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June 24, 2005

DOCKET
02-AFC-1
DATE JUN 24 2005
RECD. JUN 24 2005

Ms. Raquel Rodriguez
California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Docket No. 02-AFC-1

Dear Ms. Rodriguez:

Enclosed for filing with the California Energy Commission are one original and 12 (Twelve) copies of the **Caithness Blythe II, LLC's Prehearing Conference Statement, for the Blythe Energy Project Phase II (02-AFC-1).**

Sincerely,

Scott A. Galati
Counsel to
Caithness Blythe II, LLC

SAG/cp
Enclosures

...\Blythe II\Cover Docket 06-24-05

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:	**DOCKET NO. 02-AFC-1**
Application for Certification for the BLYTHE ENERGY PROJECT II	**CAITHNESS BLYTHE II, LLC'S PREHEARING CONFERENCE STATEMENT**

Caithness Blythe II, LLC (CB II), in accordance with 20 CCR § 1718.5 and the Committee Order dated June 8, 2005, hereby files its Prehearing Conference Statement for the Blythe Energy Project II (BEP II). CB II is prepared to proceed to evidentiary hearing on all topic areas contained in the Final Staff Assessment. The attached table (Table 1) presents a summary (by topic area) of:

- Whether or not disputes between the parties concerning the subject area exist including a description of the precise nature of each dispute;
- Identity of witnesses, and
- Time estimate for direct and cross-examination.

Table 1 includes estimates for direct examination by CB II witnesses based on our belief that some topic areas can be submitted into the evidentiary record on declaration. While Table 1 does assume that some topics can be submitted into the evidentiary record on declaration, we have not yet reviewed Staff's Prehearing Conference Statement. If Staff requests live testimony on any of these topics, we

reserve the right to modify our Prehearing Conference Statement to include additional witnesses and additional time for direct and cross-examination.

In accordance with the direction given by the Siting Committee at the Motion to Compel Hearing, we have prepared a more thorough and detailed discussion of the disputes than is commonly provided in Prehearing Conference Statements. Our objective is to provide the Committee with enough information to enable it to provide direction to Staff and CB II to assist in the resolution of disputes without the need for formal adjudication of each and every dispute. CB II remains committed and will work diligently to propose and accept reasonable solutions. However, at this stage it appears the parties need assistance from the Siting Committee to stimulate such resolution.

CB II continues to believe that many of these items can be resolved and thanks the Committee for this opportunity. However, since CB II is not able to accurately predict the results of the Prehearing Conference, we have prepared this Prehearing Conference Statement in such a way as to preserve our right to present evidence and cross-examine Staff witnesses for all disagreements.

STAFF ASSESSMENT AND CONDITIONS

Staff filed its Final Staff Assessment (FSA) on April 30, 2004. Staff issued a Supplement entitled Soil and Water Resources Final Staff Assessment Technical Report (Technical Report) on June 2, 2005. CB II has reviewed the FSA and the Technical Report. The following discussion summarizes CB II's disagreement with the FSA and Technical Report and proposes modifications to Staff-proposed Conditions of Certification. We have also provided a detailed discussion of why we believe the modifications are necessary and since we have not yet finalized our testimony, where appropriate, we provides an "offer of proof" to support our position.

GENERAL OVERVIEW

CB II provides a general overview to the Siting Committee so that many of its comments can be taken in the historical context of power development in the City of Blythe. As the Committee may be aware, the CB II team includes members that were instrumental in the development of the BEP prior to its acquisition by FPL Energy. We

believe that the historical context is important for the Committee to understand and to that end we intend to provide such history at evidentiary hearings.

The BEP was intentionally located in the City of Blythe to avoid development of a power project in highly populated areas of Southern California. The location of the power plant was a collaborative effort between BEP, the City of Blythe and Riverside County. Several alternative sites were discussed and rejected through a public process. The City ultimately extended their limits and annexed the power plant site where BEP is now located.

The BEP was located in the City of Blythe because the site location;

- provides ample groundwater, rejected for drinking or irrigation use, but suitable for use in a power plant,
- has an easy interconnection to existing and future transmission lines in multiple energy markets,
- was located in an air quality attainment zone,
- was close to multiple intra- and inter-state natural gas pipelines,
- had the support of the local communities including the City of Blythe and Riverside County,
- had no immediate adjacent sensitive land uses,
- involved no disturbance of existing rare and endangered plants or animal species, and
- was in an area of very few residences in close proximity to the project.

BEP II was conceived using the same criteria. CB II believes it is responsible to site power facilities in the locations in which they pose the least impacts to its surroundings. CB II believes the BEP II site is such a location.

BEP was licensed in March 2001. The evidentiary hearings for BEP fully adjudicated many of the issues Staff raises again in its FSA of the BEP II. Specific examples will be more fully developed below. First and foremost, the Committee should recognize BEP II is nearly identical to the previously licensed BEP. BEP II will be constructed adjacent to BEP entirely on land that was previously disturbed and

analyzed by the Commission Staff for approval of the BEP Petition for Amendment 1-B. CB II has repeatedly told Staff it can and will accept all applicable Conditions of Certification contained in the BEP license. CB II has acknowledged where circumstances differ from BEP or where additional or different Conditions of Certification are warranted. However, Staff has approached BEP II as if it bore no relation to BEP and none of the conditions or decisions reached in BEP are relevant to the analysis of BEP II. It would be arbitrary and capricious for the Commission to issue two licenses for nearly identical, adjacent projects with substantially different Conditions of Certification. CB II has advocated that Staff's analysis should focus on identifying the applicability of the BEP Conditions of Certification to BEP II and focusing the analysis on ***changed circumstances*** and on those areas that may result in ***cumulative impacts*** from both projects. Instead, Staff has taken an adversarial approach and has engaged in underground rulemaking resulting in additional regulation for the sole purpose of advancing its agenda. The Commission unanimously found the Conditions of Certification for BEP ensured the project would not result in significant environmental impacts and will comply would all applicable laws, ordinances, regulations and standards (LORS). CB II should be entitled to rely on the Commission's work in BEP and substantial deviation from the analysis and conditions is neither warranted nor within the statutory authority of the Commission, unless the deviation is supported by substantial evidence that it is necessary to specifically address the changes exclusively caused by the addition of BEP II. The BEP II proceeding should not be used to re-litigate issues that have been resolved by the BEP Commission Decision.

On January 22, 2004 many of the issues were addressed in a Status Conference for BEP II. CB II believes the Siting Committee gave clear direction that is consistent with treating BEP II and BEP similarly. References to the transcript for that hearing are provided below where applicable.

AIR QUALITY

CB II and the Staff agree that BEP II will not result in significant impacts to air quality and will comply with all air quality related laws, ordinances, regulations and standards (LORS). However, CB II does not agree with some the Staff-recommended Conditions of Certification.

Conditions of Certification

BEP II provided detailed comments including suggested modifications to the recommended Conditions of Certification contained in Staff's Preliminary Staff Assessment (PSA). Those comments largely applied to Staff's construction mitigation conditions. The substance of those comments was that BEP II should have the exact same conditions as were required by the adjacent BEP project, unless Staff can demonstrate the particular need for new conditions that were not addressed by BEP conditions, which was licensed in 2001. While we do understand Staff has developed new standard conditions, CB II questions whether such increased burdens are necessary. However, in the spirit of compromise, CB II modifies its request for exactly the same conditions as were imposed on BEP and requests the following modifications to Staff Conditions be made.

AQ-SC3 Construction Fugitive Dust Control: The AQCMM shall submit documentation to the CPM in each Monthly Compliance Report (MCR) that demonstrates compliance with the following mitigation measures for the purposes of preventing all fugitive dust plumes from leaving the Project. Any deviation from the following mitigation measures shall require prior CPM notification and approval.

a) All unpaved roads and disturbed areas in the project and linear construction sites shall be watered as frequently as necessary to comply with the dust mitigation objectives of **AQ-SC4** (the prevention of fugitive dust plumes). The frequency of watering can be reduced or eliminated during periods of precipitation.

b) No vehicle shall exceed 10 miles per hour within the construction site.

c) The construction site entrances shall be posted with visible speed limit signs.

d) All construction equipment vehicle tires shall be inspected and washed as necessary to be cleaned free of dirt prior to entering paved roadways.

e) Gravel ramps of at least 20 feet in length must be provided at the tire washing/cleaning station.

f) All unpaved exits from the construction site shall be graveled or treated to prevent track-out to public roadways.

g) All construction vehicles shall enter the construction site through the treated entrance roadways, unless an alternative route has been submitted to and approved by the CPM.

h) Construction areas adjacent to any paved roadway shall be provided with sandbags or other measures as specified in the Storm Water Pollution Prevention Plan (SWPPP) to prevent run-off to roadways.

i) All paved roads within the construction site shall be swept ***as necessary*** ~~at least twice daily (or less during periods of precipitation)~~ on days when construction activity occurs to prevent the accumulation of dirt and debris.

j) At least the first 500 feet of any public roadway exiting from the construction site shall be swept ***as necessary*** ~~at least twice daily (or less during periods of precipitation)~~ on days when construction activity occurs or on any other day when dirt or runoff from the construction site is visible on the public roadways.

k) All soil storage piles and disturbed areas that remain inactive for longer than 10 days shall be covered, or shall be treated with appropriate dust suppressant compounds.

l) All vehicles that are used to transport solid bulk material on public roadways and that have potential to cause visible emissions shall be provided with a cover, or the materials shall be sufficiently wetted and loaded onto the trucks in a manner to provide at least one foot of freeboard.

m) Wind erosion control techniques (such as windbreaks, water, chemical dust suppressants, and/or vegetation) shall be used on all construction areas that may be disturbed. Any windbreaks installed to comply with this condition shall remain in place until the soil is stabilized or permanently covered with vegetation.

Verification: The project owner shall include in the MCR (1) a summary of all actions taken to maintain compliance with this condition, (2) copies of any complaints filed with the air district in relation to project construction, and (3) any other documentation deemed necessary by the CPM and AQCMM to verify compliance with this condition. Such information may be provided via electronic format or disk at the project owner's discretion.

CB II suggests the above modifications to lessen the burden of on- and off-site sweeping. We believe there is limited benefit, if any, to requiring twice-daily sweeping of on-site and off-site roadways in an area with sandy soils and especially since there were no specific issues with "tracking" off-site during the construction of BEP. The project is already employing several other methods including an on-site person (AQCMM) to monitor fugitive dust plumes. Clearly, if the AQCMM identifies that roads need to be swept, then the AQCMM can direct such activities be performed. Therefore, we believe insertion of the words "as necessary" instead of specifying frequency of sweeping is a reasonable and prudent approach.

AQ-SC4 Dust Plume Response Requirement: The AQCMM or an AQCMM Delegate shall continuously monitor the construction activities for visible dust plumes. Observations of visible dust plumes that have the potential to be transported (1) ***a distance of 200 feet*** off the project site or (2) 200 feet beyond the centerline of the construction of linear facilities ~~or~~***and*** (3) within 100 feet upwind of any regularly occupied structures not owned by the project owner indicate that existing mitigation measures are not resulting in effective mitigation. The AQCMM or Delegate shall implement the following procedures for additional mitigation measures in the event that such visible dust plumes are observed:

Step 1: The AQCMM or Delegate shall direct more intensive application of the existing mitigation methods within 15 minutes of making such a determination.

Step 2: The AQCMM or Delegate shall direct implementation of additional methods of dust suppression if step 1 specified above fails to result in adequate mitigation within 30 minutes of the original determination.

Step 3: The AQCMM or Delegate shall direct a temporary shutdown of the activity causing the emissions if step 2 specified above fails to result in effective mitigation within one hour of the original determination. The activity shall not restart until the AQCMM or Delegate is satisfied that appropriate additional mitigation or other site conditions have changed so that visual dust plumes will not result upon restarting the shutdown source. The owner/operator may appeal to the CPM any directive from the AQCMM or Delegate to shut down an activity, provided that the shutdown shall go into effect within one hour of the original determination, unless overruled by the CPM before that time.

Verification: The AQCMP shall include a section detailing how the additional mitigation measures will be accomplished within the time limits specified.

CB II requests the above modification in order to reflect that the impacts should not be defined as fugitive dust leaving the project site but rather should be defined as fugitive dust that causes an impact to persons or property. The modification is consistent with the Roseville Energy Park Decision, where like BEP II, the project is not immediately surrounded by residential uses.

AQ-19 During an initial commissioning period of no more than ~~120~~***180*** days, commencing with the first firing of fuel in this equipment, NOx, CO, VOC and ammonia concentration limits shall not apply. The project owner shall minimize emission of NOx, CO, VOC and ammonia to the maximum extent possible during the initial commissioning period.

Verification: During the initial commissioning period, the project owner shall submit a detailed record of all commissioning activities to the CPM in the Monthly Compliance Report.

CB II requests that **AQ-19** be modified to reflect the Final Determination of Compliance (FDOC). It appears that there has been an error in transcription.

ALTERNATIVES

CB II disputes Staff's conclusions that alternative sites may reduce impacts and intends to present evidence in other technical areas to demonstrate that the preferred alternative does not result in any significant environmental impacts. To that end, CB II intends to present a witness to dispute Staff's ultimate conclusions regarding Alternatives.

BIOLOGICAL RESOURCES

Staff has recommended in its FSA that BEP II install a Zero Liquid Discharge (ZLD) System to prevent potential impacts to migratory birds associated with such wildlife using the BEP II pond. First, the FSA should acknowledge that BEP II is using a ZLD because no liquid waste is disposed off site. Instead, the liquid will be evaporated

in an appropriately lined and permitted evaporation pond to be constructed on-site. Secondly, CB II does not believe installing an expensive crystallizer to eliminate the pond is the only method that could provide effective mitigation for the potential impact. CB II intends to provide expert testimony that several methods of bird hazing or netting of the ponds can effectively deter birds from using the pond. The bird hazing coupled with always keeping water in the pond to avoid creating a shoreline would further deter the types of bird uses that could potentially create an impact. For this reason, CB II is not willing to concede at this time that the only effective mitigation is installation of an expensive crystallizer. CB II believes Conditions of Certification **BIO-10** and **BIO-11** originally proposed by Staff in its PSA should be incorporated into the Decision instead of a requirement to install a crystallizer.

Conditions of Certification

BEP II construction activity will take place entirely within an area that has been previously disturbed as part of the construction activities of the BEP. During construction of BEP, all of the material excavated from the pond areas was placed as engineered fill over the entire BEP II site. The entire site has already been mitigated for all ground disturbing activities and all activities were subject to the conditions of certification for the BEP. Based on this unique set of facts, the United State Fish and Wildlife Service (USFWS) did not require a new Biological Opinion. In light of the remote to no potential for impacts to wildlife that have not already been mitigated, CB II requests the following modifications to the Staff-proposed Conditions of Certification.

Designated Biologist and Biological Monitor Duties

BIO-2 The project owner shall ensure that the Designated Biologist and Biological Monitor(s) shall perform the following ~~during any site (or related facilities) mobilization, ground disturbance, grading, construction, operation, and closure activities~~:

1. Advise the project owner's Construction and Operation Managers on the implementation of the biological resources Conditions of Certification;

2. Be available to supervise or conduct mitigation, monitoring, and other biological resources compliance efforts, particularly in areas requiring avoidance or containing

sensitive biological resources, such as wetlands and special status species or their habitat;

3. Clearly mark sensitive biological resource areas and inspect these areas at appropriate intervals for compliance with regulatory terms and conditions;

4. ~~Inspect active construction areas where animals may have become trapped prior to construction commencing each day. At the end of the day, inspect for the installation of structures that prevent entrapment or allow escape during periods of construction inactivity. Periodically inspect areas with high vehicle activity (parking lots) for animals in harms way;~~

5. Notify the project owner and the CPM of any non-compliance with any biological resources Condition of Certification; and

6. Respond directly to inquiries of the CPM regarding biological resource issues.

Verification: The project owner shall ensure that the Designated Biologist and Biological Monitor(s) maintain written records of the tasks described above, and summaries of these records shall be submitted in the Monthly Compliance Reports (MCR).

During project operation, the Designated Biologist shall submit record summaries in the Annual Compliance Report.

CB II requests the above modification because continuous monitoring for biological resources for a site that has no off-site linears, and all construction activity will take place within a "fenced" area where engineered fill was placed less than three years ago, is unnecessary. CB II agrees to preconstruction surveys, which should identify any special protection measures to be included in the Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) required by Condition of Certification **BIO-5**.

BIO-7 ~~During the interim period between the Commission Decision on the project, and the CPM authorization to start construction, the project owner shall follow a weed control program modeled on the "Interim Weed and Erosion Control Prevention Program" adopted for the site by the Blythe Energy Project Phase I.~~

During construction and operations, a comprehensive exotic weed control program for California Department of Agriculture List A, List

B, and Red Alert weeds, shall be implemented at the 66-acre power plant site. This program shall be implemented until such time that the adjacent land use on the north and west sides in no longer a natural community or agriculture, or until the plant is permanently closed. The natural vegetation adjacent to the BEP II site shall be monitored to determine if it has been modified or degraded. Any seed mixture applied following ground disturbance shall be certified as weed-free.

Verification: The project owner shall submit an "Interim Weed and Erosion Control Prevention Program" for CPM review and approval within 90 days of the Commission Decision. The project owner shall be responsible for implementing an approved "Interim Weed and Erosion Control Prevention Program" until they have requested authorization to mobilize at the power plant site from the CPM. Thirty days prior to mobilization, the project owner shall submit a weed control report to the CPM for approval and to Western Area Power Administration for comment. The report shall include photos of the adjacent land or otherwise document any changes in an annual report until such time as the CPM approves cessation. The project owner shall submit the seed mixture to be used following ground disturbance.

CB II requests the above modification because the portion of the proposed condition that requires the exotic weed program to be implemented between Commission Decision and construction is already part of the obligation of BEP.

COMPLIANCE

CB II has reviewed and agrees with the General Compliance Conditions of Certification as contained in the FSA.

CULTURAL RESOURCES

CUL-2 Prior to the start of ground disturbance, the project owner shall provide the CRS, the CPM and Western with maps and drawings showing the footprint of the power plant and all linear facilities. Maps shall include the appropriate USGS quadrangles and a map at an appropriate scale (e.g., 1:2000 or 1" = 200') for plotting individual artifacts. If the CRS requests enlargements or strip maps for linear facility routes, the project owner shall provide copies to the CRS and CPM. The CPM shall review submittals and in

consultation with the CRS approve those that are appropriate for use in cultural resources planning activities.

If construction of the project would proceed in phases, maps and drawings not previously provided shall be submitted prior to the start of each phase. Written notification identifying the proposed schedule of each project phase shall be provided to the CRS and CPM and Western.

At a minimum, the CRS shall consult ***as necessary*** ~~weekly~~ with the project construction manager to confirm area(s) to be worked ***where excavations will occur in previously undisturbed native soils*** ~~during the next week~~, until ground disturbance is completed.

The project owner shall notify the CRS and CPM and Western of any changes to the scheduling of the construction phases. No ground disturbance shall occur ***in areas, which have not been previously disturbed*** prior to CPM approval of maps and drawings, unless specifically approved by the CPM.

Verification:

1. The project owner shall submit the subject maps and drawings at least 40 days prior to the start of ground disturbance to the CPM and Western. The CPM will review submittals in consultation with the CRS and approve maps and drawings suitable for cultural resources planning activities.
2. If there are changes to any project related footprint, revised maps and drawings shall be provided to the CPM and Western at least 15 days prior to start of ground disturbance for those changes.
3. If project construction is phased owner shall submit the subject maps and drawings, if not previously provided, 15 days prior to each phase to the CPM and Western.
4. A current schedule of anticipated project activity ***in undisturbed areas*** shall be provided to the CRS ***as necessary*** ~~on a weekly basis~~ during ground disturbance and also provided in each Monthly Compliance Report (MCR).
5. The project owner shall provide written notice of any changes to scheduling of construction phases within five days of identifying the changes to the CPM and Western.

CB II requests the above modifications to proposed Condition of Certification **CUL-2** to be consistent with the fact that the entire site has received engineered fill and therefore, the protections inherent in the condition are only necessary when construction activity is taking place in previously undisturbed native soil.

CUL-6 The project owner shall ensure that the CRS, alternate CRS, or CRMs ***shall be available at all times to respond within 24 hours after a pre-construction or construction activity has been halted due to the discovery of a cultural resource(s). The specialist, or representative of the project owner shall have the authority to halt or redirect construction activities if previously undiscovered cultural resource materials are encountered during vegetation clearance, earth disturbing activities, project site preparation or construction occurring in*** ~~monitor ground disturbance of~~ previously undisturbed sediments ~~full time~~ in the vicinity of the project site, linears and ground disturbance at laydown areas or other ancillary areas. ~~to ensure there are no impacts to undiscovered resources and to ensure that known resources are not impacted in an unanticipated manner. In the event that the CRS determines that full-time monitoring is not necessary in certain locations, a letter or e-mail providing a detailed justification for the decision to reduce the level of monitoring shall be provided to the CPM for review and approval prior to any reduction in monitoring~~.

~~CRMs shall keep a daily log of any monitoring or cultural resource activities and the CRS shall prepare a weekly summary report on the progress or status of cultural resources-related activities.~~ The CRS may informally discuss cultural resource monitoring and mitigation activities with Energy Commission technical staff.

The CRS and the project owner shall notify the CPM and Western by telephone or e-mail of any incidents of non-compliance with the conditions of certification and/or applicable LORS upon becoming aware of the situation. The CRS shall also recommend corrective action to resolve the problem or achieve compliance with the conditions of certification.

~~Cultural resources monitoring activities are the responsibility of the CRS. Any interference with monitoring activities, removal of a monitor from duties assigned by the CRS or direction to a monitor to relocate monitoring activities by anyone other than the CRS shall be considered non-compliance with these conditions of certification.~~

A Native American monitor shall be obtained to monitor excavations in undisturbed sediments in areas where Native American artifacts are discovered. Informational lists of concerned Native Americans and Guidelines for monitoring shall be obtained from the Native American Heritage Commission. Preference in

selecting a monitor shall be given to Native Americans with traditional ties to the area that shall be monitored.

~~**Verification:** During the ground disturbance phases of the project, if the CRS wishes to reduce the level of monitoring occurring at the project, a letter or e-mail identifying the area(s) where the CRS recommends the reduction and justifying the reductions in monitoring shall be submitted to the CPM for review and approval and to Western. Documentation justifying a reduced level of monitoring shall be submitted to the CPM and Western at least 24 hours prior to the date of planned reduction in monitoring.~~

~~During the ground disturbance phases of the project, the project owner shall include in the MCR to the CPM copies of the weekly summary reports prepared by the CRS regarding project-related cultural resources monitoring. Copies of daily logs shall be retained and made available for audit by the CPM and Western.~~

Within 24 hours of recognition of a non-compliance issue with the conditions of certification and/or applicable LORS, the CRS and the project owner shall notify the CPM and Western by telephone of the problem and of steps being taken to resolve the problem. The telephone call shall be followed by an e-mail or fax detailing the non-compliance issue and the measures necessary to achieve resolution of the issue. Daily logs shall include forms detailing any instances of non-compliance. In the event of any non-compliance issue, a report written no sooner than two weeks after resolution of the issue that describes the issue, resolution of the issue and the effectiveness or the resolution measures, shall be provided in the next MCR.

If Native American artifacts are discovered in undisturbed sediments, the project owner shall send notification within one week to the CPM and Western identifying the person(s) retained to conduct Native American monitoring. The project owner shall also provide a plan identifying the proposed monitoring schedule and information explaining how Native Americans who wish to provide comments will be allowed to comment. If efforts to obtain the services of a qualified Native American monitor are unsuccessful, the project owner shall immediately inform the CPM. The CPM will either identify potential monitors or will allow ground disturbance to proceed without a Native American monitor.

CB II requests the above modifications to reflect the fact that the BEP II site is highly disturbed, has engineered fill placed entirely over the proposed building areas, and has undergone extensive cultural monitoring and investigation during the

construction of BEP. Therefore the amount of monitoring should be required only during those times that the construction activities will be disturbing previously undisturbed native soils. Infrequent, the reporting burdens should also be less than normally required for an undisturbed site.

Cul-9 The project owner shall invite tribal leaders, elders and/or representatives of the Salt River Pima-Maricopa Indian Community, the Fort Yuma Quechan Tribe, the Chemehuevi Indian Tribe and the Fort Mojave Indian Tribe to bless the project area and conduct other appropriate ceremonies. As recommended in "Blythe Energy Projects American Indian Ethnographic Assessment Study, Final Report," participants shall be provided with adequate compensation in the form of a consulting fee and reimbursement for travel, meal and lodging costs, if lodging is necessary. Members of the Tukic-speaking Cahuilla groups, Yuman-speaking Cocopah, Kumeyaay, Pai, and Yavapai tribes, the Twenty-nine Palms Band of Mission Indians (Chemehuevi) and Maricopa members of the Gila River and Ak-Chin Pima-Maricopa Indian Community shall also be notified of the site visit and invited to attend and conduct appropriate ceremonies. The project owner shall also invite Western's Historic Preservation Officer, the CPM and City of Blythe officials to the blessing. The date(s) for the blessing and ceremonies shall be within 30 days of ***ground disturbing activities*** ~~certification~~ or at a time mutually convenient to the tribes, project owner, Western's Historic Preservation Officer, the CPM and the City of Blythe officials.

Verification: Within 30 days of the ***ground disturbing activities***,~~certification~~ the project owner shall provide copies of the invitation letters to the CPM. If additional time and correspondence is required to arrive at a mutually convenient time, copies of all correspondence to finalize the blessing/ceremonies date shall be provided to the CPM. Within 10 days of the blessing ceremony, the project owner shall provide a list of attendees to the CPM.

CB II requests these modifications to Condition of Certification **CUL-9** because CB II should not invite members of the tribes to conduct ceremonies unless we know the schedule for commencing construction of the plant.

EFFICIENCY

CB II has reviewed and agrees with the conclusions contained in the Power Plant

Efficiency section.

FACILITY DESIGN

CB II has reviewed and agrees with the Conditions of Certification proposed by Staff in the Facility Design section of the FSA.

GEOLOGY AND PALEONTOLOGY

PAL-5 The project owner shall ensure that the PRS and PRM(s) monitor consistently with the PRMMP all construction-related grading, excavation, trenching, and augering in ***previously disturbed*** areas where potentially fossil-bearing materials have been identified. In the event that the PRS determines full time monitoring is not necessary in locations that were identified as potentially fossil-bearing in the PRMMP, the project owner shall notify and seek the concurrence of the CPM.

The project owner shall ensure that the PRS and PRM(s) have the authority to halt or redirect construction if paleontological resources are encountered. The project owner shall ensure that there is no interference with monitoring activities unless directed by the PRS. Monitoring activities shall be conducted as follows:

1. Any change of monitoring different from the accepted program presented in the PRMMP shall be proposed in a letter or email from the PRS and the project owner to the CPM prior to the change in monitoring. The letter or email shall include the justification for the change in monitoring and be submitted to the CPM for review and approval.

2. The project owner shall ensure that the PRM(s) keeps a daily log of monitoring of paleontological resource activities. The PRS may informally discuss paleontological resource monitoring and mitigation activities with the CPM at any time.

3. The project owner shall ensure that the PRS immediately notifies the CPM of any incidents of non-compliance with any paleontological resources Conditions of Certification. The PRS shall recommend corrective action to resolve the issues or achieve compliance with the Conditions of Certification.

4. For any significant paleontological resources encountered, either the project owner or the PRS shall notify the CPM

immediately (no later than the following morning after the find, or Monday morning in the case of a weekend) of any halt of construction activities.

The project owner shall ensure that the PRS prepares a summary of the monitoring and other paleontological activities that will be placed in the Monthly Compliance Reports (MCR). The summary will include the name(s) of PRS or PRM(s) active during the month, general descriptions of training and monitored construction activities and general locations of excavations, grading, etc. A section of the report shall include the geologic units or subunits encountered; descriptions of sampling within each unit; and a list of identified fossils. A final section of the report shall address any issues or concerns about the project relating to paleontologic monitoring including any incidents of non-compliance and any changes to the monitoring plan that have been approved by the CPM. If no monitoring took place during the month, the report shall include an explanation in the summary as to why monitoring was not conducted.

Verification: The project owner shall ensure that the PRS submits the summary of monitoring and paleontological activities in the MCR. When feasible, the CPM shall be notified 10 days in advance of any proposed changes in monitoring different from the plan identified in the PRMMP. If there is any unforeseen change in monitoring, the notice shall be given as soon as possible prior to implementation of the change.

CB II requests the modifications above to restrict the implementation of the condition to only those times that construction activities will be taking place in previously undisturbed native soils. This is the same request that was provided for by Staff in the Cultural Resources section.

HAZARDOUS MATERIALS

HAZ-2 The project owner shall concurrently provide a Business Plan (including a Hazardous Materials Management Plan) and a Risk Management Plan (RMP) to the Certified Unified Program Authority – (CUPA) (Riverside County Hazardous Materials Division) and the CPM for review at the time the RMP is first submitted to the U.S. Environmental Protection Agency (EPA). After receiving comments from the CUPA, the EPA, and the CPM, the project owner shall reflect all recommendations in the final documents. Copies of the final Business Plan and RMP shall then be provided to the CUPA and EPA for information and to the CPM for approval.

Verification: At least 60 days prior to receiving any hazardous material on the site ***to support plant commissioning and operations***, the project owner shall provide a copy of a final Business Plan to the CPM for approval. At least sixty (60) days prior to delivery of aqueous ammonia to the site, the project owner shall provide the final RMP to the CUPA for information and to the CPM for approval.

CB II requests the above modification be made to Condition of Certification **HAZ-2** in order to clarify that the Business Plan is only required for hazardous materials to be used during commissioning and commercial operation. Without the modification, the Condition would require the Business Plan prior to construction, because small quantities of hazardous materials will be used during construction. Normally, a Business Plan would not be required for these small quantities anticipated for construction.

HAZ-11 The project owner shall install an ammonia sensor on the discharge from the scrubber on the anhydrous ammonia containment building that can be remotely read in the power plant control room. This sensor and all other sensors located inside the containment building shall be able to detect ammonia concentrations within a range of 10 to 800 ppm and shall be reported to the power plant control room on a real-time recordable basis. ***If applicable***, ~~Additionally,~~ the project owner shall install power overhead doors in the containment building that close via an electronic actuator as well as manually.

Verification: At least sixty (60) days prior to delivery of anhydrous ammonia to the facility, the project owner shall provide final design drawings and specification for the above systems to the CPM for review and approval.

CB II requests the above modification because the packaged enclosures likely to be provided for BEP II may have removable wall panels instead of overhead doors. It is not practical to provide removable panels with automatic operators.

CB II requests that Staff proposed Condition of Certification **HAZ-12** be deleted because CB II has already provided the analysis to Staff on March 1, 2005. That analysis provides the economic and technical justification for not using Lithium Bromide absorption chilling technology. Therefore the condition requiring the analysis to be completed again is unwarranted.

LAND USE

Staff asserts any permanent retirement of "productive farmland" by the WCOP is a land use impact and must be mitigated. To mitigate this impact Staff has proposed Condition of Certification **LAND-3**. However, Staff applied a different standard to determine impacts in BEP. We disagree that removal of "productive farmland" is the appropriate threshold of significance. The threshold utilized in the BEP and throughout the state is the removal of farmland that is designated as Prime Farmlands or Farmlands of Statewide Importance as defined by the Department of Conservation, removal of land that is designated in a Williamson Act Preserve, or violating any condition of a Williamson Act Contract. Utilizing this approach, in order to avoid triggering any action that would result in an impact above the thresholds of significance the Commission adopted the following Condition in BEP.

> **BEP LAND-2** The proposed water conservation offset program shall not retire lands in the Palo Verde Valley (Priority 1 Lands) designated as Prime Farmlands or as Farmland of Statewide Importance as defined by the Department of Conservation, or lands included in a Williamson Act Preserve. Fallowing or retirement of farmlands shall not violate any provision of a Williamson Act Contract. Lands selected for retirement on the Mesa shall not include lands currently involved in active orchard crop production.
>
> **Verification:** At least 60 days prior to implementation of the Water conservation Offset Program (WCOP), the project owner shall submit detailed information to the CPM regarding the lands involved in the WCOP, including: 1) location and assessor parcel number, 2) Department of Conservation Important Farmland Program Classification, 3) crop and cultivation history, and 4) Williamson Act Preserve status. If the program will fallow or retire any lands under Williamson Act contract, the project owner shall provide documentation that such fallowing or retirement has been reviewed and approved by Riverside County Planning Department and does not violate any provision of a Williamson Act contract. Any WCOP agreements that are altered or added to the program shall be submitted to the CPM at least 30 days prior to taking effect.

In addition to committing to this condition for BEP II, CB II agreed if permanent fallowing is to occur on the Mesa under the WCOP and that land is designated as Prime Farmland or Farmland of Statewide Importance, CB II will mitigate this potential agricultural land impact by purchasing and setting aside an equivalent amount of

farmland in a farmland trust or contributing a sum of money to an existing farmland trust determined on an acre for acre basis. In either case, there will be no unmitigated land use impact.

LAND-3 If the WCOP involves permanent transfer of irrigation water previously used for ***land designated as either Prime Farmland or Farmland of Statewide Importance as defined by the Department of Conservation (Designated Farmland)*** ~~productive irrigated farmland~~, the project owner shall mitigate at a one-to-one acre ratio for the conversion of ~~productive~~ farmland in the fulfillment of the WCOP through permanent retirement (time of the expected life of the project or greater) by implementing one or more of the following strategies:

1) a mitigation fee payment to the Riverside County agricultural land trust or the American Farmland Trust consistent with a prepared Farmlands Mitigation Agreement. The payment amount shall be determined by contacting the local assessor's office to determine the assessed value for the acreage of productive agricultural land retired by the WCOP, or by a real estate appraiser selected by the project owner and approved by the CPM.

2) securing the acquisition of an agricultural easement for other farmland (retired or fallow land that has been actively irrigated within the past five years within the Palo Verde Irrigation District Service area). ~~Farmlands shall include areas of row crops and non-citrus producing orchards that depend upon Colorado River groundwater~~. Easements for irrigated farmland would be acquired based on the California Department of Conservation's Important Farmland Classification Map, but in no case shall be less than a 1:1 ratio. The program will involve approximately 726 acres assuming an accounting basis of consumptive water use of 4.2 acre-feet per acre.

Verification: Thirty (30) days prior to start of construction, the project owner shall provide in its monthly compliance reports a discussion of any land and/or easements purchased in the preceding month by the trust with the mitigation fee money provided, and the provisions to guarantee that the land managed by the trust will be farmed in perpetuity. This discussion must include the schedule for purchasing the same acreage of ~~productive~~ ***Designated F***~~f~~arm land as retired by the WCOP and/or easements within one year of start of construction as compensation for the acreage of ~~productive~~ ***Designated F***~~f~~arm land to be converted by the WCOP.

CB II requests the above modifications be made to accurately reflect both CB II's commitments and to link the mitigation to thresholds of significance outlined above.

NOISE AND VIBRATION

CB II has reviewed and agrees with the Conditions of Certification proposed by Staff in the Noise and Vibration section of the FSA.

PUBLIC HEALTH

CB II has reviewed and agrees with the Conditions of Certification proposed by Staff in the Public Health section of the FSA.

RELIABILITY

CB II has reviewed and agrees with the conclusions contained in the Power Plant Reliability section of the FSA.

SOCIOECONOMICS

Staff has proposed Condition of Certification **SOCIO-2** to mitigate Staff's prediction that the Water Conservation Offset Program (WCOP) will result in a loss of farm-worker jobs. This conclusion is directly contrary to Staff's own conclusions in BEP and the Commission Decision for BEP, which concludes the BEP, including a nearly identical WCOP, will not result in significant socioeconomic impacts. We intend to produce expert testimony that BEP II will result in a net job gain, not loss and Staff's determination of loss of farm-worker jobs, if accurate, is not significant, requiring the proposed condition. We therefore, request **SOCIO-2** to be deleted.

TRAFFIC AND TRANSPORTATION

CB II disagrees with Staff's assertions and conclusions that the BEP II does not comply with LORS. Staff is correct, the Riverside County Airport Land Use Commission (ALUC), an advisory board only, determined the BEP II is not consistent with the Comprehensive Land Use Plan for the Airport. The City of Blythe legally and properly made the appropriate findings to override the ALUC's erroneous advisory opinion. BEP II is further south of the approach to Runway 26 and a condition of the City Override was that BEP II would facilitate a change in the airport traffic pattern to ensure that aircraft landing at Runway 26 would not fly over BEP II project components.

In addition to the fact that aircraft will not be flying over BEP II, CB II will present expert testimony that it poses no danger to aircraft landing at Runway 26 even if an aircraft were to fly over BEP II. These expert witnesses will include an air modeling expert who can determine the worst case scenario updraft that could be generated by the power plant cooling towers and stacks, an engineer that has investigated the cause of numerous airplane crashes and has conducted tests over the BEP while operating, as well as representatives of the City of Blythe, the airport owner.

Conditions of Certification

TRANS-5 The project owner shall prepare a construction traffic control and implementation plan for the project and its associated facilities. The project owner shall consult with the affected local jurisdiction(s), Caltrans (if applicable) and the Blythe School District, in the preparation of the traffic control and implementation plan. The project owner shall provide a copy of the local jurisdiction's, Caltrans, and school district written comments and a copy of the traffic control and implementation plan to the CPM.

The traffic control and implementation plan shall include and describe the following minimum requirements:

- Timing of heavy equipment and building materials deliveries and related hauling routes;
- Redirecting construction traffic with a flag person;
- Signing, lighting, and traffic control device placement;
- ~~Timing of construction work hours and arrival/departure intervals outside of peak traffic periods~~;

- Coordinating measures for eliminating any traffic safety hazards to school buses and school children on or near the construction worker travel and truck routes;
- Ensuring safe access to the main entrance;
- Ensuring access for emergency vehicles to the project site;
- Developing a emergency notification plan in case of a hazardous materials release including alternative transportation routes if I-10 was closed to traffic;
- Closing of travel lanes on a temporary basis;
- Ensuring access to adjacent residential and commercial property during the construction of all linears; and
- Devising a construction workforce ridesharing plan.

The project owner shall submit the proposed traffic control and implementation plan to the affected local jurisdiction, school district(s) and Caltrans (if appropriate) for review and comment. The project owner shall provide to the CPM a copy of the transmittal letter submitted to the affected local jurisdiction, school district(s) and Caltrans requesting their review of the traffic control and implementation plan. The project owner shall provide any comment letters to the CPM for review and approval.

Verification: At least 30 calendar days prior to site mobilization, the project owner shall provide a copy of the traffic control and implementation plan to the CPM for review and approval with documentation of review and comment by the reviewing agencies. The reviewing agencies shall have 30 calendar days to review the plan.

CB II requests the restriction on construction traffic during peak traffic be deleted. Staff has not identified that construction traffic at any time would cause a significant traffic impact to any roadway. Therefore, such a restriction is unwarranted.

TRANSMISSION LINE SAFETY AND NUISANCE

CB II has reviewed and agrees with the Conditions of Certification proposed by Staff in the Transmission Line Safety and Nuisance section of the FSA.

TRANSMISSION SYSTEM ENGINEERING

Staff has not yet issued its Addendum to the Transmission System Engineering section of the FSA. CB II proposed (January 2004) a Condition of Certification in accordance with the Committee direction and is prepared to present expert testimony at evidentiary hearing to support its adoption. For the Committee's reference our proposed Condition of Certification is reproduced below:

> **Condition TSE No. _____:** The Project Owner shall not commence construction until the Desert Southwest Transmission Project (or an equivalent transmission upgrade as determined by the CPM) has received all necessary permits. The Project Owner shall not deliver to the grid more than ____ megawatts combined from the Blythe I and Blythe II projects until the Desert Southwest Transmission Project (or an equivalent transmission upgrade as determined by the CPM) has been constructed and is in operation.
>
> **Verification:** Not later than 30 days prior to commencement of construction, the Project Owner shall provide to the CPM a statement from the owner(s) of the Desert Southwest Transmission Project (or an equivalent transmission upgrade as determined by the CPM) that all necessary permits have been issued. Not later than 30 days prior to delivery to the grid from the Blythe I and Blythe II projects of greater than ____ megawatts, the Project Owner shall submit to the CPM a statement from the owner(s) of the Desert Southwest Transmission Project (or an equivalent transmission upgrade as determined by the CPM) that the project is operational.

Since we have not yet reviewed the Staff Addendum, we reserve the right to present direct testimony and cross-examine Staff witnesses at evidentiary hearing. We understand that Staff will be filing the Addendum on June 24, 2005. We will review it and update the Committee regarding our position orally at the Prehearing Conference on June 29, 2005.

WASTE MANAGEMENT

WASTE-7 The project owner shall determine if the ZLD generated wastes are hazardous or non-hazardous pursuant to Chapter 12, section 66262.11 of Title 22 of the California Code of Regulations. The wastes shall be managed as

designated wastes if the wastes are classified as non-hazardous, unless determined otherwise.

Verification: The project owner shall notify the CPM via the ~~monthly~~ ***annual*** compliance report regarding the classification of the wastes and the treatment/disposal methods utilized ~~consequently~~.

CB II requests the modification to the above Condition because we believe it is unnecessary to require reporting on a monthly basis. CB II agrees to report annually, which is more frequent than other projects licensed by the Commission. For example, the REP Decision requires that the project owner report only once.

WATER QUALITY AND SOILS

Staff asserts that as an alternative to dry-cooling, use of Rannells Drain water is preferable to use of groundwater because the Rannells Drain is of poorer quality than the groundwater. We intend to provide expert testimony that in fact BEP II is using the poorest quality water in the region, the groundwater. Further, Staff asserts that the use of groundwater by BEP II will further degrade the aquifer and other well users. Specifically, we intend to present evidence that the CB II team has worked diligently with the City providing free legal and engineering services to assist the City of Blythe in developing a project to deliver City water to the community of Mesa Verde. Mesa Verde's wells have been of extremely poor quality, unrelated to BEP. However, after hearing the complaints of the Mesa Verde community, the City of Blythe and members of the CB II team initiated an engineering study sufficient to support bonding to develop a project to deliver much needed City water to the community of Mesa Verde. While we disagree with Staff that BEP II pumping could further degrade the quality of the Mesa Verde well, actions to replace the source of water to this community are already underway.

Conditions of Certification

Condition of Certification **SOIL & WATER-1** should be deleted because the project is not required to obtain a General National Pollutant Discharge Elimination System (NPDES) Permit for Discharges of Storm Water Associated with Construction

Activity because all stormwater runoff during construction will be retained on-site. Since no stormwater leaves the site, there is no discharge and therefore a permit is not required and a Stormwater Pollution Prevention Plan is not required.

Condition of Certification **SOIL & WATER-2** should be deleted. It is not required because the entire BEP II site will be graded to direct all stormwater runoff to the BEP retention basin. That basin's design was approved by the Commission during the compliance phase for BEP, is currently in operation, is capable of handling the 100-year storm event and flow for the project site and watershed area of approximately 700 acre. It is the mechanism by which the Committee can be assured stormwater and sediments will not leave the site. If stormwater and sediments cannot leave the site, then there cannot be impacts to local surface waters from uncontrolled stormwater runoff during construction. While CB II recognizes that this condition has become standard for Commission licenses, in the case of BEP II, the exercise to develop a plan that will confirm what the BEP retention was designed and built (and approved by the Commission Compliance Staff) to accomplish, is futile with no environmental benefit.

As discussed in the Section entitled Biological Resources, CB II believes that elimination of the evaporation pond is not the only method to mitigate potential wildlife impacts. Therefore, Staff's Proposed Condition **SOIL & WATER-6** should be deleted.

WATER RESOURCES

Staff asserts that the BEP II's use of groundwater constitutes use of Colorado River surface water and therefore the use does not comply with applicable LORS. Staff further asserts that BEP II's use of the groundwater results in significant environmental impacts. Staff further describes the environmental impacts associated with the use of groundwater as local impacts to nearby wells and regional impacts to downstream users of Colorado River water. Staff claims are false on all accounts and therefore Staff's assertion that BEP II must employ dry-cooling technology or use water from the Rannells Drain coupled with a Water Conservation Offset Plan (WCOP) should be rejected by the Committee. CB II intends to bring a series of experts to characterize the

water both legally and physically, to distinguish between the California groundwater that will be used by BEP II and the Colorado River surface water that will not be used, and the effects of pumping on nearby wells.

CB II believes it is necessary for the Committee to note that each of these issues was vigorously contested and fully adjudicated during the licensing of BEP. In that case, the Commission ruled that these same Staff's arguments were without merit. BEP II proposes to use exactly the same source of water as authorized by the Commission for BEP and commits to a voluntary WCOP.

Applicable LORS

There are no LORS applicable to the use of the groundwater proposed for BEP II. The Commission determined in BEP that even SWRCB Policy 75-58 would not require the BEP to use dry-cooling technology. Staff asserts that a complete body of law that is applicable to surface water applies to the groundwater in the vicinity of BEP II. However, Staff has failed to cite any federal or state law that regulates the groundwater or in any way "links" it to Colorado River surface water for purposes of imposing LORS that are applicable to the use of Colorado River surface water. We intend to provide testimony at evidentiary hearing and legal analysis in our briefs that cite law that specifically distinguishes between the groundwater and Colorado River surface water.

The LORS applicable to Colorado River surface water include the requirement that one have a legal right to divert and use the water. While we will provide a complete description of these LORS in our testimony, we have developed a brief summary for the Committee's use in understanding the dispute between the parties.

As one might expect, disputes over the legal right to use the Colorado River surface water have been ongoing for decades. These disputes have resulted in a widely accepted body of law that governs all diversions in the lower Colorado River basin, known collectively as the "Law of the River". The U.S. Bureau of Reclamation (Bureau) is the appointed water master for use of the Colorado River surface water in the lower Colorado River basin, in which BEP II is located. The diversion scheme regulated by the Bureau divides water rights into Priorities. For example, Priority 1

water right holders' right to divert and use the Colorado River surface water is superior to holders of Priority 2, 3, etc. water rights. The BEP II is within the boundaries of the Palo Verde Irrigation District (PVID), which holds Priority 1 superior water rights as well as Priority 3 water rights to divert and use Colorado River surface water. The surface water that PVID does not use continues to flow downstream to other water rights holders. However, the downstream users' rights are inferior to PVID's. In other words, PVID has the legal right to satisfy all of its water needs before any of the downstream users would have the right to use any Colorado River water.

As Staff described, PVID's right is not quantified in terms of water volume, but is instead quantified in the ability to serve potable needs (municipal and industrial) and irrigate over 104,000 acres in the Valley and 16,000 acres on the Mesa within in its boundaries. The reason this background is important to understand is that when PVID does not irrigate all of the lands within its boundaries to which it is entitled, the unused water is allowed to flow to downstream users. For this reason the downstream users are very concerned about the amount that PVID actually uses since the amount directly affects the amount of Colorado River water that is available for their uses. PVID accounts for its uses by calculating the amount of surface water it diverts from the Colorado River and then subtracts the amount that it returns to the Colorado River as "return flow". The downstream users have a vested interest in the return flows as well as the amount that is diverted and used by PVID.

PVID, in a letter to the Commission dated September 16, 2003, made it abundantly clear that BEP II's use of groundwater is not an illegal diversion of Colorado River Water as follows:

> "Setting aside the question of whether or not a particular well produces water "drawn from the mainstream," there is a practical answer to whether or not a well is unauthorized. There are hundreds, perhaps thousands, of wells in the Palo Verde Valley, Imperial Valley and Coachella Valley which draw water from below the Bureau of Reclamation's accounting surface. These wells are in districts which have water delivery contracts with the United States. No one, including the United States, has assumed that these wells are unauthorized. There is no reason whatever why wells on the lower Palo Verde Mesa should be treated differently than wells in the Palo Verde, Imperial or Coachella Valleys. In fact, if the Bureau's

presumption that they are drawing from the river is correct, then wells in the Palo Verde Valley and the lower Palo Verde Mesa are drawing from the same underground pool. The only difference is that the water would be used on the Mesa, not in the valley. Other wells are operating on the Mesa and the United States issued patents based on the water supply from such wells.

It should not be assumed or concluded that the Blythe Energy Project's wells are unauthorized or that, even if they are actually diverting water from the river, there is no right to do so. The water delivery agreements give no support to such arguments and where wells are within districts authorized to use water, it is assumed that the wells within the district are not additional diversions from the river, and that such wells are not unauthorized diversions.

You should not assume that Blythe Energy has no right to use well water on the lower Palo Verde Mesa. Such use would be indistinguishable from wells already on the Mesa or in the PVID and PVID has the right to provide water to additional lands on the Mesa under its water delivery agreement."

If the groundwater were in fact hydrologically connected in real-time to the Colorado River surface water as alleged by Staff, clearly the downstream users would be extremely concerned about the accounting for every well using this groundwater. The groundwater use would in essence need to be accounted for and "charged" against PVID's water right. Yet, unexplained by Staff, there are hundreds of wells including agricultural wells, the well at the community of Mesa Verde, and the City of Blythe municipal wells, none of which are "charged" against PVID's allocation. According to Staff's logic every one of these wells are violating federal law by using Colorado River water without the legal authorization to do so. The very downstream users that Staff claims the BEP II will impact do not object to every other well user within PVID's boundaries. In fact, the largest downstream user, MWD, supported the WCOP by BEP and BEP II as providing a benefit to it. In other words, MWD has not objected to the BEP or BEP II proposed uses because the voluntary WCOPs of both projects results in reducing the amount of water that PVID is able to divert by taking land that PVID had the legal right to irrigate with Colorado River surface water and removing it from PVID's total acreage Priority 1 water right. This improves MWD's inferior water right by in effect placing additional limits on PVID. Without objection of the largest downstream user, the

Committee should find Staff's arguments that BEP II's use of groundwater negatively affects downstream water rights holders to be less than credible.

Staff continues to cite the US Bureau of Reclamation Accounting Surface model as applicable LORS to the groundwater within the region and as proof that the groundwater is in fact Colorado River surface water. While the model has existed for over a decade, the Bureau has yet to adopt any applicable regulation or policy relative to it. The WCOPs for BEP and for BEP II were developed in order to provide protection from ***this potential future policy*** that ***may be implemented*** by the Bureau in the uncertain future and, ***which might account*** for use of this groundwater as if it were Colorado River water. In fact Staff testified in the evidentiary hearings for BEP in 2000 that it believed that such a policy was imminent. No such policy now exists, even in draft form, and the Bureau has never consulted with the State regarding its intent to declare millions of acre-feet of California groundwater to be federal surface water. However, the Bureau has approved the BEP II WCOP and has said that it would comply with this future policy should it ever be promulgated. That was enough for the Commission to issue a license to BEP recognizing that the WCOP was voluntary. BEP II should be commended instead of criticized for voluntarily incurring the expense of implementing the WCOP.

The Committee should rule that the LORS applicable to Colorado River surface water are not applicable to BEP II's use of groundwater. This was the conclusion of the BEP Decision. To hold otherwise would be an inconsistent result on the same set of basic facts.

Impacts to Downstream Users

Staff concludes that BEP II's use of groundwater would also result in a significant environmental impact under the California Environmental Quality Act (CEQA). Specifically, Staff asserts that the use of groundwater would deny downstream users of Colorado River surface water the use of some quantity of water. Staff believes that because groundwater and surface water do interact, the use of one will negatively affect the other. While Staff's assertion is more likely to be true for a shallow well in close proximity to the bank of a large river, the relationship between cause and effect is

attenuated with distance. The relationship is also defined by the amount of time and the quantity of water that can move from the groundwater aquifer beneath the site to any Colorado River surface source and visa versa. Such slow movement precludes measurement of any effect on the Colorado River. Staff has speculated and assumed that if any effect was measurable it would be large enough to be characterized as an impact. Such speculation is not only prohibited by CEQA it is just plain illogical. Applying Staff's logic results in the erroneous conclusion that every individual well in the Sacramento and San Joaquin Valleys adversely affects the Sacramento and San Joaquin Rivers instantaneously causing measurable loss of surface water rights to every downstream surface water user. This is contrary to the whole system of California and Western United States water rights laws and management policies that clearly distinguish surface water and groundwater. We intend to provide expert testimony to demonstrate the flaws in this logic.

Staff also asserts that the groundwater pumping would affect the surface water in the agricultural drains that PVID uses to collect agricultural runoff water (and diverted but unused water from its members). The water in these drains is part of the return flows to the Colorado River and such return flows are used in the Bureau accounting of PVID's Colorado River surface water diversion. Rannells Drain is singled out by Staff, but is over 1.5 miles away and 70 feet below the BEP II site, and more than 500 feet above the source of water that will be used by BEP II. On the one hand Staff asserts that affecting Rannells Drain is negatively impacting the downstream users of the Colorado River but then recommends that BEP II not rely on groundwater but rather directly take water from Rannells Drain. Taking water directly from Rannells Drain clearly is using water that is returning to the Colorado River and is accounted for as Colorado River water and on that basis should be rejected.

Therefore, Staff assertion that the groundwater pumping results in a significant impact to downstream Colorado River water users should be rejected. Since there is no impact that needs mitigating, the imposition of dry-cooling technology, the imposition of use of Rannells Drain, or the requirement that the Commission have jurisdiction over or require modifications to the WCOP are unwarranted.

Impacts to Surrounding Wells

Staff has also predicted impacts to surrounding wells due to the well interference effects from BEP II pumping. This argument is entirely inconsistent with the argument that the Colorado River and the groundwater are instantaneously connected. If these independent water sources were directly connected in the manner asserted by Staff, it would stand to reason that any drawdown would be replenished by Colorado River water, thereby eliminating any well interference effects. On the one hand, Staff asserts that the pumping affects the Colorado River and the drains, but on the other, the drains and the Colorado River do not replenish the aquifer in such a manner to reduce the effects of drawdown.

BEP II agreed to the exact same well monitoring and replacement condition the Commission included in the BEP Decision. While Staff predicted impacts from BEP pumping, these impacts have failed to materialize and BEP has not had to replace or modify any well in the surrounding area. Even though CB II believes its groundwater pumping will not result in well interference impacts, in order to provide assurance to surrounding well owners CB II has agreed to the BEP condition related to well interferences.

Conditions of Certification

CB II requests that the Committee reject Staff's proposed Condition of Certification **SOIL & WATER-7** which requires CPM approval of the WCOP. CB II requests the Committee to base its rejection on the same reasons the Commission rejected Staff's arguments in BEP. Since BEP II's proposed use of groundwater does not result in a significant impact, a WCOP is not necessary for mitigation. The voluntary WCOP should be acknowledged in the Commission Decision but not made to be mandatory and subject to CPM jurisdiction because its purpose is only to comply with the speculative uncertain future Bureau policy.

CB II believes Staff's Proposed Conditions of Certification **SOIL & WATER-8** and **9** should be rejected because they are not necessary to mitigate any identifiable impact,

are not required by any LORS and may actually result in the use of Colorado River surface water.

CB II requests that the Committee reject Staff proposed Condition of Certification **SOIL & WATER-11** and replace it with the exact same well interference conditions imposed on BEP (BEP Conditions of Certification **SOIL & WATER-6** and **7**). Staff has provided no support for modifying the BEP conditions.

CB II requests that Staff's proposed Condition of Certification **SOIL & WATER-12** be replaced with the groundwater quality monitoring requirements imposed on BEP (BEP Condition of Certification **SOIL & WATER-10**). Staff has not demonstrated sufficient changed circumstances to warrant modification of the BEP monitoring strategy.

WORKER SAFETY AND FIRE PROTECTION

WORKER SAFETY-2 The project owner shall submit to the CPM a copy of the Project Operations and Maintenance Safety and Health Program containing the following:

- An Operation Injury and Illness Prevention Plan;
- An Emergency Action Plan;
- Hazardous Materials Management Program;
- Fire Protection and Prevention Program (8 CCR § 3221); and
- Personal Protective Equipment Program (8 CCR §§ 3401-3411).

The Operation Injury and Illness Prevention Plan, Emergency Action Plan, and Personal Protective Equipment Program shall be submitted to the***CPM*** ~~Cal/OSHA Consultation Service~~, for review and comment concerning compliance of the program with all applicable Safety Orders. The Operation Fire Protection Plan and the Emergency Action Plan shall also be submitted to the City of Blythe Fire Department and the Riverside County Fire Department for review and comment.

Verification: At least 30 days prior to the start of operation, the project owner shall submit to the CPM for approval a copy of the Project

Operations and Maintenance Safety & Health Program~~. It shall incorporate Cal/OSHA Consultation Service's comments, if any, stating that they have reviewed and accepted the specified elements of the proposed Operations and Maintenance Safety and Health Plan~~. The project owner shall provide a letter from the City of Blythe Fire Department and the Riverside County Fire Department stating that they have reviewed and commented on the Operations Fire Protection and Prevention Plan and the Emergency Action Plan.

Proposed Condition of Certification **WORKER SAFETY-2** needs to be modified to reflect the fact that the CAL/OSHA does not provide the review service required by the condition. The above modification is consistent with the REP Decision.

Condition of Certification **WORKER SAFETY-3** should be deleted because it is unnecessary. In response to the Fire Needs Assessment, CB II has committed to provide a significant amount of money to the City of Blythe specifically for the training required by the proposed condition. In addition to the training, the funds are sufficient to provide equipment that will enable the City of Blythe to be the first responder. CB II intends to call a representative from the City of Blythe to testify to the above facts. Therefore, the condition is unnecessary.

VISUAL RESOURCES

Proposed Condition of Certification **VIS-1** requires extremely burdensome screening for construction activities. Staff claims **VIS-1** is required to mitigate for the visual impact caused by construction activities on the site. This is contrary to Staff's conclusion for the construction of BEP. CB II pointed this out to Staff in its comments on the PSA and received no substantive response. See pages 4.12-32 and 33 of the FSA. We intend to present testimony that the temporary construction activities at BEP II are no different that the activities that took place for BEP and that neither constitute significant visual impacts. We intend to present the testimony of a City of Blythe representative that there was not a single complaint reported by anyone during the construction of BEP. If anything, the landscaping installed on Hobsonway to comply with BEP Visual Conditions of Certification reduces the visibility when driving from east

to west above and beyond what was visible during the construction of BEP. Therefore the visual impacts should be less, not more. Proposed Condition of Certification **VIS-1** should be deleted.

Proposed Condition of Certification **VIS-5** requires a detailed landscaping plan to screen the plant. Staff concludes that this screening is necessary to mitigate visual impacts from viewers on I-10 and Hobsonway, and viewers from the community of Mesa Verde approximately 2 miles away. We intend to present expert testimony that the project does not result in significant visual impacts and any mitigation that may be prudent is accomplished through Proposed Conditions of Certification **VIS-4** and **VIS-6**. If landscaping is required it should only be at the discretion of the City of Blythe in order to comply with its overall master plans for Hobsonway.

VIS-7 The project owner shall install minimal signage visible to the public, which shall a) have unobtrusive colors and finishes that prevent excessive glare; and b) be consistent with the policies and ordinances of the City of Blythe. The design of any signs required by safety regulations shall conform to the criteria established by those regulations.

Verification: ***Prior to installation of the sign, t***~~T~~he project owner shall ***provide a copy of the plans for the sign to*** ~~notify~~ the CPM and the City of Blythe ***for review and*** approval.~~that appropriate signage has been installed and is ready for inspection prior to the start of commercial operation, and shall provide the CPM with electronic color photographs of the signage. If the CPM determines that signage requires changes, the project owner shall complete the changes within 60 days and notify the CPM that the changes have been completed.~~

OUTSTANDING ISSUES AND SCHEDULE

As directed by the Prehearing Conference Order the following is a proposed schedule for hearings and briefs. We request that the tentative schedule for evidentiary hearings on August 1 and 2 in the City of Blythe should be confirmed. We further believe that hearings can be concluded within those two days.

To accommodate the August 1 and 2 evidentiary hearing schedule, we request the Committee direct the parties to file testimony by July 15, 2005.

We also request that the Committee schedule one round of briefs to be filed within two weeks of availability of the evidentiary hearing transcripts. We do not request reply briefs.

Dated, June 24, 2005

Scott A. Galati
Counsel to Caithness Blythe II, LLC

TABLE 1

TOPIC AREA	DISPUTES BETWEEN PARTIES	WITNESS	TESTIMONY SUMMARY	DIRECT TESTIMONY ESTIMATE	CROSS-EXAM ESTIMATE
PROJECT DESCRIPTION	None	Tom Cameron, Robert Looper, Robert Gavahan	Brief description of Siting of BEPII and Project components	20 minutes	None
AIR QUALITY	Yes	Joel Reisman, Gordon Frisbie, Tom Cameron	Disputed Condition language	20 minutes	15 minutes
ALTERNATIVES	Yes	Jeff Harvey Robert Looper	Comparison of impacts of Alternatives to Preferred Alternative	20 minutes	20 minutes
BIOLOGICAL RESOURCES	Yes	Alice Karl, Robert Gavahan, Tom Cameron	Description of appropriate bird hazing program for evaporation ponds, crystallizer costs	30 minutes	30 minutes
COMPLIANCE	None	Peter Boucher, Tom Cameron, Robert Gavahan	Declaration	5 minutes	None
CULTURAL RESOURCES	Yes	Peter Boucher, Tom Cameron	Disputed condition language	15 minutes	15 minutes
EFFICIENCY	None	Tom Cameron, Robert Gavahan	Declaration	5 minutes	None
FACILITY DESIGN,	None	Robert Gavahan, Rob Holt, Tom Cameron	Declaration	5 minutes	None
GEOLOGY AND PALEONTOLOGY	Yes	Leon Crain	Minor disputed condition language	5 minutes	5 minutes

TOPIC AREA	DISPUTES BETWEEN PARTIES	WITNESS	TESTIMONY SUMMARY	DIRECT TESTIMONY ESTIMATE	CROSS-EXAM ESTIMATE
HAZARDOUS MATERIALS	Yes	Leon Crain	Minor disputed condition language	5 minutes	5 minutes
LAND USE	Yes	Jeff Harvey	Farmland Impacts and Mitigation	15 minutes	15 minutes
NOISE AND VIBRATION	None	Robert Gavahan	Declaration	5 minutes	None
PUBLIC HEALTH	None	Leon Crain	Declaration	5 minutes	None
RELIABILITY	None	Tom Cameron, Robert Gavahan	Declaration	5 minutes	None
SOCIOECONOMICS	Yes	Jeff Harvey	Farmland labor impacts of WCOP	15 minutes	15 minutes
TRAFFIC AND TRANSPORTATION	Yes	Rob Holt, Bob Wynn, Ken Klosky, Charles Hull	Airport Safety Issue, ALUC Ovrride, Disputed condition language	2 hours	30 minutes
TRANSMISSION LINE SAFETY AND NUISANCE	None	Doug Proctor, Robert Looper	Declaration	5 minutes	None
TRANSMISSION SYSTEM ENGINEERING	Unknown till Staff Addendum Filed	Bob Mooney, Robert Looper	Unknown	Unknown	Unknown
WASTE MANAGEMENT	Yes	Robert Gavahan	Disputed condition language	10 minutes	5 minutes
WATER QUALITY AND SOILS	Yes	Jeff Harvey, Robert Looper Dave Hanson	Disputed condition language, groundwater and drain water quality, effects of pumping on groundwater quality	1 hour	30 minutes

TOPIC AREA	DISPUTES BETWEEN PARTIES	WITNESS	TESTIMONY SUMMARY	DIRECT TESTIMONY ESTIMATE	CROSS-EXAM ESTIMATE
WATER RESOURCES	Yes	Jeff Harvey, Robert Looper, Tom Cameron, Robert Gavahan, Tim O'Laughlin	See Prehearing Conference Statement for description, Dry cooling costs and feasibility	3 hours	1 hours
WORKER SAFETY AND FIRE PROTECTION	Yes	Robert Gavahan, Tom Cameron, Charles Hull	Fire Needs Assessment, Disputed condition language	15 minutes	10 minutes
VISUUAL RESOURCES	Yes	Tom Cameron, Bob Looper, Bob Gavahan, Charles Hull Jeff Harvey	Construction impacts, Permanent vegetation and screening	25 minutes	10 minutes

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:	Docket No. 02-AFC-1
Application for Certification for the BLYTHE ENERGY PROJECT PHASE II	PROOF OF SERVICE

I, Carole Phelps, declare that on June 24, 2005, I deposited copies of **Caithness Blythe II, LLC's Prehearing Conference Statement, for the Blythe Energy Project Phase II (02-AFC-1)** in the United States mail at Sacramento, California with first class postage thereon fully prepaid and addressed to the following:

Original plus 12 copies delivered to:
DOCKET UNIT
California Energy Commission
Docket Unit, MS-4
Attn: Docket No. 02-AFC-1
1516 Ninth Street
Sacramento, CA 95814-5512

Copies also sent to:
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I declare under penalty of perjury that the foregoing is true and correct.

Carole Phelps

Carole Phelps