

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:) Docket No. 07-AFC-8
)
The Application for Certification for the Carrizo)
Energy Solar Farm by Carrizo Energy, LLC)
_____)

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RESPONSE IN SUPPORT OF CURE'S MOTION TO COMPLETE

BY ECOSLO

November 14, 2008

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STATE OF CALIFORNIA

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**RESPONSE IN SUPPORT OF CURE’S MOTION TO COMPEL
BY ECOSLO**

ECOSLO supports intervener, California Unions for Reliable Energy’s (“CURE”) October 24, 2008 motion to compel responses to its September 5, 2008 data requests. CURE’s data requests seek highly relevant information concerning the Project’s potential impacts to birds-of-prey and migratory birds, the state and federally listed endangered California condor, and several state species of special concern. On September 25, 2008, the applicant objected and refused to respond to many of CURE’s data requests. Moreover, many of the applicant’s responses to CURE’s data requests are non-responsive. The applicant should be required to provide complete responses to these requests.

First, the applicant completely refused to respond to CURE’s data requests 36-38 regarding bird collisions with project structures. The information sought by these data requests is relevant to the Commission’s obligation under the California Environmental Quality Act (“CEQA”) to analyze the Project’s potentially significant impacts on biological resources and to

impose feasible mitigation measures or alternatives. In addition, the information is relevant to the Commission's determination of the project's compliance with the Fish and Game Code's prohibition against "take" of birds-of-prey or migratory non-game avian species.

In its response to CURE's motion to compel, the applicant asserted that the 1986 study provided and cited by CURE was inapplicable to the Project because the study focused on different solar technology and the study was conducted in a different landscape. Based on these claims, the applicant argued that bird collisions are much less likely at the Project site.

The applicant's argument is unpersuasive. The applicant failed to provide any empirical data to support its argument that bird collisions are unlikely at the Project. If anything, this Project could potentially cause more bird collisions than the solar facility in the study. The solar facility in the study included only one central receiver tower. This Project consists of 195, 56-foot tall receiver towers, each composed of multiple cables, wires, and other components, and ten pipes. The Project also includes a system of pipes above the entire solar field for washing mirrors. Based on this evidence, the Commission should require the applicant to adequately analyze the Project's impacts to birds from collision with Project structures.

The applicant also refuses to respond to other requests because the applicant asserts that the concentrated heat birds would encounter when flying between reflectors and receivers would not result in any would not harm birds because the Project employs a different technology than the solar project in the 1986 study. The applicant provides no data to support this argument. Instead, the applicant merely asserts that the technology this Project would employ is proven safe, and that workers at the Australian facility have reportedly witnessed birds flying safely between the mirrors and receivers. The applicant's argument is not persuasive. The 1986 study, whose

credibility is not challenged, concluded that the heat generated by the reflectors was high enough to kill birds. Based on this evidence, the applicant should be required to analyze potential bird mortality from concentrated heat generated by the Project.

The Commission should sustain CURE's motion to compel responses to data requests regarding the state and federally endangered California condor because the requested information is highly relevant to the Commission's obligation under CEQA to analyze the project's potential direct and indirect impacts to sensitive species. The Project is located in a wildlife movement corridor for large mammals, a food source for the endangered California condor. Federal efforts to bring the condor back from the brink of extinction will be undermined unless condors are able to resume foraging in areas such as the Projects vicinity in the future. This Project, as well other solar facilities proposed to be built in the area, will collectively make large portion of condor foraging habitat unavailable, thereby causing a potentially significant impact. The applicant, therefore, must be required to analyze the Project's cumulative impact on condor's foraging habitat.

Finally, CURE requested information relevant and necessary to the Commission's obligation under CEQA to analyze potentially significant impacts to several state species of special concern. The applicant asserted that this information was irrelevant and unnecessary because it is not appropriate to address impacts to species that the applicant has not documented on the project site. The applicant's assertion is false. CEQA requires analysis of potentially significant impacts on any candidate, sensitive, or special status species, either directly or through habitat modification. Regardless of whether the applicant itself documented the species

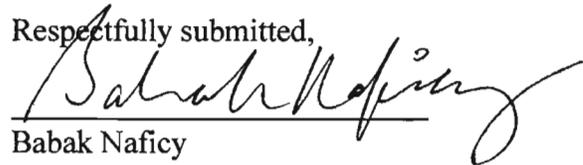
below in the project site, the species are known to exist on the project or in the project vicinity, and the project site has been documented to provide habitat for several of the species.

As documented by the California Department of Fish and Game, the project site provides habitat for the western spadefoot toad, mountain plover, San Joaquin whipsnake, Kern primrose sphinx moth, coast (California) horned lizard, and Oregon vesper sparrow. Further, according to Fish and Game, the following species are known to occur on-site or known to occur in the vicinity of the project site: bald eagle, ferruginous hawk, loggerhead shrike, mountain plover, San Joaquin whipsnake, coast (California) horned lizard, and Oregon vesper sparrow. Thus, CEQA requires that the applicant provide an impact analysis for the above-listed species.

ECOSLO urges the Commission to grant CURE's motion to compel.

Dated: November 14, 2008

Respectfully submitted,



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PROOF OF SERVICE

I, Babak Naficy, declare that on November 14, 2008, I deposited the original signed copy of the attached RESPONSE IN SUPPORT OF CURE'S MOTION TO COMPEL BY ECOSLO in the United States mail in San Luis Obispo, California, with first class postage thereon fully prepaid and addressed to:

California Energy Commission
Docket Unit
Attn: Docket Unit 07-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

I, Babak Naficy, declare that on November 14, 2008, transmission via electronic mail of the attached RESPONSE IN SUPPORT OF CURE'S MOTION TO COMPEL BY ECOSLO was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.6, and 1210. Electronic copies were sent to all those identified on the list below.

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I declare under penalty of perjury that the foregoing is true and correct. Executed at San Luis Obispo, California, on November 14, 2008.

Babak Naficy
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