model Report. Prepared for Pima County, AZ. March 22, 2012.

Myers, T. 2011. Baseflow Conditions in the Chuitna River and Watersheds 2002, 2003, and 2004 and the Suitability of the Area for Surface Coal Mining. January 14, 2011.

Myers, T., 2011. Hydrogeology of Cave, Dry Lake and Delamar Valleys, Impacts of pumping underground water right applications #53987 through 53092. Presented to the Office of the Nevada State Engineer On behalf of Great Basin Water Network.

Myers, T., 2011. Hydrogeology of Spring Valley and Surrounding Areas, Part A: Conceptual Flow Model. Presented to the Nevada State Engineer on behalf of Great Basin Water Network and the Confederated Tribes of the Goshute Reservation.

Myers, T., 2011. Hydrogeology of Spring Valley and Surrounding Areas, Part B: Groundwater Model of Snake Valley and Surrounding Area. Presented to the Nevada State Engineer on behalf of Great Basin Water Network and the Confederated Tribes of the Goshute Reservation.

Myers, T., 2011. Hydrogeology of Spring Valley and Surrounding Areas, PART C: IMPACTS OF PUMPING UNDERGROUND WATER RIGHT APPLICATIONS #54003 THROUGH 54021. Presented to the Nevada State Engineer on behalf of Great Basin Water Network and the Confederated Tribes of the Goshute Reservation.

Myers, T., 2011. Rebuttal Report: Part 2, Review of Groundwater Model Submitted by Southern Nevada Authority and Comparison with the Myers Model. Presented to the Nevada State Engineer on behalf of Great Basin Water Network and the Confederated Tribes of the Goshute Reservation.

Myers, T. 2011. Rebuttal Report: Part 3, Prediction of Impacts Caused by Southern Nevada Water Authority Pumping Groundwater From Distributed Pumping Options for Spring Valley, Cave Valley, Dry Lake Valley, and Delamar Valley. Presented to the Nevada State Engineer on behalf of Great Basin Water Network and the Confederated Tribes of the Goshute Reservation.

Myers, T., 2011. Baseflow Selenium Transport from Phosphate Mines in the Blackfoot River Watershed Through the Wells Formation to the Blackfoot River, Prepared for the Greater Yellowstone Coalition.

Myers, T., 2011. Blackfoot River Watershed, Groundwater Selenium Loading and Remediation. Prepared for the Greater Yellowstone Coalition.

Myers, T., 2011. Technical Memorandum Review of the Proposed Montanore Mine Supplemental Draft

Environmental Impact Statement and Supporting Groundwater Models

Myers, T., 2010. Planning the Colorado River in a Changing Climate, Colorado River Simulation System (CRSS) Reservoir Loss Rates in Lakes Powell and Mead and their Use in CRSS. Prepared for Glen Canyon Institute.

Myers, T., 2010. Technical Memorandum, Updated Groundwater Modeling Report, Proposed Rosemont Open Pit Mining Project. Prepared for Pima County and Pima County Regional Flood Control District

Myers, T., 2009. Monitoring Groundwater Quality Near Unconventional Methane Gas Development Projects, A Primer for Residents Concerned about Their Water. Prepared for Natural Resources Defense Council. New York, New York.

Myers, T., 2009. Technical Memorandum, Review and Analysis of the Hydrology and Groundwater and Contaminant Transport Modeling of the Draft Environmental Impact Statement Blackfoot Bridge Mine, July 2009. Prepared for Greater Yellowstone Coalition, Idaho Falls, Idaho.

Myers, T., 2008. Hydrogeology of the Carbonate Aquifer System, Nevada and Utah With Emphasize on Regional Springs and Impacts of Water Rights Development. Prepared for: Defenders of Wildlife, Washington, D.C.. June 1, 2008.

Myers, T., 2008. Hydrogeology of the Muddy River Springs Area, Impacts of Water Rights Development. Prepared for: Defenders of Wildlife, Washington, D.C. May 1, 2008

Myers, T., 2008. Hydrogeology of the Santa Rita Rosemont Project Site, Numerical Groundwater Modeling of the Conceptual Flow Model and Effects of the Construction of the Proposed Open Pit, April 2008. Prepared for: Pima County Regional Flood Control District, Tucson AZ.

Myers, T., 2008. Technical Memorandum, Review, Record of Decision, Environmental Impact Statement Smoky Canyon Mine, Panels F&G, U.S. Department of the Interior, Bureau of Land Management. Prepared for Natural Resources Defense Council, San Francisco, CA and Greater Yellowstone Coalition, Idaho Falls, ID. Reno NV.

Myers, T., 2007. Groundwater Flow and Contaminant Transport at the Smoky Canyon Mine, Proposed Panels F and G. Prepared for Natural Resources Defense Council, San Francisco, CA and Greater Yellowstone Coalition, Idaho Falls, ID. Reno NV. December 11, 2007.

Myers, T., 2007. Hydrogeology, Groundwater Flow and Contaminant Transport at the Smoky Canyon Mine, Documentation of a Groundwater Flow and Contaminant Transport Model. Prepared for Natural Resources Defense Council, San Francisco, CA and Greater Yellowstone Coalition, Idaho Falls, ID. Reno NV, December 7, 2007.

Myers, T., 2007. Review of Hydrogeology and Water Resources for the Final Environmental Impact Statement, Smoky Canyon Mine, Panels F and G and Supporting Documents. Prepared for Natural Resources Defense Council, San Francisco, CA and Greater Yellowstone Coalition, Idaho Falls, ID. Reno, NV. December 12, 2007.

Myers, T., 2007. Hydrogeology of the Powder River Basin of Southeast Montana Development of a Three-Dimensional Groundwater Flow Model. Prepared for Northern Plains Resource Council. February 12 2007.

Myers, T., 2007. Hydrogeology of the Santa Rita Rosemont Project Site, Conceptual Flow Model and Water Balance, Prepared for: Pima County Flood Control District, Tucson AZ

Myers, T., 2006. Review of Mine Dewatering on the Carlin Trend, Predictions and Reality. Prepared for Great Basin Mine Watch, Reno, NV

Myers, T., 2006. Hydrogeology of Spring Valley and Effects of Groundwater Development Proposed by the Southern Nevada Water Authority, White Pine and Lincoln County, Nevada. Prepared for Western Environmental Law Center for Water Rights Protest Hearing.

Myers, T., 2006. Potential Effects of Coal Bed Methane Development on Water Levels, Wells and Springs of the Pinnacle Gas Resource, Dietz Project In the Powder River Basin of Southeast Montana. Affidavit prepared for Northern Plains Resource Council, April 4 2006.

Myers, T., 2006. Review of Hydrogeology and Water Resources for the Draft Environmental Impact Statement, Smoky Canyon Mine, Panels F and G, Technical Report 2006-01-Smoky Canyon. Prepared for Natural Resources Defense Council.

Myers, T., 2006. Review of Nestle Waters North America Inc. Water Bottling Project Draft Environmental Impact Report / Environmental Assessment. Prepared for McCloud Watershed Council, McCloud CA.

Myers, T., 2005. Hydrology Report Regarding Potential Effects of Southern Nevada Water Authority's Proposed Change in the Point of Diversion of Water Rights from Tikapoo Valley South and Three Lakes Valley North to Three Lakes Valley South. Prepared for Western Environmental Law Center for Water Rights Protest Hearing

Myers, T., 2005. Review of Draft Supplemental Environmental Impact Statement, Ruby Hill Mine Expansion: East Archimedes Project NV063-EIS04-34, Technical Report 2005-05-GBMW. Prepared for Great Basin Mine Watch.

Myers, T., 2005. Hydrogeology of the Powder River Basin of Southeast Montana, Development of a Three-Dimensional Groundwater Flow Model. Prepared for Northern Plains Resource Council, Billings, MT in support of pending litigation.

Myers, T., 2005. Nevada State Environmental Commission Appeal Hearing, Water Pollution Control Permit Renewal NEV0087001, Big Springs Mine. Prepared for Great Basin Mine Watch, Reno NV.

Myers, T., 2005. Potential Effects of Coal Bed Methane Development on Water Levels, Wells and Springs In the Powder River Basin of Southeast Montana. Prepared for Northern Plains Resource Council, Billings, MT.

Myers, T., 2004. An Assessment of Contaminant Transport, Sunset Hills Subdivision and the Anaconda Yerington Copper Mine, Technical Report 2004-01-GBMW. Prepared for Great Basin Mine Watch.

Myers, T., 2004. Technical Memorandum: Pipeline Infiltration Project Groundwater Contamination. Prepared for Great Basin Mine Watch.

Myers, T., 2004. Technical Report Seepage From Waste Rock Dump to Surface Water The Jerritt Canyon Mine, Technical Report 2004-03-GBMW. Prepared for Great Basin Mine Watch.

Myers, T., 2001. An Assessment of Diversions and Water Rights: Smith and Mason Valleys, NV. Prepared for the Bureau of Land Management, Carson City, NV.

Myers, T., 2001. Hydrogeology of the Basin Fill Aquifer in Mason Valley, Nevada: Effects of Water Rights Transfers. Prepared for the Bureau of Land Management, Carson City, NV.

Myers, T., 2001. Hydrology and Water Balance, Smith Valley, NV: Impacts of Water Rights Transfers. Prepared for the Bureau of Land Management, Carson City, NV

Myers, T., 2000. Alternative Modeling of the Gold Quarry Mine, Documentation of the Model, Comparison of Mitigation Scenarios, and Analysis of Assumptions. Prepared for Great Basin Mine Watch. Center for Science in Public Participation, Bozeman MT.

Myers, T., 2000. Environmental and Economic Impacts of Mining in Eureka County. Prepared for the Dept. Of Applied Statistics and Economics, University of Nevada, Reno.

Myers, T., 1999. Water Balance of Lake Powell, An Assessment of Groundwater Seepage and Evaporation. Prepared for the Glen Canyon Institute, Salt Lake City, UT.

Myers, T., 1998. Hydrogeology of the Humboldt River: Impacts of Open-pit Mine Dewatering and Pit Lake Formation. Prepared for Great Basin Mine Watch, Reno, NV.

Selected Abstracts, Magazine and Proceedings Articles

Myers, T., 2014. Reservoir Loss Rates, Lakes Mead and Powell and Fill Mead First. INVITED PRESENTATION at 2014 Future of the Colorado Plateau Forum – Drought and the Colorado River. http://musnaz.org/educational-programs/public-programs/future-of-the-colorado-plateau-forums/

Myers, T., 2013. Three-dimensional Groundwater and Contaminant Flow around Marcellus Gas Development. INVITED PRESENTATION at 2013 Associated Engineering Geologists Conference, Seattle WA.

Myers, T., 2012. Mine Dewatering: Humboldt River Update. INVITED PRESENTATION at 2012 Nevada Water Resources Association Annual Conference.

Myers, T., 2012. Reservoir loss rates from Lake Powell, and long-term management of the Colorado River system. 2012 Nevada Water Resources Association Annual Conference

Myers, T., 2011. Reservoir loss rates from Lake Powell, and long-term management of the Colorado River system. 2011 Fall Conference, American Geophysical Union.

Myers, T., 2006. Modeling Coal Bed Methane Well Pumpage with a MODFLOW DRAIN Boundary. In MODFLOW and More 2006 Managing Ground Water Systems, Proceedings. International Groundwater Modeling Center, Golden CO. May 21-24, 2006.

Myers, T., 2006. Proceed Carefully: Much Remains Unknown, *Southwest Hydrology 5(3)*, May/June 2006, pages 14-16.

Myers, T., 2004. Monitoring Well Screening and the Determination of Groundwater Degradation, Annual Meeting of the Nevada Water Resources Association, Mesquite, NV. February 27-28, 2004.

Myers, T., 2001. Impacts of the conceptual model of mine dewatering pumpage on predicted fluxes and drawdown. In MODFLOW 2001 and Other Modeling Odysseys, Proceedings, Volume 1. September 11-14, 2001. International Ground Water Modeling Center, Golden, Colorado.

Myers, T., 1997. Groundwater management implications of open-pit mine dewatering in northern Nevada. In Kendall, D.R. (ed.), Conjunctive Use of Water Resources: Aquifer Storage and Recovery. AWRA Symposium, Long Beach California. October 19-23, 1997

Myers, T., 1997. Groundwater management implications of open-pit mine dewatering in northern Nevada. In Life in a Closed Basin, Nevada Water Resources Association, October 8-10, 1997, Elko, NV.

Myers, T., 1997. Uncertainties in the hydrologic modeling of pit lake refill. American Chemical Society Annual Meeting, Las Vegas, NV, Sept. 8-12, 1997.

Myers, T., 1997. Use of groundwater modeling and geographic information systems in water marketing. In Warwick, J.J. (ed.), Water Resources Education, Training, and Practice: Opportunities for the Next Century. AWRA Symposium, Keystone, Colo. June 29-July 3, 1997.

Myers, T., 1995. Decreased surface water flows due to alluvial pumping in the Walker River valley. Annual Meeting of the Nevada Water Resources Association, Reno, NV, March 14-15, 1995.

Special Coursework

Years	Course	Sponsor
2011	Hydraulic Fracturing of the Marcellus Shale	National Groundwater Association
2008	Fractured Rock Analysis	MidWest Geoscience
2005	Groundwater Sampling Field Course	Nielson Environmental Field School
2004	Environmental Forensics	National Groundwater Association
2004 and -5	Groundwater and Environmental Law	National Groundwater Association

ATTACHMENT D

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RACHAEL E. KOSS
JAMIE L. MAULDIN
MEGHAN A. QUINN
ADAM J. REGELE
ELLEN L. TRESCOTT

December 24, 2014

Via U.S. Mail and Electronic Mail

John Ford, Services Manager
Resource Management Agency Planning Department
Monterey County
168 W. Alisal Street @ Capitol, 2nd Floor
Salinas, CA 93901
Email: FordJH@co.monterey.ca.us

CC: Jacquelyn Nickerson, Public Records
Email: nickersonj@co.monterey.ca.us

Re: Request for Documents under CEQA – California Flats Solar Energy Facility (PLN120294; SCH#2013041031)

Dear Mr. Ford and Ms. Nickerson:

We are writing on behalf of the Monterey County Residents for Responsible Development to request *immediate access* to the following documents referenced in the Final Environmental Impact Report for the California Flats Solar Energy Facility ("Project"):[1]

- Browder, Christopher. Deputy Chief, Environmental Protection, CAL FIRE. Personal Communication. September 22, 2014.

- Chardavoyne, David E., Monterey County Water Resources Agency. California Solar Flats (PLN 120294) DEIR response to comments on flooding hazards. October 2, 2014.

[1] http://www.co.monterey.ca.us/planning/major/California%20Flats%20Solar/California_Flats_Solar.htm.

- Wallace Group, California Flats Solar Project, 404-1b Drainage Crossings, March 28, 2014.

- First Solar, Sarnia Solar Power Plant Air Temperature Variation Analysis: Interim Results, March 15, 2010.

- Hamilton, Mary. Environmental Scientist. Central Coast Regional Water Quality Control Board. Email Communication. October 28, 2014.

- Elliot, P., G. Shaddick, M. Douglass, K. de Hoogh, DJ Briggs, and MB Toledano, Adult Cancers Near High-Voltage Overhead Power Lines, Epidemiology, 24(2): 184- 190, March 2013.

This request for materials referenced or relied upon in the Final EIR is made pursuant to the California Environmental Quality Act ("CEQA"), Pub. Resources Code, §§ 21000 et seq., which requires that all documents referenced in an environmental review document be made available to the public.[2] This request is also made pursuant to Article I, section 3(b) of the California Constitution, which provides a Constitutional right of access to information concerning the conduct of government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to information shall be narrowly construed.

We will pay for any direct costs of duplication associated with filling this request up to $200. However, please contact me at (650) 589-1660 with a cost estimate before copying/scanning the materials.

Pursuant to Government Code Section 6253.9, if the requested documents are in electronic format and are 10 MB or less (or can be easily broken into sections of 10 MB or less), please email them to me as attachments.

[2] *See* Pub. Resources Code, § 21092, subd. (b)(1); *see also* 14 Cal. Code Reg. § 15072, subd. (g)(4).

My contact information is:

U.S. Mail

Laura E. Horton
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Email

lhorton@adamsbroadwell.com

Please call me if you have any questions. Thank you for your assistance with this matter.

Sincerely,

Laura E. Horton/ljl
Laura E. Horton

LEH:ljl

G-3

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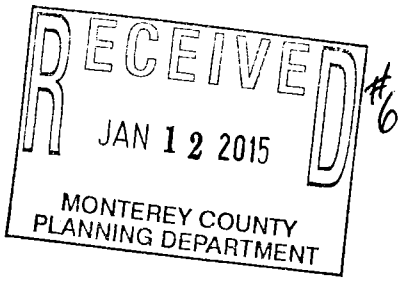
Kathleen D. Lambeth
6465 Via Escondida
San Miguel, CA 93451



#6

January 11, 2015

Monterey County Planning Commission
Resource Management Agency
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: California Flats Solar Project
Public Hearing, January 14, 2015

Dear Commissioners:

I am responding to the Final Environmental Impact Report (FEIR) on the California Flats Solar Project. I continue to be opposed to this project being constructed on the proposed site for a variety of reasons and urge the Planning Commission to deny a permit for this project. My reasons for this follow.

I have read the objections to this project from a number of experts in the fields of wildlife preservation, plant science, environmental health and safety, and medical science. I have also read the responses to the experts' comments made by proponents of this project. While I am not an expert in any of these fields, I can read and I have common sense. This proposed project will be responsible for the deaths of large numbers of birds, kill or displace other animals, disturb the natural environment of a number of endangered and protected species and will turn a beautiful grassland, including a wetland (whatever happened to the Wetlands Preservation Act?), into an ugly environmental disaster. I am not convinced by the responses of the proponents of this project to the expert commentators. Responding by saying, in some instances, that the objections of commenters to this project are not matters the developers of this project are required to consider is not a compelling argument. Should the County of Monterey not be concerned about issues raised regarding the destruction of a beautiful grassland and wetland? Should the County of Monterey not be concerned about the amount of water it will take to control dust from this project, given the fact that we are experiencing a severe drought? Should the County of Monterey be willing to approve a project that will endanger the health of construction workers, neighbors of the proposed project as well as the health of people who are passing near the project? All of these things are very likely to happen. Does the County of Monterey want to be have the blood of animals and, possibly, human beings on their hands? How many such deaths are acceptable to the County? The answer should be none.

One of the specific dangers of this proposed project that cannot be mitigated is the deaths of numerous species of birds that will be incinerated or fatally injured a they fly over the solar panels. This is happening in large numbers at the Ivanpah Solar Project will happen at this project as well and cannot be mitigated. (See "Google Kills Birds", The Wall Street Journal, September 26, 2014, enclosed.) Is that acceptable to the

County of Monterey? I would hope not. Degradation of the natural environment of the San Joaquin Kit Fox, the golden eagle, the bald eagle, various other birds, various reptiles, badgers, pronghorns, among other animals will, without doubt, occur. Is this something the County of Monterey wants to approve? I would hope not.

Another danger of this project is the exposure to Valley Fever of the construction workers as well as neighbors of the project and people passing by on roads near the proposed project, such as Hwy 41 and other smaller roads. Valley Fever is treated in this report like it is no big deal. In reality, some people die of Valley Fever. Most who contract it do not die from it immediately. There is, however, no cure for Valley Fever (see "Valley Fever Connections" from FirstGov.gov, enclosed). A person who contracts it has it for life and can experience flare ups and even death from Valley Fever later in their lives. Is this a risk to which the County of Monterey is willing to expose people? **On the FirstGov.com web site, there is even an article entitled "Valley Fever Cases Prompt Health Warnings" which describes a warning put out by <u>your own Monterey County health officials</u> (also enclosed).** I would hope the County of Monterey would not want to go on record approving a project which could, very likely, increase the incidences of this disease after they have issued a health warning regarding Valley Fever which is on the rise in Monterey County.

The various mitigation strategies described by the proponents of this project will not and cannot eliminate the environmental destruction which will occur. Ask yourselves, do you really want to go on record saying it is okay to kill some animals, endanger the health of people and ruin a beautiful natural environment in the name of "green energy"? I ask you, what is "green" about destroying a grassland, wetland and the lives of animals, some of which are endangered species? Not only that, but you cannot mitigate ugly. This project will be ugly.

I am aware that the motivation of the developers of this project is huge sums of money. The federal government subsidizes producers of solar energy at the rate of $775.64 for every megawatt hour of electricity produced by solar energy. In 2010, this amounted to **$968,000,000.00 taxpayer dollars**. (Source: U.S. Department of Energy and Institute for Energy Research, 2011). Please see the enclosed opinion piece from the Wall Street Journal, August 8, 2012, entitled "The Energy Subsidy Tally." I am sure millions of Americans do not want their tax dollars going to subsidize very wealthy companies as this project will do. The federal government has already shown its stupidity in choosing solar companies to subsidize with taxpayer dollars. Think of Solyndra, among others.

You have many pages of responses to the Draft Environmental Impact Report (DEIR) by various environmental experts with impressive credentials. In the FEIR you also have the non-compelling responses to the experts' comments by those who have a huge amount of money to gain by this project being approved and the subsequent "corporate welfare" they will reap. I would hope you would give the environmental experts more credibility as their motivation is to protect the environment, plants and animals, not to make billions of dollars at taxpayers' expense. I realize the County of Monterey has money to gain from this project. I hope you will not allow that to cloud your judgment in this matter.

I am enclosing an article from the Nature Conservancy on the significant environmental problems with the Ivanpah Solar Project. I am also enclosing articles regarding Valley

Fever and dangers to wildlife caused by large solar projects like the one you are considering for approval, some of which I have cited above. I am requesting these articles be admitted to the record regarding this proposed project.

I would also like to speak at your January 14th meeting in Salinas. Please put me on the roster of speakers.

Sincerely,

Kathleen D. Lambeth

Enc.: "Place in the Sun," Nature Conservancy magazine, October/November 2014
"The Energy Subsidy Tally," The Wall Street Journal, August 8, 2012
"Google Kills Birds," The Wall Street Journal, September 26, 2014
"Valley Fever Connections," FirstGov.gov includes:
"Pro Golfer Greg Kraft Still Fights Valley Fever"
"Governor Proposes Valley Fever Fund"
"Valley Fever Reaches Epidemic Level"
"State Health Money Goes Toward Combating Valley Fever"
"Valley Fever Numbers Increasing"
"Valley Fever Cases Prompt Health Warning" (County of Monterey warning)
"Advice to Employers and Employees Regarding Work-related Valley Fever," CA.gov
"Valley Fever Outbreak in California Desert," DailyRx.com, May 3, 2013

Google Kills Birds

Our headline has the virtue of being true—as we will explain—unlike Google executive chairman Eric Schmidt's assertion this week that people who oppose government subsidies for green energy are liars. The real charlatans are businesses like Google that use climate change as a pretext for corporate welfare.

> The mercenary motives behind Eric Schmidt's appeal to green virtue.

Google, whose motto is "Don't Be Evil," announced on Monday that it is quitting the American Legislative Exchange Council (ALEC) because of the conservative outfit's putative denial of climate change. "Everyone understands climate change is occurring," said Mr. Schmidt. "And the people who oppose it are really hurting our children and our grandchildren and making the world a much worse place. And so we should not be aligned with such people—they're just, they're just literally lying."

In fact, ALEC takes no position on the substance of climate change. ALEC provides a forum for sundry businesses to discuss free-market reforms with state lawmakers. Two of its policy targets are renewable-energy mandates and subsidies, which are being exploited by big businesses like Google at the expense of low- and middle-income taxpayers. Google's real problem with ALEC is a conflict of pecuniary interests.

Consider Google's pledge to fund over $1.5 billion in non fossil-fuel energy. Yet Google derives most of its energy from non-renewables on the grid because it says that "while our data centers operate 24/7, most renewable energy sources don't." Data centers consume a lot of power, and renewables can cost three times as much as fossil fuels. It's no coincidence that Google's server in Iowa is located near one of the cheapest sources of coal-fired power in the Midwest.

Also not a coincidence is that nearly all of Google's solar and wind farms are located in states with renewable-energy mandates, which create opportunities for politically mediated profit-making. For instance, California requires that renewables make up a third of electricity by 2020. Google has invested about $600 million in California's solar plants such as the Ivanpah system in California's Mojave Desert. Ivanpah is the world's largest solar-thermal project, which is the target of environmentalists.

Dozens of federally protected desert tortoises have been displaced or killed. The Center for Biological Diversity estimates that Ivanpah's "power towers"—which burn natural gas—incinerate about 28,000 birds annually. The death toll is disputed by others, but Google has made taxpayers complicit in its avian-cide. The $2.2 billion bird fryer was funded with a $1.6 billion federal loan, which Google and its business partners plan to repay by applying for a federal *grant*.

The do-no-evil company has invested $157 million in a wind farm in California's Tehachapi Mountains, which has killed thousands of birds including federally protected golden eagles. Google's renewable portfolio includes a $275 million investment in two wind farms in Texas that are partly responsible for the construction of $7 billion in new transmission lines. The Texas Public Utility Commission estimates the lines will cost ratepayers on average $72 per year. Google has about $60 billion in cash and short-term investments sitting on its balance sheet.

Most of Google's renewable investments qualify for a federal investment tax credit that covers 30% of the cost. Its $450 million investment in rooftop solar-systems also benefits from state incentives such as "net-metering" laws. This hidden subsidy compensates ratepayers for power they remit to the grid at the retail rate, which can be three times as much as the wholesale price of electricity. Net-metering allows solar companies to charge higher rates to homeowners who lease their panels, and thus for investors like Google to reap larger profits.

ALEC as well as the right-wing radicals at the Natural Resources Defense Council and National Black Caucus of State Legislators have encouraged states to ensure that all ratepayers under net metering pay their share for maintaining the grid.

The point is that Google behaves like all other self-interested businesses—which also means that it bends to the political winds. Unions and progressive groups have been bullying corporations for years to abandon ALEC so the left has less political and intellectual opposition in the 50 state capitals. Earlier this month they wrote to Google denouncing ALEC's "extreme views," which "include denying climate change."

Perhaps Google figured it could gain political benefit by joining the liberal smear campaign against ALEC. But Mr. Schmidt shouldn't disguise his company's mercenary motives behind false and trendy appeals to green political virtue.

REVIEW & OUTLOOK

The Energy Subsidy Tally

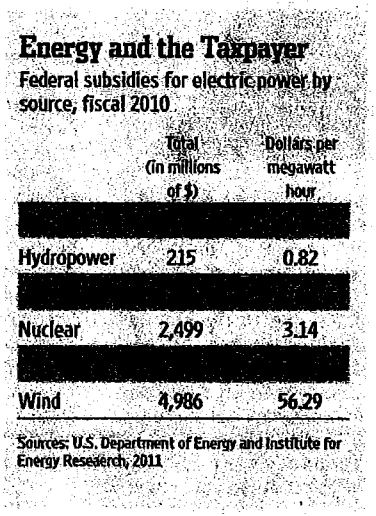
President Obama traveled to Iowa Tuesday and touted wind energy subsidies as the path to economic recovery. Then he attacked Mitt Romney as a tool of the oil and gas industry. "So my attitude is let's stop giving taxpayer subsidies to oil companies that don't need them, and let's invest in clean energy that will put people back to work right here in Iowa," he said. "That's a choice in this election."

Wind and solar get the most taxpayer help for the least production.

There certainly is a subsidy choice in the election, but the facts are a lot different than Mr. Obama portrays them. What he isn't telling voters is how many tax dollars his Administration has already steered to wind and solar power, and how much more subsidized they are than other forms of electricity generation.

The facts come in a 2011 report from Mr. Obama's own Department of Energy. The report—"Direct Federal Financial Interventions and Subsidies in Energy in Fiscal Year 2010"—identifies $37.16 billion in federal subsidies. These include special tax breaks, loans and loan guarantees, research and development, home heating assistance, conservation programs, and so on.

The nearby chart shows the assistance that each form of energy for electricity production received in 2010. The natural gas and oil industry received $2.8 billion in total subsidies, not the $4 billion Mr. Obama claims on the campaign trail, and $654 million for electric power. The biggest winner was wind, with $5 billion. Between 2007 and 2010, total energy subsidies rose 108%, but solar's subsidies increased sixfold and wind's were up 10-fold.



The best way to compare subsidy levels is by the amount of energy produced. But the Energy report conspicuously left out this analysis, though Congress specifically requested it.

Energy said that "caution" should be used in calculating the taxpayer handouts "relative to their share of total electricity generation," because many wind and solar subsidies are for "facilities that are still under construction." It also warned that "Focusing on a single year's data does not capture the imbedded effects of subsidies that may have occurred over many years" for other energy sources.

This sounds suspiciously like a political dodge, because subsidies for renewable energy date to at least the 1970s. The problem is that wind and solar still can't make a go of it without subsidies. Solyndra is merely the most famous of the solar-power failures. Earlier this month United Technologies sold its more than $300 million investment in wind power, with CFO Greg Hayes telling investors, according to press reports, that "We all make mistakes." He added that the market for renewables like wind "as everyone knows, is stagnating." Someone alert the White House.

The folks at the Institute for Energy Research used the Energy Department data to calculate a subsidy per unit of electricity produced. Per megawatt hour, natural gas, oil and coal received 64 cents, hydropower 82 cents, nuclear $3.14, wind $56.29 and solar a whopping $775.64.

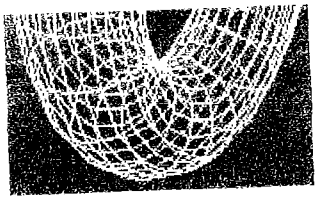
So for every tax dollar that goes to coal, oil and natural gas, wind gets $88 and solar $1,212. After all the hype and dollars, in 2010 wind and solar combined for 2.3% of electric generation—2.3% for wind and 0% and a rounding error for solar. Renewables contributed 10.3% overall, though 6.2% is hydro. Some "investment."

Zooming out for all energy, the Congressional Research Service did its own analysis of tax incentives last year. It found that in 2009 fossil fuels accounted for 78% of U.S. energy production but received only 12.6% of tax incentives. Renewables accounted for 11% of energy production but received 77% of the tax subsidies—and that understates the figure because it leaves out direct spending.

By the way, these subsidy comparisons don't consider that the coal, oil, and natural gas industries paid more than $10 billion of taxes in 2009. Wind and solar are net drains on the Treasury.

All of this suggests a radical idea. Why not eliminate all federal energy subsidies? This would get the government out of the business of picking winners and losers—mostly losers.

Mr. Obama's plan to eliminate oil and gas subsidies would lower the budget deficit by less than $3 billion a year, but creating a true level playing field in energy, and allowing markets to determine which energy sources are used, would save $37 billion. That's an energy plan that makes sense.



Valley Fever

FIRSTGOV

Valley Fever Connections

Valley Fever Connections delivers medical professionals and individuals the latest on Valley Fever from the original sources, keeping you better informed. Discover more information, breaking news, articles, Valley Fever symptoms and Valley Fever treatments. Valley Fever is also known as coccidioidomycosis, fungal infection, coccidiomycosis, coccidioides immitis, c immitis, desert rheumatism.

Valley Fever is found in the Southwest: Arizona, California, Texas, New Mexico, Nevada, and Utah. Travelers and those who receive items delivered from the southwest are exposed. As the name Valley Fever implies, the fungus is found only in certain regions. In the United States, Valley Fever is found in the desert Southwest, including California's San Joaquin valley. Coccidiomycosis also grows in parts of Central and South America.

The Valley Fever fungus lives in the soil and releases its spores into the air. Outbreaks occur during weather changes, dust storms and earthquakes, all of which increase the amount of Valley Fever spores dispersed into the air. People become infected with Valley Fever by inhaling the spores.

Pro Golfer Greg Kraft still fights Valley Fever

by Ed Hardin -- Greg Kraft fought his way onto the leaderboard Friday afternoon at the Wyndham Championship and will go into the weekend with his head and his heart and most of his lungs.

That he's back out here is a testament to his head and heart. That he only has part of one of his lungs is a testament to something else -- either the wonders of modern medicine or the lack thereof.

"They call it **Valley Fever**," said the 43-year-old. "It's a fungus. I'd never heard of it. I know all about it now." "Two weeks later I started showing signs of it at the Honda," he said. "Had to withdraw after five holes. Had to withdraw from Bay Hill after the first day. Players Championship. I could hardly walk.

"I ended up losing about 30 pounds and it took them five months to really figure it out, because when you have a fungal infection there's no bacteria, so when they take your blood and they run it, check on you, nothing shows."

Doctors suggested he might have a virus. Then they thought it

might be mono.

"Five months later, when they finally did a CAT scan on my body for the third time, they said I had cancer," Kraft said. "I lived with that for about seven days."

Surgery revealed he didn't have cancer. He was put on antifungal treatments, which Kraft said was like chemotherapy, then he waited nine months only to see the fungus return.

"They put me on medicine again for six months," he said. "Three months into it, I started getting worse and they finally just went in and said, 'We've got to remove part of your lung.' So they took that out and I had to be back on that medicine for three more months just in case."

Kraft began to fight his way back in 2006, playing in 26 PGA Tour events with an exemption based on the number of cuts he'd made in his career. That's the last of 34 exemption categories. In other words, he's hanging by a thread. He now plays on the Nationwide Tour and the rare PGA event to which he can gain entry. That he's playing at all says something about his heart and soul.

Kraft talks matter-of-factly about what he went through. He looks you in the eye and tells you the statistics, about the attempts to find cures and vaccines for something almost no one knows about. He knows the various stages of it, the chances of recovery and the effects it has on a person's health, his mind, his golf game. Kraft talks easily about them all, pantomiming putts on slow greens and hard swings from sandy divots.

He smiles a lot and points to his chest a lot, noting where one lung remains strong and the other defiant after a disease he knows more about than anyone in golf.

There's still a lot he doesn't know, but Kraft knows he'll play golf again today and he'll play again Sunday. And if it all works out, he'll be playing for a long time, no matter which tour, which event or which city.

Even the one in Tucson, right?

"Uh, no," Kraft said.

He wasn't smiling.

Governor proposes Valley Fever fund

gvnews.com by Regina Ford: Gov. Janet Napolitano's proposed executive budget for fiscal years 2008-09 includes a one-time increase of **$1.8 million for Valley Fever research** with some of that earmarked for a drug that just may be a potential cure for the fungal disease.

"Of this, $1.5 million would be used to cover a portion of the funding necessary for the first stage of **clinical trials for nikkomycin Z**," said John N. Galgiani, M.D., director of the Valley Fever Center for Excellence at the Southern Arizona VA Heath Care System and

University of Arizona.

"Of course this won't happen unless the Legislature agrees to what the governor has proposed," Galgiani added. **"It might be helpful if your readers let their elected officials know what they think."** Contact your elected officals - More Info

According to Galgiani, there are currently only four drugs on the market to treat Valley Fever, but none cure the patient.

"Nikkomycin Z has been proven to cure mice of Valley Fever," he said. "The remaining $300,000 would be used for the development of a diagnostic test to distinguish Valley Fever from other causes of community-acquired pneumonia."

Rarely diagnosed The University of Arizona estimates that Valley Fever causes one in three cases of CAP but it is rarely tested for or diagnosed.

"Instead, physicians treat the Valley Fever as CAP, uselessly prescribing antibiotics," Galgiani said. "A reliable diagnostic test would improve the clinician's ability to rapidly diagnose Valley Fever and also limit inappropriate treatment."

Galgiani said that current treatments for Valley Fever do not always work and when they do, they mainly assist the immune system in controlling infections.

"None are curative," he added. "The Valley Fever Center for Excellence has become the sponsor of nikkomycin Z because pharmaceutical companies have been unwilling to do it since Valley Fever in an 'orphan' disease and the market is relatively small." Partial development funds are being obtained from the National Institutes of Health, the Federal Drug Administration and from a foundation donation.

✳ Valley fever reaches epidemic level

According to health officials, Valley Fever is at epidemic levels in Arizona, afflicting 56% more people last year than in 2005. Cases were already breaking records last May.

A study at that time showed that one-in-every-three Arizonans diagnosed with pneumonia actually have Valley Fever. Last June, Governor Janet Napolitano freed up $50,000 to fight the valley fever outbreak, by educating doctors.

"When they seek medical attention, we think the doctors look for other diagnosis to account for their symptoms rather than do the tests that are needed to make the diagnosis for valley fever," said Dr. John Galgiani with the Veteran's Hospital.

Fortunately, we have the Valley Fever Center for Excellence right here in Tucson.

Click Here for Valley Fever Center for Excellence

State health money goes toward combating valley fever

KVOA.com. Gov. Janet Napolitano has released $50,000 in health crisis funds to combat an outbreak of valley fever in Arizona. The money will be used to train and educate doctors to diagnose and treat the fungal lung disease, which can cause prolonged illness that sometimes proves fatal. The disease is caused by a fungus that lives in the soil and attacks the lungs when inhaled.

"This is a sign of recognition valley fever is a disease that matters in Arizona," said Dr. Eskild Petersen, an infectious-disease specialist at University Medical Center. "This puts valley fever on the map, with official recognition of its impact here."

Another $75,000 has been designated to fight the rising number of cases of tick-borne Rocky Mountain spotted fever, now plaguing American Indian reservations in northern Arizona.

This year, Arizona health officials are predicting an all-time high in reported valley fever cases _ possibly reaching 4,000 _ which occur mainly in Pima, Maricopa and Pinal counties. Case counts have been rising steadily throughout the 1990s, but spiked dramatically in recent months, nearly tripling the average count.

Valley fever often causes only mild flulike symptoms, but also can trigger prolonged pneumonia with severe fatigue. If the disease spreads beyond the lungs to other organs, it can cause disability and death.

Money allocated to fight fevers

Arizona Daily Star, AZ - In an effort to combat the ongoing outbreak of valley fever in Arizona — now affecting hundreds of Tucsonans — Gov. ...

✳ Valley Fever numbers increasing

The Associated Press - Arizona has had more than 1,000 cases of valley fever in the first two months of 2006, health officials say.

Usually, the state averages only about 2,700 cases per year.

There were 640 cases of valley fever this February - more than triple the five-year February average.

"We're kind of looking at this now as 'the year' for valley fever," state epidemiologist David Engelthaler said. "Over the past couple of months, it has really been the most dramatic increase that we've ever documented."

Engelthaler said both 2004 and 2005 had above-average numbers of cases of the infection, which could indicate a multi-season outbreak.

Valley fever is caused by a fungus in desert soil. When the soil is

disturbed, the fungus releases spores that can lead to infection when inhaled.

Health officials can attribute some of the cases to growth in the state, Engelthaler said.

Construction stirs up spore-filled dust, while more and more people never before exposed to valley fever, found mostly in Arizona and California, are moving to the desert. Maricopa and Pima counties, with their population centers, are hot spots for the infection.

A very rainy start to 2005, followed by a record dry spell that extended into this year "probably has played a major factor in this dramatic increase," Engelthaler said.

Also contributing to the increase in reported cases is that health professionals are becoming more adept at identifying valley fever.

Research activity in the state focuses on identifying infection risk factors, determining the cause of the recent increase in cases and developing a preventive vaccine, Engelthaler said.

MONTEREY COUNTY HEALTH WARNING

* **Valley Fever Cases Prompt Health Warning**

SALINAS, Calif. -- A public health warning has been issued for a potentially deadly illness that's on the rise in Monterey County.

County health officials said they're seeing an alarming number of cases of valley fever, also known as cocci. The illness is a fungal infection that affects the lungs.

Officials said during all of last year, there were 22 cases of valley fever reported in Monterey County. Less than two months into this year, there have already been more than a dozen cases reported.

Valley fever is an airborne illness that is caused by exposure to a fungus that lives in the soil. Those who work outdoors near soil are most prone to getting the infection.

The infection causes flu-like symptoms, such as fever, cough, headache and fatigue.

Health officials said they're concerned because the disease is not common to the area and if the symptoms are not treated properly, the problem could get worse.

"We're seeing a lot of people showing up to the doctor's office after having a cough for two to three weeks and have taken multiple cases of antibiotics and not gotten better," Monterey County Health Department spokeswoman Linda Velasquez said.

If untreated, valley fever can turn into severe pneumonia or pulmonary disease.

Officials are in the process of talking to those affected to see if there is a common thread.

Doctors said valley fever can only be treated with fungus-killing medicines

Anyone who's had a cough for more than two weeks is encouraged to have their doctor check for signs of valley fever.

The Arizona Daily Star newspaper in Tucson reported last month that cases of valley fever are spiking across the state, with a record 4,000 reported cases possible by the year's end.

But a study says the true count could reach 30,000 because many cases of pneumonia are valley fever in disguise, the Daily Star said.

Microbiology, Mycology, Fungal Resources Valley Fever, Coccidiomycosis, Valley Fever Treatment, Coccidiomycosis, Health Care News & Articles

Advice to Employers and Employees Regarding Work-related Valley Fever

A recent cluster of work-related cases of Valley Fever at two solar installation plants in the Central Valley has drawn attention to the related health risks faced by many California workers whose jobs may expose them to fungal spores found in soil.

Information for Employers

Employers have a legal responsibility to immediately report to Cal/OSHA any serious injury or illness, or death (including any due to Valley Fever) of an employee occurring in a place of employment or in connection with any employment. Employers also have responsibilities to control workers' exposure to hazardous materials.

Applicable regulations with regard to Valley Fever protection and exposure can be found in the California Code of Regulations, Title 8, sections

342 (Reporting Work-Connected Fatalities and Serious Injuries),

3203 (Injury and Illness Prevention),

5141 (Control of Harmful Exposures),

5144 (Respiratory Protection) and

14300 (Employer Records-Log 300).

Cal/OSHA has issued citations to several employers following investigation of confirmed cases of Valley Fever contracted at the California Valley Solar Ranch and the Topaz Solar Farm in Santa Margarita. Those citations can be viewed on the Cal/OSHA Notable Citations page.

Cal/OSHA

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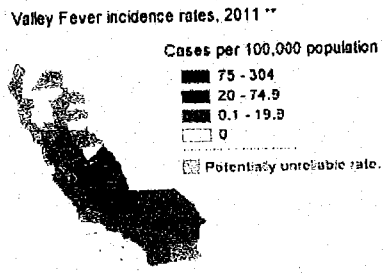
What is Valley Fever?

Valley Fever is caused by a microscopic fungus known as *Coccidiodes immitis* which lives in the top two to 12 inches of soil in many parts of the state. When soil is disturbed by activities such as digging, driving, or high winds, fungal spores can become airborne and potentially be inhaled by workers. Populations with more than 20 cases annually of Valley Fever per 100,000 people are considered highly endemic.

While the fungal spores are more likely to be present in the soils of the Central Valley, they may also be present in other areas of California. The map below shows the areas with the greatest incidence of reported human Valley Fever cases.

Fresno
Kern
Kings
Madera
Merced
San Luis Obispo
Tulare



** *map source: CDPH Valley Fever Fact Sheet*

What work activities increase the risk of Valley Fever?

When fungal spores are present, any work activity that disturbs the soil, such as digging, grading or other earth moving operations, or vehicle operation on dirt roads, can cause the spores to become airborne, therefore increasing the risk of Valley Fever. All workers on sites where the fungus is present, and who are exposed to dusty conditions and wind-blown dusts are at increased risk of becoming infected.

Construction workers and other workers on construction sites, including roadbuilding and excavation crews

Archeologists

Geologists

Wildland firefighters

Military personnel

Workers in mining, quarrying, gas and oil extraction jobs

Agricultural workers*

* Cultivated, irrigated soil may be less likely to contain the fungus compared to undisturbed soils.

What should employers do if a worker reports Valley Fever symptoms?

Report all hospitalized cases and deaths to Cal/OSHA.

Complete the "Employer's Report of Occupational Injury or Illness" (Form 5020) for each suspected occupational Valley Fever illness.

Send the worker to a workers' compensation healthcare provider or occupational medicine clinic whose staff is knowledgeable about Valley

How can Valley Fever be Prevented?

While there is no vaccine to prevent Valley Fever, the following steps are

important to take in order to limit risk:

- Determine if your worksite is in an endemic area.
- Adopt site plans and work practices that reduce workers' exposure, which may include:
  - Minimize the area of soil disturbed.
  - Use water, appropriate soil stabilizers, and/or re-vegetation to reduce airborne dust
  - Stabilize all spoils piles by tarping or other methods.
  - Provide air conditioned cabs for vehicles that generate heavy dust and make sure workers keep windows and vents closed.
  - Suspend work during heavy winds.
  - Onsite sleeping quarters, if provided, should be placed away from sources of dust.
- When exposure to dust is unavoidable, provide NIOSH-approved respiratory protection with particulate filters rated as N95, N99, N100, P100, or HEPA. Employers must develop and implement a respiratory protection program in accordance with Cal/OSHA's Respiratory Protection standard (8 CCR 5144).
- Take measures to reduce transporting spores offsite, such as:
  - Clean tools, equipment, and vehicles before transporting offsite.
  - If workers' clothing is likely to be heavily contaminated with dust, provide coveralls and change rooms, and showers where possible.
- Identify a health care provider for occupational injuries and illnesses who is knowledgeable about the diagnosis and treatment of Valley Fever
- Train workers and supervisors about the risk of Valley Fever, the work activities that may increase the risk, and the measures used onsite to reduce exposure. Also train on how to recognize Valley Fever symptoms.
- Encourage workers to report Valley Fever symptoms promptly to a supervisor. Not associating these symptoms with workplace exposures can lead to a delay in appropriate diagnosis and treatment.

Fever. Alert the provider or clinic to the possibility that the employee was exposed to dusts that may contain coccidioides spores. Physicians must submit a "Doctor's First Report of Occupational Injury or Illness" (Form 5021) for each employee evaluated for occupational Valley Fever.

Record all cases on the Cal/OSHA Log 300.

More Resources ...

- California Department of Public Health Valley Fever informational page
- Kern County Public Health Services Department Valley Fever Website
- Center for Disease Control and Prevention Valley Fever informational page
- Valley Fever Americas Foundation
- University of Arizona – Valley Fever Center for Excellence

October 2013

dailyRX

Valley Fever Outbreak in California Desert

Valley fever outbreak affects solar power workers in California desert

May 3, 2013 / Author: Morgan Jones / Reviewed by: Chris Galloway, M.D.

(dailyRx News) Coccidioidomycosis, or valley fever, may sound strange to those unfamiliar with it. Nevertheless, this fungal infection can be serious. And now it seems some Californians are becoming familiar with the condition.

An outbreak of valley fever in California has infected 28 patients and put some officials on alert.

Valley fever is a fungal infection contracted when soil is disrupted, releasing fungal spores into the air, and eventually into the lungs of patients.

Once inhaled, it can cause serious illness.

"Learn about regional infection risks."

The Los Angeles Times reported on Wednesday that the patients were workers from two separate solar power construction sites in San Luis Obispo County, north of LA.

According to the Mayo Clinic, the fungi that cause valley fever are common in the soil of certain areas and can be released by anything that disturbs the ground, like the wind, construction or farming. The severity of the infection, which is not contagious, can range drastically.

Some patients have no symptoms, some have mild flu-like symptoms that can be treated easily and, in some cases, the infection can spread to other parts of the body, causing a variety of serious problems and even death.

According to the LA Times, the infected California workers were employed at "two large-scale photovoltaic power plants whose construction often requires considerable scraping and clearing to make way for thousands of acres of solar panels."

The news of the infections comes as the state is coping with relocating inmates in response to an ongoing outbreak in two desert prisons. The LA Times reported that three dozen inmates from the prisons have died from valley fever since 2006.

"The threat of acquiring the respiratory illness extends to residents living near expansive construction sites," reported the LA Times. "That risk is rising given the scope of the renewable energy boom centered in the state. Scores of solar projects are planned for millions of acres across California's Mojave Desert and elsewhere."

Valley fever cases have been on the rise in recent years, and according to the Centers for Disease Control and Prevention (CDC), this could be due to increases in the number of people exposed to the fungus, or due to changes in the detection and reporting of the infections.

The CDC reported that in 2011, 20,000 valley fever cases were reported in the US, but that there are an estimated 150,000 undiagnosed cases every year.

According to the CDC, some people have a greater likelihood of developing severe forms of valley fever, including African Americans, Asians, pregnant women in their third trimester and those with a weakened immune system (like HIV/AIDS patients or organ transplant recipients, for example).

Conditions: Infectious Disease Pulmonary

Reviewed by: Chris Galloway, M.D. **Review Date:** May 2, 2013

Citation: Los Angeles Times, "28 solar workers sickened by valley fever in San Luis Obispo County"
Los Angeles Times, "CDC probing valley fever outbreaks in two California prisons"
Mayo Clinic, "Valley Fever"
Centers for Disease Control and Prevention, "Valley Fever: Awareness is Key"

Last Updated: November 5, 2013

Source: dailyrx.com

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January 12, 2015

VIA EMAIL (fordjh@co.monterey.ca.us)

Monterey County Planning Commission
c/o John Ford
Monterey County Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: California Flats Solar (PLN120294) - Secondary Access Road

Dear Commissioners:

I am writing on behalf of Ethel Russell, Ann Myhre, Jane Wooster, and Mary Russell (the "Russells"). The Russells own a parcel of land (APN 424-181-011) located at the end of the public portion of Turkey Flat Road ("Russell Property"). The California Flats Solar Project referenced above ("Project") proposes to use a portion of the Russell Property for certain purposes related to the Project, including construction, operations, maintenance, and emergency access. However, the Project applicants have no right to use the Russell Property to access the adjoining Hearst Ranch property on which the Project is proposed ("Project Site") for purposes related to the Project. The owners of the Russell Property vigorously object to the use of their property for Project purposes and will strenuously oppose the use of the private road over the Russell Property for any purpose other than the agricultural and ranch-related uses for which it has historically been used. Moreover, because proof of access is required before the Project can be approved and no such proof has been presented, the Planning Commission cannot take action on the Project at its January 14, 2015, meeting.

The proposed private access road from the public portion of Turkey Flat Road to the Project Site (between the existing gate and the Project Site) lies entirely within the Russell Property. (See Exhibit A attached hereto.) Notwithstanding the opinion of applicant's engineer contained in Exhibit H to the Planning Commission staff report, the law is clear that any access rights across the Russell Property that may be appurtenant to the adjoining Hearst Ranch property are limited to historical ranch-related uses.

Any such rights are limited under Civil Code Section 806, which states, "The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired." The California Supreme Court has consistently interpreted Section 806 as narrowly and literally as possible. (*See Allen v. San Jose Land & Water Co.* (1891) 92 Cal. 138 (it is "settled doctrine" that uses under an easement shall remain substantially the same as when the right accrued); *see also Joseph v. Ager* (1895) 108 Cal. 517 (easement is a restriction upon the right of property of the owner of the servient tenement and, thus, no alteration can be made that increases such restriction); *Winslow v. Vallejo* (1906) 148 Cal. 723 (parties' use of a right controlled as to the extent of the right even when parties knew of planned future use); and *O'Banion v. Borba* (1948) 32 Cal.2d 145 (easements for private rights of way are limited to uses of the easements when right accrued and no different or greater use can be made without the servient landowner's consent).) Following *Winslow*, California Courts have subsequently prohibited increases or changes in burdens, expansion of the physical size, and the placement of permanent improvements without approval. (*See Bartholomew v. Staheli* (1948) 86 Cal.App.2d 844; *Wall v. Rudolph* (1961) 198 Cal.App.2d 684; *Cushman v. Davis* (1978) 80 Cal.App.3d 731); and *County of Colusa v. Charter* (1989) 208 Cal.App.3d 256.) Consequently, any access rights across the Russell Property that may be appurtenant to the Hearst Ranch property are limited to historical ranch-related uses and would not extend to any Project related uses such as construction, operation, or maintenance of the Project.

The Project applicant acknowledges that the Project does not have the required access from the public portion of Turkey Flat Road across the Russell Property to the Project Site. In a recent meeting between First Solar's representatives and members of the Russell Family, First Solar proposed a new access road parallel to and north of the existing private portion of Turkey Flat Road located on the Russell Property ("Proposed New Access Road").

The owners of the Russell Property oppose the Proposed New Access Road for two primary reasons. First, the Proposed New Access Road will have environmental impacts related to disturbance of new areas and visual impacts of another road parallel to the existing private portion of Turkey Flat Road located on the Russell Property that were neither discussed nor evaluated in either the Draft Environmental Impact Report ("DEIR") or the proposed Final Environmental Impact Report ("Proposed FEIR"). Secondly, the Proposed New Access Road would still require access across portions of the Russell Property for purposes for which neither the applicant nor the owners of the Project Site have existing rights.

The DEIR, FEIR, and Planning Commission staff report are internally inconsistent with respect to proposed Project uses of the private portion of Turkey Flat Road located on the Russell Property. Page 2-73 of the DEIR states, "Project construction and operation would not use Turkey Flat Road for access, except for emergencies and one or two project construction trips (to deliver large equipment), and there are no improvements proposed to this access." However, at page 4.13-13, the DEIR states that the Project would generate 10 trips per day at the Turkey Flat

Road access "under both construction and operation phase conditions." (This would be in addition to any ranch-related trips that would use this access point.) Finally, Exhibit A to the Planning Commission staff report at page 6 states, "Turkey Flats Road . . . will be used for emergency access, but has not been evaluated as a means of primary access and is thus not an option to provide access to the site." These inconsistencies create unnecessary confusion for the decision makers, the owners of the Russell Property, and the public and must be rectified before any action can be taken with respect to the Project.

Both the DEIR and the FEIR misrepresent the location of the proposed access from Turkey Flat Road. The DEIR erroneously states that the Turkey Flat Road gated entry is at the western border of the Hearst Ranch (see, e.g., DEIR, pp. 4.13-4 & 4.13-24). Also, the Project description incorrectly states that, "on the project site, the [County] road becomes a "gated private ranch road," when in fact, it becomes a private ranch road off of the Project Site, i.e., on the Russell Property. The DEIR completely fails to mention that a substantial length of the private portion of the access road east of the gate lies entirely within the Russell Property. In addition, DEIR Figure 2-4d shows the existing private portion of the Turkey Flat Road as lying along the property line between the Hearst Ranch Property to the north and the Russell Property, when the existing private portion of Turkey Flat Road actually lies entirely within the Russell Property. In fact, the property line lies approximately 20-30 feet to the north of the northerly line of the developed unpaved road on the Russell Property. (See Exhibit A attached hereto.) Furthermore, the proposed uses of the Russell Property, including but not limited to the hauling of heavy equipment and the anticipated trips during construction and operations, have the potential to cause damage to the private portion of the road located on the Russell Property, an impact not examined or addressed in the FEIR.

In light of the foregoing, the County cannot approve the Project unless and until the DEIR is revised to correct the erroneous statements regarding the location of the access road from Turkey Flat Road and to make other revisions as necessary to correct the analysis contained in the DEIR and FEIR. The lack of legal access from Turkey Flat Road is significant new information related to the Project with the potential to have new impacts and require new mitigation. Therefore, the DEIR must be corrected and recirculated for public review.

Even if the DEIR is not recirculated, the Planning Commission must deny the project as required by Monterey County Code section 21.64.320. If the Planning Commission is inclined to recommend approval of the Project notwithstanding the significant defects discussed above, the Planning Commission must recommend adoption of a condition prohibiting the use of the private portion of Turkey Flat Road on the Russell Property for Project construction, operations, and maintenance and limiting its use to emergency access only. Such a condition would be consistent with the staff report's statement that Turkey Flat Road will be used for emergency access only. (See Staff Report, Exhibit A, page 6, section II.a.) Consistent with Monterey

County Code section 21.64.320, the Planning Commission must also include the following two conditions of approval:

> *1. Before the issuance of any other permits in furtherance of the Project, including but not limited to grading or building permits, the applicant shall provide the County with proof of access demonstrating that the dispute as to rights of access has been satisfactorily resolved. Proof of access shall be in the form of one or more of the following: a) Written concurrence of all parties to the private road over APN 424-181-011 (including but not limited to the concurrence of the owners of APN 424-181-011) that access shall be allowed for Project purposes; b) Existence of a final settlement or final judicial determination that the private road may be used to access the Project; or c) A private road agreement duly recorded and properly executed by all parties.*
>
> *2. Before the issuance of any other permits in furtherance of the Project, including but not limited to grading or building permits, the applicant shall provide the County with proof that either a private road maintenance agreement properly executed by the owners of APN 424-181-011 and any benefitted properties has been duly recorded or a final judicial determination including repair and maintenance terms in light of the Project is in place.*

Thank you for your consideration of these very important issues.

Very truly yours,

FENTON & KELLER
A Professional Corporation

David C. Sweigert

DCS:kmc

cc: Supervisor Simon Salinas (via e-mail)
Ramon Montano (via e-mail)
Bob Schubert (via e-mail)
Ethel Russell
Ann Myhre
Jane Wooster
Mary Russell

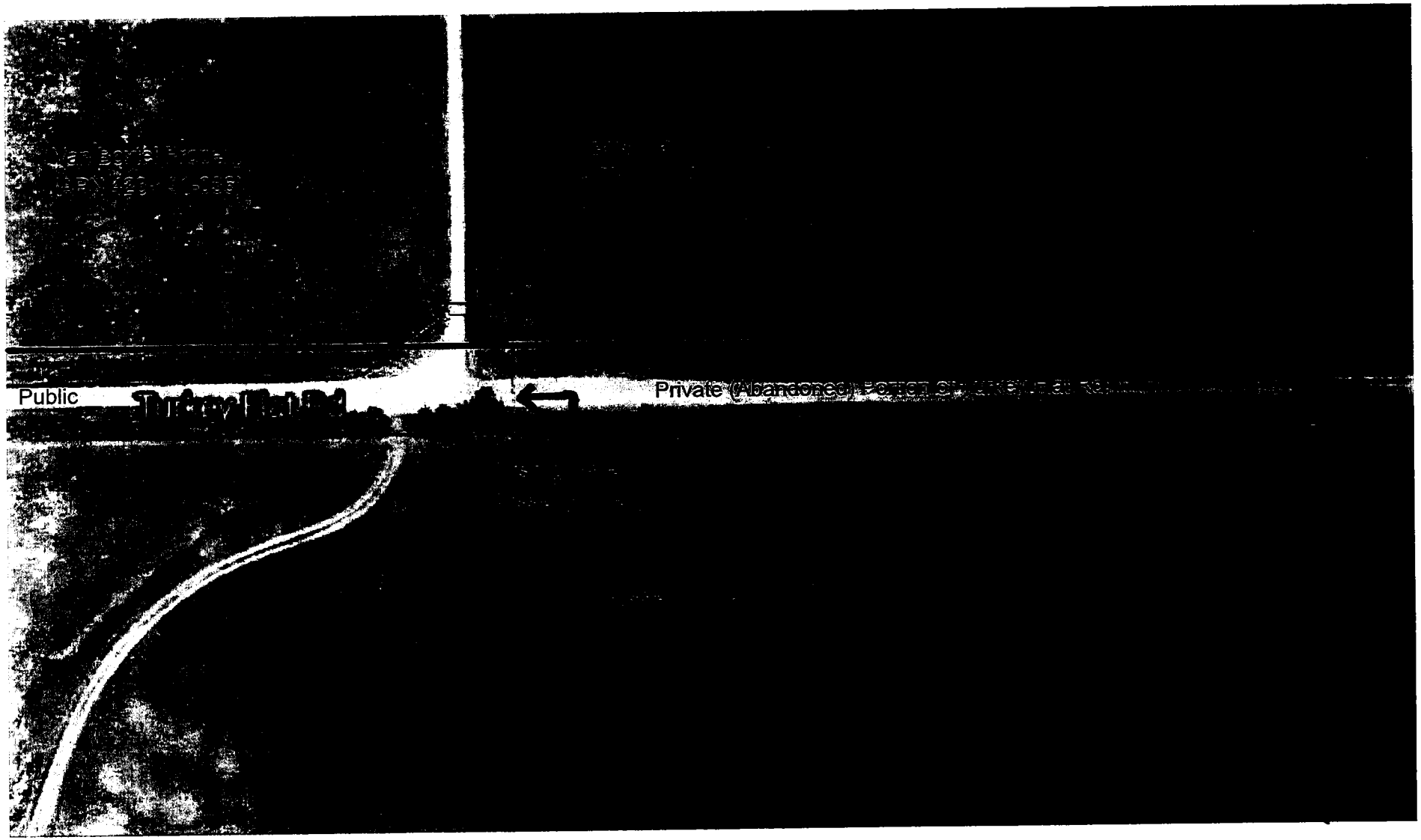

EXHIBIT A

Mitch and Jane Ulibarri
Rancho Basque
423-191-022-000
423-191-055-000
423-191-052-000

Planning
168 W. Alisal St.
2nd Floor
Salinas, CA 93901

allen@co.monterey.ca.us

January 9, 2015

Dear Planning Commission,

I am writing as a property owner who will be impacted by the Solar Flats Project in Parkfield. I am somewhat surprised that being a property owner very close to the project that I have never received any notices of planning meetings and have not had an opportunity to comment. After speaking to multiple landowners in the area and looking at the project online it appears to me that there are still some very important environmental impact questions to be considered.

First, this valley is not a desert. In a normal rainfall year the watershed from the adjacent mountains where my property is located is huge. As we have been in a drought for the past four years how could the impact on the watershed and groundwater have been thoroughly evaluated? Since water is more precious than solar electricity I would consider this critical.

Second, the pollution created from construction and earth moving will increase risks of Valley Fever and other maladies for everyone in the area. It seems that there needs to be more considered before moving full steam ahead.

Thus far the Solar Flats Project seems to benefit mostly those developing it. The benefits for everyone else are transient and negative. The damage to this pristine and delicate ecosystem will be irreversible.

Sincerely,

Mitch and Jane Ulibarri

G-5

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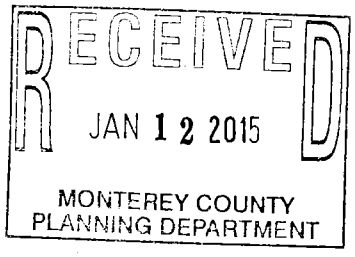
Allen, Carol x5178

From: Francisco & Ruth Legaspi [pecacita@aol.com]
Sent: Monday, January 12, 2015 9:45 AM
To: Allen, Carol x5178
Subject: California Flats Solar Project

#6



Carol Allen
Senior Secretary
Monterey County Resource Management Agency-Planning
Attn: Planning Commission
Re: California Flats Solar Project

Dear Planning Commission Of Monterey County:

My name is Ruth Legaspi and for the last 10 years I have been on the Board of California Valley Community Services District in San Luis Obispo County. It has been my experience that First Solar has been a good neighbor to our community. During the 3 year construction of their Topaz Solar Farm project, they provided regular construction updates and always available for questions or concerns, either on the phone or coming in person to our monthly board meetings. The company understands their responsibilities to their neighbors and was sensitive to our needs and our safety. Through the years, First Solar has been helpful to our school and our local community center . In addition, many people from our community had good paying jobs and felt they were contributing to the local economy and environment. While we were concerned what a large project would mean to our small community, in the end, we have gained greatly from their presence in our community. All and all, it was a positive experience.

Thank you,

Sincerely,
Mrs. Ruth Legaspi
pecacita@aol.com

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G-6

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FARELLA
BRAUN+MARTEL LLP

RICHARD J. RABBITT
rrabbitt@fbm.com
D 415.954.4959

#6 @PC

January 13, 2015

Via Email (fordjh@co.monterey.ca.us)

Monterey County Planning Commission
c/o John Ford
Monterey County Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: California Flats Solar (PLNI20294) - Secondary Access Road

This letter is being provided on behalf of California Flats Solar, LLC in response to a January 12, 2015 letter from David C. Sweigert of Fenton & Keller, presented to the Planning Commission ("Commission") by Mr. Sweigert on behalf of Ethel Russell, Ann Myhre, Jane Wooster, and Mary Russell (the "Russells"). Below we identify and respond to each of the concerns expressed by Mr. Sweigert, and explain why the Russells do not raise any issues that should impede the Commission's adoption of a resolution recommending approval of the California Flats Solar Project ("Project") to the Board of Supervisors ("Board").

1. The Project possesses legal access over the private portion of Turkey Flat Road pursuant to a Resolution of the Board expressly granting a right of ingress and egress to all affected property owners over that portion of Turkey Flat Road.

Mr. Sweigert states: "*the Project applicants have no right to use the Russell Property to access the adjoining Hearst Ranch property on which the Project is proposed ("Project Site") for purposes related to the Project*" and that "*proof of access is required before the Project can be approved and no such proof has been presented*". This is not correct. A right of access exists over the relevant portion of Turkey Flat Road pursuant to an express reservation granted by the Board in 1998 which preserved the right of access that existed over the public road when it was abandoned by the County.

In 1998, the Board addressed a petition filed by property owners regarding a request to abandon the relevant portion of the Turkey Flat Road. Having found that the abandonment of that portion of the road would not cut off access to any person's property adjoining the road and would not terminate a public service easement, the Board granted the request but, in doing so, made clear that access via that former public road would be preserved for all affected property owners. As clearly set forth in the Board's Resolution No. 98-146 – a document which Mr. Sweigert conveniently omits from his letter – an express easement for ingress and egress was

reserved for the benefit of all affected property owners as follows: "FURTHER RESERVING AND EXCEPTING THEREFROM easements for ingress and egress for all affected property owners." *See* County Resolution No. 98-146, attached as Exhibit H to the Planning Commission staff report and as Exhibit A attached hereto.

Pursuant to the Board's Resolution, the Jack Ranch property, owned by The Hearst Corporation as an adjoining property owner, was granted an express easement for ingress and egress consistent with the scope of uses for public road access over Turkey Flat Road. The Project applicant will have a right to use this reserved right of access as the prospective lessee of The Hearst Corporation.

2. The Project's proposed access over Turkey Flat Road is consistent with the reserved right of access granted by the Board.

Mr. Sweigert states: "*the law is clear that any access rights across the Russell Property that may be appurtenant to the adjoining Hearst Ranch property are limited to historical ranch-related uses.*" That is not correct..

Mr. Sweigert cites Civil Code Section 806, which states: "The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired." The easement grant was made in connection with the abandonment of a portion of Turkey Flat Road and therefore included all of those access and use rights which are applicable to Turkey Flat Road as a public road.

Mr. Sweigert cites a number of inapplicable or misapplied cases, ignoring the Civil Code's reference to the "terms of the grant" and apparently focusing on the mistaken idea that the relevant right of access was established asa prescriptive, rather than an express, right. For example, he cites *Allen v. San Jose Land & Water Co.* (1891) 92 Cal. 138, *Joseph v. Ager* (1895) 108 Cal. 517, and *O'Banion v. Borba* (1948) 32 Cal.2d 145 – each of which dealt with the limitations on prescriptive rights, which rights are more limited than express easement grants, given that one can only acquire a prescriptive right consistent with the extent of the actual historical use. That is not the case with express easements such as we have here, which are determined in accordance with the terms and intent at the time of the grant.

Another case cited by Mr. Sweigert in connection with his argument regarding scope of use, *Winslow v. Vallejo* (1906) 148 Cal. 723, is also misinterpreted by Mr. Sweigert. That case provides that the rights granted in an easement should be determined based on the circumstances at the time of the creation of the grant and that future rights may be exercised consistent with that grant – which here establishes a scope of use consistent with public road use. As explained in *Winslow*:

> "It is of course true that for the purpose of ascertaining the extent and limits of the right granted the entire instrument is to be considered, in view of the circumstances surrounding its execution and the situation of the parties. (Herman v. Roberts,119 N.Y.

37, [23 N. E. 442, 16 Am. St. Rep. 800].) And if the language of the grant in question, viewed in the light of all the conditions existing when it was executed, clearly gave to the defendant a right in excess of the one actually used, such right would still exist, notwithstanding the exercise for a time of a lesser privilege."

At the time of the creation of the easement, Turkey Flat Road was used for public road purposes and, thus, that is the scope of use that was applicable and remains effective pursuant to the Board's express reservation of the rights for adjoining property owners.

3. The County's Environmental Impact Report and Staff Report are consistent in the description of the Project's access over Turkey Flat Road and associated analysis under the California Environmental Quality Act.

Mr. Sweigert states that the County's Environmental Impact Reports (EIR) and Staff Report are "*internally inconsistent*" and must therefore be rectified before the Commission takes action with regard to the Project. This statement misrepresents the text of the EIR, which establishes that the Project's access over Turkey Flat Road will be limited to emergency access and limited construction and operational needs and analyzes the associated impacts accordingly.

The principal text cited by Mr. Sweigert for the alleged inconsistency is a reference in the EIR's traffic analysis to ten daily trips along the road. In contrast to Mr. Sweigert's representation, the relevant text actually states that current ranch operations result in "approximately 10 trips per day" and that the Project's use of that road would be "consistent" with that use – meaning the use of the road would not exceed its existing use. *See* EIR, 4.13-13. The EIR used the Jack Ranch's existing use of the road to set a conservative outer-boundary for purposes of analyzing associated air quality and transportation related impacts. In contrast, the EIR's project description and the County's staff report clearly explain that the use of the road would be far more limited, focusing on secondary emergency access and limited construction and operational needs when necessary due to location or limitations associated with the Project's primary access road.

4. The Project does not need a new access road in this area.

Mr. Sweigert incorrectly states: "*Project applicant acknowledges that the Project does not have the required access from the public portion of Turkey Flat Road across the Russell Property to the Project Site.*" Here, Mr. Sweigert has taken liberties with the Project's attempt to act in a "good neighbor" capacity and its identification of potential options to address the Russell's concerns, despite the Project's very clear right of legal access over the relevant portion of Turkey Flat Road. In the context of discussing and attempting to address the Russells' concerns, the Project applicant offered to consider the possibility of relocating a portion of the road to address concerns voiced by the Russells. Contrary to Mr. Sweigert's statement, the Project has not proposed moving the access road and it certainly does not need to do so. Since it appears this good faith gesture has been rejected by the Russells, it has no bearing on the

Commission's review and does not in anyway undermine the continuing validity and effectiveness of the existing access right, regardless of the characterization by Mr. Sweigert.

5. The Easement reservation constitutes a "private road agreement" providing access within the meaning of Monterey County Code section 21.64.320.

Mr. Sweigert references Monterey County Code section 21.64.320. That code section contains certain application requirements with respect to private roads. Since a "Private road agreement" includes: "an easement" or "reservation", the easement referenced above clearly constitutes a private road agreement and the Project applicant has satisfied the requirement to show access rights with respect to such private road.

Sincerely,

Richard J. Rabbitt

Richard J. Rabbitt

RJR:mb

Exhibit A

See attached copy of Turkey Flats Road Abandonment Document

Before the Board of Supervisors in and for the County of Monterey, State of California

RESOLUTION NO. 98-146)
PUBLIC HEARING TO CONSIDER ABANDONMENT OF)
A PORTION OF TURKEY FLAT ROAD, PARKFIELD AREA.....)

A petition having been heretofore presented to the Board of Supervisors by ten freeholders of the County of Monterey, more than two of whom are residents of the Parkfield area, wherein the right-of-way hereinafter described is requested to be abandoned; and the Planning Commission of the County of Monterey having considered said petition and found that such abandonment would not be inconsistent with the Monterey County General Plan and the South County Area Land Use Plan.

WHEREAS, this right-of-way is not useful as a non-motorized transportation facility as designated by Section 156 of the Streets and Highways Code; and

WHEREAS, such abandonment will not cut off access to any person's property adjoining such street or highway; and

WHEREAS, such abandonment will not terminate a public service easement on Turkey Flat Road.

NOW, THEREFORE, BE IT RESOLVED by order of this Board of Supervisors on its own motion under and by virtue of the provision of Section 8334 of the Streets and Highways Code of the State of California:

This Board finds and orders the portion of said road, shown in Exhibit "A" attached hereto, and the same is hereby and henceforth vacated and abandoned.

RESERVING AND EXCEPTING THEREFROM easements for utility facilities and drainage facilities lying within the limits of the above described portion.

FURTHER RESERVING AND EXCEPTING THEREFROM easements for ingress and egress for all affected property owners.

IT IS FURTHER RESOLVED THAT the Clerk to this Board shall record a certified copy of this Resolution in the Office of the County Recorder.

PASSED AND ADOPTED on this 21st day of April 1998, by the following vote, to wit:

AYES: Supervisors Salinas, Pennycook, Perkins, Johnsen, Potter.

NOES: None

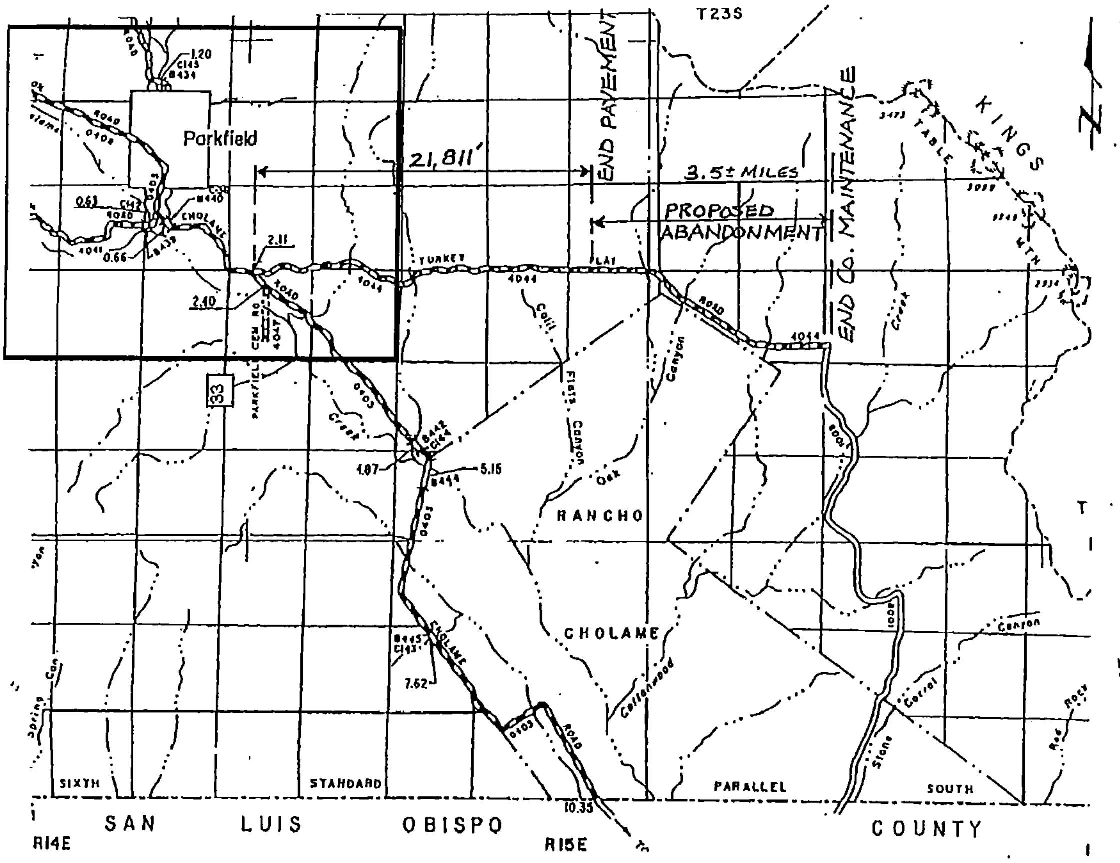
ABSENT: None

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original resolution of said Board of Supervisors duly made and entered in the minutes thereof at page --- of Minute Book 69, on 4/21/98.

Dated: April 21, 1998

ERNEST K. MORISHITA, Clerk of the Board
of Supervisors, County of Monterey, State of California.

By: Carrie Wilkinson
Carrie Wilkinson, Deputy


Parkfield
21,811'
END PAVEMENT
3.5± MILES
PROPOSED
ABANDONMENT
END CO. MAINTENANCE
T23S
KINGS
RANCHO
CHOLAME
SIXTH
STANDARD
PARALLEL
SOUTH
SAN LUIS OBISPO COUNTY
R14E
R15E
33

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G-7

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Mitch and Jane Ulibarri
Rancho Basque
423-191-022-000
423-191-055-000
423-191-052-000

#6

Planning
168 W. Alisal St.
2nd Floor
Salinas, CA 93901

allen@co.monterey.ca.us

January 9, 2015

Dear Planning Commission,

I am writing as a property owner who will be impacted by the Solar Flats Project in Parkfield. I am somewhat surprised that being a property owner very close to the project that I have never received any notices of planning meetings and have not had an opportunity to comment. After speaking to multiple landowners in the area and looking at the project online it appears to me that there are still some very important environmental impact questions to be considered.

First, this valley is not a desert. In a normal rainfall year the watershed from the adjacent mountains where my property is located is huge. As we have been in a drought for the past four years how could the impact on the watershed and groundwater have been thoroughly evaluated? Since water is more precious than solar electricity I would consider this critical.

Second, the pollution created from construction and earth moving will increase risks of Valley Fever and other maladies for everyone in the area. It seems that there needs to be more considered before moving full steam ahead.

Thus far the Solar Flats Project seems to benefit mostly those developing it. The benefits for everyone else are transient and negative. The damage to this pristine and delicate ecosystem will be irreversible.

Sincerely,

Mitch and Jane Ulibarri

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G-8

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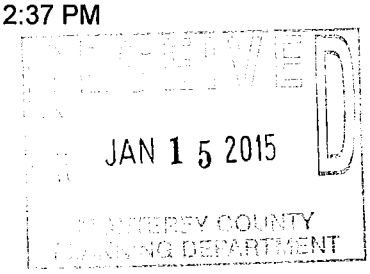
Allen, Carol x5178

From: cckuhnle1234@aol.com
Sent: Thursday, January 15, 2015 12:37 PM
To: Allen, Carol x5178
Subject: First Solar Topas Farms



Corinne Kuhnle
10540 Bitterwater Rd.
Santa Margarita, CA
93453

Carol Allen, Senior Secretary
Monterey County Resource Management Agency - Planning Commission

Dear Mrs. Allen,

This is a letter regarding the First Solar Topas Farm in Carrisa Plains, California.

My husband and I are long time residents of Carrisa Plains and live next to the Topas Farm. Initially, when I was first made aware of the plans for the solar farm, I was somewhat skeptical. Our family has farmed and raised cattle for over a hundred years on the Carrisa Plains and we truly love the quiet atmosphere of our country life.

However, I was impressed by the various avenues of communication presented to our community to answer questions and concerns that we might have. For example, we received newsletters with project updates, traffic notifications and a list of speaking engagements scheduled at various clubs and organizations. It was not uncommon for Dawn Legg (Construction Liaison) or other members of the First Solar crew to call or stop by and give us a heads-up on a particular process taking place.

Now that everything is said and done, I am proud that a clean source of energy is being "farmed" on the Carrisa Plains and we continue to live in the quiet atmosphere of our much loved country life.

Very truly yours,

Corinne Kuhnle

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G-9

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Rebecca Allen
888 Camino Vina
Paso Robles, CA 93446

January 12, 2015

Monterery County Planning Commission
Resource Management Agency
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: Public Hearing, California Flats Solar Project, January 14, 2015

Dear Commissioners:

I recently was made aware of the Final Environmental Impact Report (FEIR) on the California Flats Solar Project. What I have been able to read and learn about this project compels me to voice my strong opposition to the construction of this 2100-acre solar field on the proposed site. I urge the Planning Commission to reject and deny a permit for this project.

I was under the impression that the State of California, and in this case the County of Monterey, was seriously concerned about the diversity of animal species and the conservation of their habitat. However, such previously voiced environmental concerns now seem to be taking a silent backseat to the more obvious concern of certain landowners, groups, and individuals of making money, regardless of the harm done to "Mother Nature."

After reading the objections of many experts to this project, experts in the fields of wildlife preservation, environmental health and science, and medical science, I feel this project will endanger and ultimately cause the death of large numbers of birds, displacement of many other animals and, while disturbing the natural environment, endanger many threatened and protected species. How many of you have actually visited this beautiful site? My husband and I have been fortunate enough to spend many hours traversing and exploring these incredible acres of grassland. It sickens me to imagine this pristine unimproved valley effectively becoming a 2100-acre combination of roofs and windows, altering forever the animal and floristic composition of these grasslands. I ask why would you choose to destroy such a naturally beautiful environment, home to California condors, golden eagles, bald

eagles, kit fox, western pond turtles, and countless other threatened species that live on this land?

What I have learned from reading the pros and cons of solar fields is that the impact solar farms have on individual species can send ripples throughout entire ecosystems. Adverse ecological effects can occur from the disturbance of wildlife by equipment noise and human activity, exposure to contaminants, mortality of birds, and on and on. When solar farms harm or remove species within a habitat, they also remove the valuable ecosystem services that they provide to the habitat. The habitat becomes degraded, and thus less livable for plants and wildlife that have adapted to its specific conditions. With this in mind, I have to ask again why you would purposely choose to eliminate this amazing grassland valley when our enormous State has so many miles of uninhabited and unlivable land where a solar field would be better considered?

Although I am unable to attend the meeting on Wednesday, the 14th, I urge the Commission to please let this awesome grassland valley remain the natural and undisturbed home to countless endangered and threatened wildlife, helping to ensure that the valuable ecosystem and ecological resources of the Cholame Valley are not impacted.

Sincerely,

Rebecca Allen

G-10

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Salinas Valley
CHAMBER OF COMMERCE

January 12, 2015

Monterey County Planning Commission
Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

SUBJECT: **Chamber Supports California Flats Solar Project**

Dear Planning Commissioners,

As the voice for business in the Salinas Valley with nearly 600 member organizations representing thousands of local employees and citizens, we ask that you recommend approval of the Cal Flat Solar Project.

The Chamber supports programs, policies and legislation that enhance the health, safety, and welfare of Salinas Valley residents to seek alternative sources, to improve efficiencies, and realize cost savings. The California Flats Solar Project is consistent with these goals in that it will provide a 100% renewable energy source that is clean and quiet, produces no harmful emissions and requires no fuel.

California Flats is located in an ideal area for Monterey's County solar energy production. The site is entirely within the Jack Ranch, several miles away from any major roads, and not visible from the public view shed. In addition, the project will use modern technologies that have a small footprint on the land that allows continued wildlife and grazing in the area.

This Monterey County project will be an important contribution to California's energy efforts. California law currently requires the State's electric utilities to have 33% of their retail sales derived from eligible renewable energy resources in 2020 and subsequent years.

For these reasons, we ask that you recommend approval of the California Flats Solar Project.

Thank you for your consideration,

Paul Farmer

Paul J. Farmer
President & CEO
Salinas Valley Chamber of Commerce
Phone (831) 751-7725

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G-11

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Allen, Carol x5178

From: holly Phillips [hollyphillips375@hotmail.com]
Sent: Monday, January 12, 2015 7:10 PM
To: Allen, Carol x5178
Subject: First Solar

Holly Ann Phillips
HCR 69 Box 3111
California Valley, CA 93453

Carol Allen
Senior Secretary for the planning commission
230 Church St Bldg 3
Salinas, CA 93901-5103

Hello Carol Allen,

My name is Holly Ann Phillips; I live in California Valley and also work at Carrisa Plains School. I am writing to you to share my experience living out here while the solar farm was being built.
First Solar were good neighbors and very accessible to the members of our community regarding concerns we may have had. Carrisa Plains is very serene and wild, First Solar managed to keep it that way during the construction process. They were conscious of the wildlife and natural surroundings we all love and enjoy out here in California Valley. First Solar would be good neighbors to any host community. I appreciate all the work they do to make cleaner and more sustainable energy for our world. Thank you for taking the time to read my letter.

Sincerely,
Holly Ann Phillips
Hollyphillips375@hotmail.com

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G-12

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#6

DATE: 10 January 2015

FROM: The Van Boxtel Family

TO: Monterey County Planning Commission

RE: Monterey County Planning Commission Hearing on proposed California Flats Solar Project

We the Van Boxtel family reiterate and clarify herewith, the objections to the California Flats Solar project for its massive impact on our quality of life, health, visual and financial degradation. We will be more negatively impacted than any other neighbor or adjacent landowner by the proposed or completed solar development in the state of California and likely in America. Last year I contacted an appraiser who qualifies primarily rural and agricultural properties to evaluate the effect the California Flats solar field could have on our ranch. After a few days I called him to find out how the process was going and he opined that he could appraise the ranch as it is at present without consideration of a proposed solar field, however, there are no comparables anywhere to his knowledge that could evaluate the negative financial effect the solar field would have on our ranch. He thought the solar field could reduce the value of our ranch by at least 50% of current market value.

Our issues are many and critical to us, near term and obviously long term. The ranch was established twenty years ago to be a multi-generation family headquarters. The issues presented below address many of our concerns.

1. ENVIRONMENTAL:
   A) Dust – There is the potential for high levels of disease-laden dust to be lifted into the prevailing southwesterly, southern and westerly winds during the two years or more of construction. There is likely to be considerable dust created during the multi-decade operational phase as well, as evidenced by numerous cases of valley fever from the solar projects developed ten miles south of California Flats. In addition to the known valley fever, spores in the soils of the area, anthrax bacteria may also be present. The possibility of cancer causing dust elements is also possible. The stress of the unknowns is huge.

   B) On a personal level, our daughter, Michelle, has two children who spend most of their vacations on the ranch. Both have respiratory concerns. Our grandson, Michael, already has an existing heart problem (aortic stenosis). Also our son, Thor and his wife are raising her granddaughter with a lung issue. Having grandchildren visits are the biggest joys of our life. Are they to abstain from visiting the ranch in the future? Needless to say, my wife and I are in our senior years and have great concern of the possible effects excessive bacteria-laden dust will have on our health. We have been very pro-active in taking great care of ourselves. If the project is approved, we, the resident families will have to re-locate off the ranch during the construction phase. We should be compensated for our total expenses for the two or more years this project is under construction for our loss of quality living, stress and anxiety. It is totally impractical to wear respirators 24 hours a day. We will refuse to be a

C) casualty of this proposed project as we have lived here for 20 years. With all the acres they had to use, it was a total disregard to stick it right under our nose.

D) Noise – The constant roar and groaning of heavy equipment moving in excess of 800,000 cubic yards of dirt will be an irritant 8 to 10 hours a day during the course of construction.

E) Traffic – Construction and operation vehicle traffic is supposed to enter the project from Hwy 41 but from our experience the last 2-1/2 years during the research process, almost daily traffic of several vehicles and trucks have come down Turkey Flat Road to enter the project. Turkey Flat is only 10 feet wide, extremely curvy and many blind corners over hilly land. Over the years we have had many close calls from cars driving down the center of road which does not have a center line. Non-resident traffic on Turkey Flat will increase considerable for the curious to look at the project.

2. ARCHEOLOGICAL:

All my life I have been sensitive to the defacing and deformation of residual Indian artifacts, home sites, ceremonial sites and tribal village sites. We have been pro-active in the protection of all relative elements. The destruction of perhaps hundreds of thousands of arrowheads, spear points and chards, etc. will be buried in the earth moving and grading process. With the mindless destruction of one of the California's most beautiful and pristine valleys and former home of the Yokut and Salinas Indian tribes going back over a thousand years, we Americans as newcomers, should not let it happen. The destruction of this Open Space for the purpose of an industrial and financially unfeasible junkyard is unthinkable. There are much better places in the desert that has no visual, biological, archaeological or traffic impacts.

3. BIOLOGICAL:

The DEIR and the updated and corrected EIR being presented to the Monterey Planning Commission have a mitigation requirement for many animals and plants and species of special concern, however, no mitigation has been prescribed for the California condor. Historically, the rock- rich bluffs of Section 11, T23S R15E have had resident nesting condors. During the highly endangered period from the early 1980's until the recent recovery of populations in scattered coastal regions there was an absence of condors on the ranch. Over the past few years the condors have returned to our cliff and have been seen flying over most of the ranch. The California condor, as with all birds of prey, including hawks and eagles of which we have many, including nesting and foraging Swainson hawks, golden and bald eagles, northern harrier, osprey and prairie falcons are all attracted to their ghost images reflected in the solar panels mirror finishes. The images cause the birds of prey to dive-bomb the panels causing crippling and death. I know of no planning or available physical deterrent or compensatory mitigation to protect these species, in particular, the condor.

Perhaps our pro-active propagation, protection and habitat enhancement is responsible for the above average populations of San Joaquin Kit Fox, Golden eagles, Swainson hawks, California tiger salamanders, spade-foot toads, Western pond turtles, red-legged frogs and bald eagles on our ranch. Many of the species are present on the California Flats solar property. Compensatory mitigation may make someone feel something is being done to protect special species

population but that does nothing to save the population that have been on the proposed solar site for hundreds, if not thousands of years. There are many species of special concern on the property, why do we allow the destruction, complete annihilation of the species and their habitat forever in an effort to site a solar field where it has no business being erected.

4. SITING:
   The proposed layout is approximately a 2200- acre solar field of the lowland, the valley floor, out of approximately 23,000 acres of the California Turkey Flat valley. From an architectural land planning standpoint, it would be unthinkable to destroy a 23,000- acre grassland, open space valley, to site an industrial project forever. From our perspective, the spilled-ink design crams the solar panels into the west end of the northwest corner, mere feet from our property line. All the way up or down our ¾ mile driveway, panels and chain link fence are planned. The fact that the footprint is so radical, inefficient and uneconomical, qualifies its rejection. The worst planning I have seen in my extensive design and building career. My background was architecture for 55 years. I would not have had the audacity to propose to a client, with obvious economics in mind, to consider a spilled-ink footprint for any project. It is such an affront to land planning principals.

5. ECONOMICS:
   At a time when most ranchers in America are scratching their heads to figure out ways to raise additional income to save their lifestyle, be it tourism, farm stay, invitational cattle drives, camp-outs, , we are faced with the possible negative influences of a massive solar field that destroys the open-space character necessary to make any of the above feasible. Our grandson has been expanding his outdoor recreation business to hopefully provide him sufficient income to live on this beautiful ranch full time. The construction will definitely be a setback to his many plans. No matter what we plan or have to consider to insure the sustainability of the ranch and our life style, the proposed solar field is always the ghost that quells the conversation.

We, the entire Van Boxtel family, owners of the Oropesa Ranch, and members of the Van Boxtel Family Ltd Partnership, pray that the above issues influence the Planning Commission's decision to deny this permit. Again, after 20 years of great health and enjoyment, we refuse to be a casualty of this proposed project. We invite you again for a field trip to our ranch.

Please reserve time for members of our family to speak at the meeting on Wednesday, 1-15-2015.

This letter is being e-mailed to the Monterey County Planning Commission in addition to the physical letter and a copy of our "Contrary Expose' which will also be provided to the Planning Commission on Wed. Jan. 14, 2015. By reference, we also make the Contrary Expose' a part of this letter.

Sincerely,

W.J Van Boxtel and Rose Van Boxtel

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G-13

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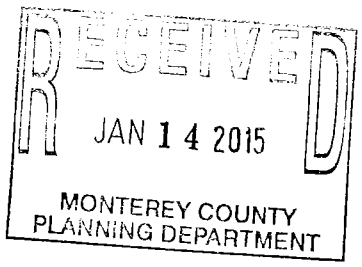
Allen, Carol x5178

From: Teresa Brander [carizzo1@aol.com]
Sent: Tuesday, January 13, 2015 6:12 PM
To: Allen, Carol x5178
Subject: California Flats Solar LLC



#6

Email: allenc@co.monterey.ca.us
Regarding: California Flats Solar LLC

To Carol Allen,
Senior Secretary
Monterey County Resource Management Agency - Planning Commission

Good Afternoon. As a resident of Carrisa Plains California, I am writing this letter to share our positive experience that we had with First Solar during the construction of the Topaz Solar project in Carrisa Plains California in San Luis Obispo County. First Solar listened to the community and was receptive to our concerns throughout the entire planning and construction process of the project. They bent over backwards to reach out and become a contributing part of the community. They did their best to mitigate any inconvenience due to the construction phase and the project itself. Most importantly, they were honest, forthcoming and followed through on their commitments. They were and still are good neighbors. Even though the project is complete, they still maintain a relationship with and support our community.

Sincerely,

Teresa Brander

Teresa Brander
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