

Scott A. Galati
GALATI & BLEK, LLP
555 Capitol Mall Avenue
Suite 600
Sacramento, CA 95814
(916) 441-6575

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
BLYTHE ENERGY PROJECT II

DOCKET NO. 02-AFC-1

**CAITHNESS BLYTHE II, LLC'S
REPLY BRIEF**

Caithness Blythe II, LLC (CB II), hereby files its Reply Brief for the Blythe Energy Project II (BEP II). Specifically, this brief replies to the arguments set forth in Staff's Opening Brief. In general, Staff has urged the Committee to deny certification of the BEP II. Staff's Opening Brief sets forth two reasons for their position. The first is that Staff claims BEP II will result in unsafe operations of the airport and does not comply with the Comprehensive Land Use Plan (CLUP) for the airport. Staff also claims that the use of groundwater creates a adverse unmitigatable impacts and therefore, the Committee should require dry cooling or use of Rannell's Drain. For the reasons stated below, Staff's assertions should be rejected.

AIRPORT SAFETY

Effect of Aircraft

BEP II thermal and visible plumes will not have a direct and cumulative adverse impact to airport safety. If the traffic pattern for Runway 26 is changed to a right hand traffic pattern, an aircraft will not overfly BEP II since the BEP II cooling towers are 800 feet south of the extended runway centerline. Additionally, all parties agree that the only time plumes are an issue is when the conditions are cool and calm. With the

designation of a calm wind runway other than Runway 26, an aircraft in the pattern will fly well clear of BEP II when the low wind speeds make thermal plumes a concern. For a left hand pattern for Runway 17, the downwind leg would put an aircraft approximately one half mile to the west of BEP II at an altitude of 800 feet AGL. (8/2/05 RT pages 33-34) Dr. Morris testified that many airports in California have a designated calm wind runway.

Staff states on page 2 of its Opening Brief that "However, Mr. Wiswell, Chief of Caltrans' Division of Aeronautics, expressed his opinion that the safety concerns will not entirely go away and that the changes offered by the applicant are simply "as much as we can accomplish under the circumstances. (8/2/05 RT page 137)" It is important to note Mr. Wiswell goes on to testify that he would be "comfortable" with BEP II if the conditions proposed by the Applicant are undertaken. (8/2/05 RT page 138) The Staff now states that "The Energy Commission should not rely too greatly on Caltrans' apparent change in position" however; in the Staff Assessment they use his March 24th letter to support their position against BEP II (FSA p. 4.10-27). Apparently Mr. Wiswell's opinion is only valid to the Staff when it supports their argument.

Staff states on page 3 of its Opening Brief, that the visible plumes can "...be hazardous, however, if they become too large for a pilot to navigate around or obscure a pilot's view of the airport." Several key arguments refute this. First, the presence of a visible plume clearly identifies the location of the turbulence making it easy for the pilot to avoid. Also, these visible plumes are most significant when there are cool, calm conditions and at those conditions the calm wind runway (as proposed) would be in effect and an aircraft would not even fly near BEP II. Last there is no evidence in the record since BEP has been operating of a single complaint that a visible plume impaired any pilot, either taking off from or landing at, the Blythe Airport.

On page 3 of Staff's Opening Brief Staff states "Of greater concern are the thermal plumes that BEP II will generate. Thermal plumes will mainly occur when wind speeds are less than 2 knots and when the ambient temperature is below 70 degrees Fahrenheit; the plumes worsen in severity as the ambient temperature decreases. (FSA pp. 4.10-18, 37; RT 8/2/05 p. 105; RT 8/2/05 pp. 184-185.)" Once again Staff completely ignores our proposal of designating a calm wind runway. Based on their own statements here when

the conditions are such that thermals plumes are a factor the designation of a calm wind runway such as Runway 17 would take aircraft well away from BEP II (RT 8/2/05 p. 33-34).

On page 4 Staff states "BEP II will generate its thermal plumes during the cold months – when pilots are least expecting them." This argument completely ignores the fact that pilots flying into Blythe Airport will know exactly where the source of the turbulence is with the written published warnings to avoid overflight of the power plants and the ASOS announcement. The power plant is easy to identify and avoid since the pilots are flying in visual flight conditions. (RT 8/2/05 p. 29, 44-46)

On page 5 Staff states "One likely, and purely appropriate, way a plane would overfly BEP II would be if it were on a straight in approach from the south, southeast, or east." If a pilot is flying a straight in approach on the centerline of the extended runway, the aircraft will be 800 feet north of BEP II. Additionally, if the pilot has planned his/her flight into Blythe and is listening to ASOS he/she will have been warned to avoid the power plant and potential thermal plumes. Here again the designation of a calm wind runway would avoid an approach to Runway 26 when the winds are calm and are conducive to the presence of thermal plumes. Additionally, Staff states "A straight in approach does not require a pilot to use the landing pattern and allows a pilot to approach within 30 degrees of runway heading; lining up a plane with a runway is often imprecise and pilots can often be off by 30-45 degrees as they aim toward the runway using a straight in approach." Once again a pilot should not fly over BEP II unless he/she disregards the warnings to avoid overflight of the power plants.

On page 6 of its Opening Brief Staff states "Staff agrees that expert pilots who are aware of BEP II's generation of thermal plumes would be capable of handling any turbulence generated with little difficulty. Staff's safety concern lies mainly with student pilots, who do not have much experience reacting to unexpected situations, and those who are not aware of the thermal plumes." Here Staff agrees that the amount of turbulence experienced from the thermal plumes by an experienced pilot aware of them is not a factor. It is our contention that a student pilot will have both flight planned and been briefed to avoid the clearly visible power plants. (RT 8/2/05 p. 21, 28-30, 43, 52, 79)

On page 6 of its Opening Brief Staff states that “The applicant’s witness, Mr. Moss, acknowledges that whether turbulence is perceived as moderate or severe varies depending upon the pilot or person experiencing it. (RT 8/2/05 pp. 94-95)” The name of the witness is Dr. Morris. While this is certainly true the g-meter readings used in the flight test displayed values of 1.5 at approach altitude over the cooling towers which support a definition of moderate turbulence as well as the plume velocities provided by Dr. Kosky.

On page 7 of its Opening Brief Staff states “In contemplating what could happen if a plane flew over BEP II, Staff concluded that the most hazardous situation would be where a plane first flies over BEP II’s cooling towers, whose thermal plumes cause some excursion of the plane and pushes the plane into the thermals from BEP I’s cooling towers, and those thermals cause further excursion of the plane, possibly past ninety degrees.” This is not a logical argument due to the separation of the two sets of cooling towers.

The bottom-line is that the Staff completely ignores the proposal of the designation of a Calm Wind Runway. The Staff argument cannot refute its effectiveness so they therefore ignore it. The proposal of designating a Calm Wind Runway is never discussed in the Staff’s Opening Brief.

More telling than any Staff speculation about what student pilots can or cannot handle is the testimony of Mr. Sheble, a licensed instructor. As discussed in our Opening Brief, Mr. Sheble continues to use the Runway 26 to instruct pilots and testified that because he and other pilots have knowledge of the potential turbulence they can stay away from it (8/2/05 RT page 159-160). While Mr. Sheble states that the power plant is a hazard, he continues to use the ILS for training even though the approach takes the aircraft over the cooling towers of BEP. If Mr. Sheble viewed the ability of student pilots in the same manner that Staff does, clearly he would ensure student training does not occur in the vicinity of the power plant.

Plumes

Staff states at Page 4 of its Opening Brief that plumes will reach 8.5 m/s velocity. As described by Mr. Kosky, who has over 30 years of modeling experience, Staff’s

application of the methodology cited is misplaced. (8/2/05 RT pages 112 and 114. Evidence of misapplication is found Walters Appendix B page 4.10-41 of the FSA. Staff's calculated 4.25 m/s based on $\frac{1}{2}$ the exit velocity, which is 8.5 m/s. (see 4.10-41 2nd paragraph and Aviation Safety and Buoyant Plumes, 2003 Table 1 for "Exit Phase"). Staff testified and found in Walters Appendix B that velocity merged plumes would be 7.1 m/s calculated based on 4.25 m/s times 1.68 (see Appendix B p 4.10-41). The 8.5 was not supported by any Staff calculation (Appendix B) or testified to by Walters. Moreover, their exhibit, Aviation Safety and Buoyant Plumes, 2003 in Table 1 for the stage where "Plumes first touch" clearly states on Table 1 that velocity is less than $\frac{1}{2}$ of the exit velocity. The actual velocity needs to be analytically calculated by the software referenced in the paper. Staff did not do so. Therefore CEC Staff misapplied the calculation by using the incorrect velocity to start with. The Walters calculations also suggest an acceleration of the plume when it mixes, i.e. 4.25 m/s accelerating to 7.1 m/s and then somehow up to 8.5 m/s. Kosky testified that this was not possible and defies physics. (8/2/05 RT page 114). Kosky testimony is also supported by the CEC cited paper in the data contained in Table 2. The predicted vertical velocities decrease for all cases evaluated by the authors, even calm winds. Yet however, Staff's calculations mysteriously show that the plume increases its speed as it rises, which is counterintuitive, defies the laws of physics and is not supported by the sole exhibit upon which the calculations are based.

Staff asserts at Page 5 of its Opening Brief that Mr. Kosky did not understand Staff's application: This statement is incorrect. Kosky actually testified at 8/2/05 RT page 112 that he was familiar with technique employed by Staff and it would not be possible to use the information in the paper to calculate vertical velocities. CEC Staff used misapplied information contained in the report. 8/2/05 RT, page 114). Kosky did not "misunderstand". Staff confuses misunderstanding with clear disagreement. Mr. Kosky understood Staff's approach enough to point out its flaws.

At Page 8 of Staff's Opening Brief Staff stated that Blythe II not similar to Blythe I. While this is not supported in the record, it also contradicted in Staff's own testimony at Appendix B of the FSA 4.10-37 last paragraph whereby Staff lists heat rejection numbers similar to BEP I and those values used by Staff and Mr. Kosky.

At page 8 of its Opening Brief, Staff asserts that Mr. Kosky's analysis was not focused on the cooling towers. While Mr. Kosky analyzed the effects of the HRSGs as well, the effects of cooling tower were distinguished in the analysis especially the duration of vertical plumes. (8/2/05 RT page 110). Staff has also alleged in its Opening Brief that the model employed by Mr. Kosky was not designed to measure vertically velocity. Staff misunderstands Mr. Kosky's analysis. Mr. Kosky did not testify that he used the air quality model, but rather used the algorithms in the EPA approved model to calculate vertical velocity. (8/2/05 RT page 119).

Staff also asserts that the modeling at 85 degrees F and calm wind conditions was incorrect. As explained by Mr. Kosky; "We performed calculations of the plume rise as well as the vertical velocities and plume dimensions based on a variety of meteorological conditions that **can exist at the site.**" (8/2/05 RT at page 15) This included lower temperatures. Original charts were based on 85 degrees as an example. Moreover, Kosky testified that the HRSG was the more buoyant plume and the differential between the HRSG stack and any ambient temperature was greater than that for the cooling tower. (8/2/05 RT at pages 111 and 118). Kosky testified that using a low wind speed would be representative of clam conditions. (8/2/05 RT page 120)

However, more telling than any speculation by any expert as to which model is correct, the Kosky method and calculations were in-effect validated by actual flight test under ideal conditions. (8/2/05 RT page 115). Kosky predicted velocity under low temperature (mid-40s degree F) and calm conditions were validated by two separate measurements. Staff's own expert, Mr. Arnold stated that he felt that the g-meters were accurate based on the pre-test calibrations. (8/2/05 RT page 204). In addition, to the field test validation the Committee should also consider that BEP has been operating since 2003 and has generated 5 complaints even though Staff and Mr. Wolfe estimated up to 65 flights a day. Two of those complaints are Mr. Wolfe and his expert's father. The other three complaints report moderate to severe turbulence, which as explained by Dr. Morris could be a quite reasonable subjective measurement if experience without warning. However such turbulence would clearly be reported as less if experienced by a pilot who is expecting it.

Once again, the warnings, the modification of the traffic pattern and the

designation of a calm-wind runway would eliminate any unexpected overflight. In fact such mitigation is supported by the Staff exhibit upon which it relies to indicate the plume rise poses unacceptable risks. In Section 7 of the exhibit;

“The reduction of plume buoyancy by using heat recovery results in a very significant reduction of critical heights but open-cycle operation usually has to be considered in any risk assessment. For critical cases, it appears better to take advantage of the relatively small zone of influence on vertical velocities and the usual requirement of CASA to identify stack locations for low-flying aircraft. A notice to aircrew together with real-time indication of site operations may be effective in most situations.”

Additionally, Staff’s advisory circular stated “The risk posed by an exhaust plume to an aircraft during low-level flight can be managed or reduced if information is available to pilots so they can avoid the area of likely air disturbance.” (8/2/05 RT pages 215-216). This is exactly what CB II is proposing.

Therefore, the Committee can be confident that with the mitigation proposed by CB II and accepted by Caltrans, the risk, although perceived to be low to nonexistent by CB II, can completely eliminated. Therefore, the Committee should find that BEP II will not create a safety risk to any pilot utilizing the Blythe Airport.

Airport Land Use Commission LORS

Staff asserts in its Opening Brief at page 10 that the Comprehensive Land Use Plan (CLUP) prohibits power plants or uses that will generate water vapor. However, Staff fails to cite all of the language in the CLUP. Section 7.3.2.f at page 7-6 of the CLUP states that “Many uses which might cause conflicts can be designed to avoid these problems. For example, businesses could design their lighting systems to avoid confusion with airfield lighting.” In fact this is exactly what the Airport Land Use Commission (ALUC) did in BEP to find that the BEP was consistent. The ALUC adopted conditions to ensure consistency with the CLUP for the BEP, which was located in more sensitive airport safety designations. Staff agreed with the ALUC in the BEP case. In the case of BEP II, the City imposed conditions similar to BEP and

included in addition a requirement to change the traffic pattern for landing at Runway 26 to ensure no overflights of BEP II. This is exactly the type of design change contemplated by the CLUP. Staff's reliance on the generation of water vapor as a defacto prohibition misinterprets the CLUP and conflicts with their own recommendation in BEP. Additionally the issue of water vapor is a red herring. There have been no complaints about water vapor.

The Staff's assertion that the City has no authority to override the ALUC determination is without legal support and in direct conflict with long-time CEC practice. Staff asserts that the City does not have jurisdiction and that jurisdiction relies solely with the CEC. However, Staff and the Commission routinely rely upon and often require the local land use agency to perform such acts such as rezoning, General Plan Amendments, Specific Plan Amendments and other land use actions, before it will issue a license to an Applicant. If the Staff were correct that the CEC has the sole and exclusive authority to make land use decisions, it would have made such determinations and actions in the past. It has not. The CEC should honor, rely upon and specifically acknowledge that the BEP II complies with the applicable land use LORS because the City, operating in accordance with the Public Utilities Code, has appropriately overridden the ALUC's advisory opinion.

WATER RESOURCES

It is difficult to believe that Staff would take such strident positions on the contested water issues after having failed to support any of their key contentions in testimony at the evidentiary hearings. Staff retreated from its primary contention that the proposed groundwater use was actually a surface water use, admitted that their finding of water quality impacts to the regional aquifer actually referred to a potential for higher salinity in a very localized zone within a maximum of 2,000 feet surrounding the bottom of the BEP I and BEP II wells, and revealed that they knew that water in the Rannell's drain would not be withdrawn in a manner affecting downstream surface

waters, but rather, would only travel about 600 feet towards the BEP II wells over a 30-year pumping period. (8/1/05 RT 209)

It was also revealed in testimony that Staff had used outdated and inadequate water quality data for both groundwater and the Rannell's drain, and that Staff misunderstood and misrepresented its own data. Further, it was revealed that Staff had no idea how the PVID drains operated or where their very limited water quality data had been collected within that system, and that Staff had disregarded the local water district's explanations of how the surface water delivery and drain systems actually work because that information did not support Staff's conclusions.

In fact, throughout these proceedings, Staff has disregarded the consistent input from all local and regional expertise on water issues in this region, including particularly the U.S. Bureau of Reclamation and the Palo Verde Irrigation District. Staff has had to do so in order to make its contradictory conclusions regarding applicable LORS, water quality, groundwater and surface water rights, effects on downstream surface water rights and users, and alternatives pertaining to the Rannell's Drain.

Despite all these failures of Staff's assessment of water issues, their Opening Brief clings to false and unsupported contentions that the BEP II project will have impacts on water quality and downstream surface waters, that the proposed water use does not satisfy applicable LORS, and that use of water from the Rannell's Drain would be a preferred alternative to use of groundwater. We urge the Commission to strongly and directly reject Staff's position, and affirm that the proposed use of brackish quality groundwater by BEP II does comply with LORS, and will not produce any significant adverse environmental impacts.

The proposed use of groundwater complies with water policy LORS

1. Applicable LORS

As established in testimony, and in the record of input from the U.S. Bureau of Reclamation (Bureau) and the Palo Verde Irrigation District (PVID) cited in testimony, all aquifers – unconfined and confined – are recharged over time from a surface water

source. Staff's assertion that *groundwater is surface water* simply because the groundwater in this region is primarily recharged by the Colorado River negates all of California water law (and that of most western states) which clearly distinguishes between groundwater and surface water.

In California, property owners are allowed to pump groundwater from beneath their property for beneficial uses on their property without obtaining a formal water right. Shallow wells in close proximity (up to about one-half mile) to a surface water body and within a well defined subsurface bed and banks, have been found to be directly linked to surface water, requiring a surface water right. In no case in California is a deep well located miles from a stream channel considered to be directly linked to, or classified as surface water.

BEP II proposes to utilize groundwater, extracted from on-site wells approximately 550 to 600 feet deep, and more than nine miles west of the Colorado River. Under California water law, a landowner may pump groundwater from beneath their own lands for use on their property. No other LORS apply to this project.

No groundwater use in the Palo Verde Valley or Palo Verde Mesa is regulated by the Bureau of Reclamation or PVID, nor is any Mesa groundwater accounted for in PVID's Colorado River surface water entitlement accounting. If such policy is ever implemented, it must be equally applied to all well water users, and cannot be applied arbitrarily or capriciously to selected wells. It should particularly not be applied unilaterally – without consensus of the agencies that have water rights jurisdiction and without basis in LORS – by the California Energy Commission.

As for BEP, CB II recognizes that Reclamation has discussed for many years the possibility of developing a policy to regulate groundwater users drawing water from a modeled "accounting surface". At this time no such policy exists, nor is such policy pending for the foreseeable future, and under negotiated terms of the Quantification Settlement Agreement (QSA) there appears to be a disincentive to pursue such a policy. Nonetheless, the applicant has voluntarily proposed a Water Conservation Offset Program (WCOP) that the Bureau has confirmed will completely satisfy its water supply accounting if such a policy is ever adopted and implemented.

As determined by the Commission in the original BEP deliberations, Mesa groundwater use does not constitute a LORS issue, and does not pose a significant environmental effect (page 208, Final Decision). The WCOP has been developed as a voluntary response to the speculative future possibility that the Bureau will implement a formal policy to regulate ALL Mesa groundwater users sometime during the life of the Project.

Staff has systematically ignored these facts, and has instead tried to apply a LORS standard that simply does not exist, and that is not applied by any of the agencies with jurisdiction and responsibility for water resources in this region.

2. Compliance with the Commission's IEPR Policy

Contrary to Staff's claims, the groundwater proposed for use by BEP II is a naturally brackish water, consistent with priorities for water use defined in the Commission's own policy guidance. Staff cynically asserts in its testimony and in its brief that the groundwater is "fresh" and "potable" water since some people (particularly the residents of Mesa Verde) have no choice but to rely upon this source for their domestic use. Staff's claim ignores the County of Riverside's health advisory regarding this water source and the efforts actively being undertaken by the City to deliver fresh water to these residents to eliminate their reliance on such poor quality water.

As noted in testimony, Riverside County has cited the Mesa Verde water supply as not meeting EPA drinking water standards and requiring an alternative clean drinking water source. The City considers this community to be impacted by its poor quality well water, and is in the process of extending a pipeline to the Mesa Verde Community to replace the Mesa well with higher quality water from the City's main system. It is alarming that Staff continues its attempt to declare that unhealthful brackish water is actually fresh potable water just because some unfortunate individuals have no alternative water sources to use.

In their argument that the State definition of brackish water includes a combination of salinity greater than 1,000 ppm TDS, and chloride levels in excess of 250 ppm, Staff deceptively cites very selective data only from the BEP I wells that show

chloride levels slightly below the 250 ppm level. Staff's presentation speciously ignores the fact that every other well for which they have USGS data on the Mesa show chloride levels in excess of 250 ppm. On this basis, Staff not only claims the water is "fresh" water, but insists that it therefore does not fall within the priorities of water sources for power plant cooling specified in the Commission's IEPR policy.

3. Water Quality and the Rannell's Drain Alternative

Equally important, Staff has argued that water quality in Rannell's drain is lower than the Mesa groundwater source, and is therefore a preferred water source. In making this argument, Staff has again used very limited data for the drain water, relying entirely upon data from 1967 to 1971 and a single data point from November 1975. Even this limited information is averaged data for a single location within the drain system with no explanation of the number of samples or the range of values actually encountered.

Staff's assessment has ignored information and testimony provided by PVID regarding the operations of, and variability in, the drain system. PVID's General Manager, Ed Smith, testified (in confirmation of Dr. Harvey's testimony), that salinity levels of water in the Rannells drain vary significantly on a daily, weekly, and seasonal basis throughout the drain, and throughout the year depending upon volume of diversions from the Colorado River, total applied water for irrigation, and operational spillage from one of their main canals (the "B Canal"), and location in the system. At very low flow periods the drains consist predominately of irrigation water surface runoff and draining soil water that are higher in salinity (approximately 800 to 1,600 TDS). At average and high flows the drain water has salinity levels that are about the same as the source water from the Colorado River (500 to 600 TDS).

Roger Henning, Chief Engineer for PVID also confirmed this wide ranging variability, and explained the significant errors in Staff's mapping of the system, understanding of sources of water to the system, and location of water sampling sites that Staff selectively used to represent the drain water quality as a static condition.

Staff's brief criticizes Dr. Harvey for having no water quality sampling data for Rannell's Drain to counter their own very limited data. As Mr. Smith and Mr. Henning indicated in their testimony, the District does not conduct sampling of the drains, and such data does not exist. Rather than contrive or misinterpret data, Dr. Harvey relied instead upon PVID's intimate and detailed understanding of the operational characteristics of its own system – information and testimony that Staff has rigorously ignored.

As established in testimony, salinities of groundwater at the depth proposed for pumping for BEP II well are in the 1,000+ TDS range, and are very consistent over time. As noted above, chloride levels for all Palo Verde wells reported by the USGS and cited by Staff exceed 250 ppm (except the BEP I well which is slightly below 250 ppm for chloride). This combination of TDS and chloride levels meet the State classification of "brackish" water. BEP II has proposed to use the lowest quality brackish water available for use in the power plant, and selecting the Rannell's Drain as an alternative would result in use of higher quality water.

4. The proposed use will not result in any unmitigated significant adverse impacts to the Colorado River system or to downstream users.

As we established in testimony, and as confirmed by PVID's General manager Ed Smith, there is no way that groundwater drawn from the proposed project well could have any measurable affect on the Rannells Drain or any other part of its surface water system. Therefore, the groundwater use cannot affect any downstream surface water user.

Groundwater use within PVID has no measurable impact on downstream surface water supplies and cannot be accounted for in PVID's "diversion less returns" method in any meaningful way. The level of accuracy for water measurement in the Valley is approximately 5% for the diversion, and 10% for the return flow. With diversions of up to 1,000,000 acre-feet, and return flows up to 500,000 acre-feet, the limit of accuracy (margin for error) is therefore within 50,000 acre-feet. Even if the District wanted to account for a new 3,300 acre-feet surface water diversion within its system, it could not

with any accuracy. Trying to account for groundwater recharge that will occur over multiple decades within this system is simply impossible – it does not represent a physically detectable change in the surface water system.

Staff has claimed in its testimony and its brief that withdrawal of groundwater from storage within the aquifer will reduce surface water supplies directly and in an amount equal to the annual groundwater withdrawal. Staff knows better, of course, and under questioning from Hearing Officer Shean, Ms. Bond freely admitted that according to her own calculations, water from the nearest surface water source – the Rannell's Drain – would only be drawn about 600 feet towards the BEP II well over a thirty year period.

SOCIOECONOMICS

Staff's brief argues that the voluntary Water Conservation Offset Program (WCOP) requires mitigation limiting eligible lands and crops on the basis of potential job loss impacts "disproportionately affecting low income workers". This argument is presented in the brief despite the fact that the FSA and testimony at the evidentiary hearings made no such conclusions, and in fact explicitly concluded that the project's potential impacts on farm labor jobs were less than significant.

Staff's testimony revealed that they had not found any significant impact, had not even considered the BEP II projects' job creation and economic benefits, and had recommended the mitigation only as a type of insurance against undefined significant impacts. It is clear that the position taken in the brief is intended to hamper implementation of the WCOP, and to bolster Staff's weak positions on water resources issues by using farm labor issues as emotional pawns. We urge the Commission to reject the notion that mitigation is required where no farm labor impact has been identified, and where no benefit to farm labor has been shown to accrue from the proposed mitigation. Instead the Committee can rely on the voluntary enhancement and outreach program described by CB II in its Opening Brief. Such a program will provide a net benefit to the farm labor community that is experiencing a decline unrelated to either BEP or BEP II.

TRANSMISSION SYSTEM ENGINEERING

Staff continues to assert that it needs to approve the specific improvements within the Buck Boulevard Substation, while simultaneously acknowledging that it does not have jurisdiction over the Western Area Power Administration (Western). Staff asserts that since the issue was “worked out” in BEP, the Committee should not worry about including requirements for approval of Western’s improvements. Staff ignores the fact that legally and technically if such conditions were imposed as Staff asserts, CB II would be unable to comply with them. While Staff may or may not hold CB II in non-compliance in the future, it is horrible policy and exposes CB II to risk to impose a condition with which the CEC knows CB II would be unable to comply. As discussed in our Opening Brief, while Staff would like to know what improvements are made within the Buck Boulevard Substation, it is simply no necessary to mitigate any adverse impact to the electrical system or the environment, nor is it necessary to demonstrate compliance with LORS ***applicable to BEP II***. Any LORS that Staff seeks to enforce are applicable to Western who is not subject to CEC jurisdiction. CB II urges the Committee to adopt CB II’s proposed conditions of certification contained in its Written Testimony.

CONCLUSION

The evidentiary record provides substantial evidence that with the mitigation as proposed by CB II, BEP II will not result in significant impacts to environment or the transmission system and will comply with all applicable LORS.

Dated, September 9, 2005



Scott A. Galati
Counsel to Caithness Blythe II, LLC