

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION
FOR THE CARRIZO ENERGY SOLAR
FARM BY CARRIZO ENERGY, LLC**

DOCKET NO. 07-AFC-8

**CARRIZO ENERGY, LLC'S OBJECTIONS TO MICHAEL STROBRIDGE'S
MARCH 8, 2009 DATA REQUESTS (SET 3)**

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March 30, 2009

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Carrizo Energy, LLC ("Carrizo") provides this objection, along with responses where feasible, to intervenor Michael Strobridge's March 8, 2009 Data Requests regarding the Carrizo Energy Solar Farm ("Project") Application for Certification ("AFC") (07-AFC-8). Mr. Strobridge served these data requests on Carrizo on March 8, 2009.

Consistent with the requirements of California Energy Commission ("Commission") regulations, this objection is being filed within 20 days of receiving the data requests. (*See* 20 C.C.R. § 1716.) The objections made below are based on the Warren-Alquist Act Siting Regulations and the California Environmental Quality Act ("CEQA"), both of which specify the type and quantity of information Carrizo must provide in response to informational requests of other parties, including Mr. Strobridge. (*See* Cal. Pub. Res. Code § 21000 et seq. and § 25000 et seq.)

Carrizo recognizes that Mr. Strobridge is not only an intervenor, but is also a local resident and member of the public. Mr. Strobridge may not be as familiar with the Commission's project certification process as the other intervenors. However, as discussed below, the time for submitting data requests has long passed. Carrizo objects to all of Mr. Strobridge's data requests as untimely. Nonetheless, without waiving its legal objections, Carrizo is providing responses to some of Mr. Strobridge's March 8, 2009 Data Requests to the extent feasible at this point in the process for this project. However, Carrizo emphasizes that it may not be able to provide responses to any future untimely data requests due to the potential for delay and unnecessary hardship to the parties.

I. APPLICABLE LAW

The Commission's regulations govern the informational requirements for the discovery stage of the Commission's proceeding on the Project's AFC, which includes data requests.

These regulations provide:

Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application.
(20 C.C.R. § 1716[b].)

Therefore, the regulations limit information requests to information that is both reasonably available to the applicant, and that is relevant to the Project's AFC proceedings or reasonably necessary to make any decision on the Project's AFC.

A. Definition of "Reasonably Available"

Neither the Warren-Alquist Act nor the Commission's regulations includes a definition of "reasonably available." However, other statutes and case law provide some guidance on this issue in the context of written civil discovery requests (interrogatories). Generally, a response to interrogatories must be "as complete and straightforward as the information *reasonably available* to the responding party permits." (Cal. Code Civ. Proc. § 2030.220[a] [*italics added*].) A party may object to a discovery request if it is "burdensome and oppressive," or where it would create undue burden and expense, rendering the discovery request unjust.¹ (*See* Cal. Code Civ. Proc. § 2030.090[b].)

B. Definition of "Relevant to the Application Proceedings"

Neither the Warren-Alquist Act nor the Commission's regulations includes a definition of "relevant." However, statutes and case law pertaining to civil discovery provide guidance on this issue. To be valid, a discovery request must seek matter which is "relevant to the subject matter involved in the pending action or to the determination of any motion made in that action...." (Cal. Code Civ. Proc. § 2017.010.) Information is regarded as "relevant to the subject matter" if

¹ In determining whether the burden of answering a discovery request is unjust, a weighing process is used: It must appear that the amount of work required to answer the questions is so great, and the utility of the information sought so minimal, that it would defeat the ends of justice to require the answers. (*See Columbia Broadcasting System, Inc. v. Sup. Ct.*, 263 Cal. App. 2d 12, 19 [1968]; and *West Pico Furn. Co. v. Sup. Ct.*, 56 Cal. 2d. 407, 417-418 [1961].)

it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Stewart v. Colonial Western Agency, Inc.*, 87 Cal. App. 4th 1006, 1013 [2001].) “Relevance” may vary with size and complexity of the case and must be considered with regard to the burden and value of the information sought (among other factors). (*See Bridgestone/Firestone, Inc. v. Sup. Ct. [Rios]*, 7 Cal. App. 4th 1384, 1391.)

C. Definition of “Reasonably Necessary to Make Any Decision on the Application”

CEQA provides guidance for determining what information is “reasonably necessary” to make a decision on the AFC. CEQA specifies that an Environmental Impact Report (EIR) be prepared with “a sufficient degree of analysis to provide decision-makers with information which enables them to make decisions which intelligently take account of environmental consequences.” (14 C.C.R. § 15151.) Specifically, the law requires that “an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.” (*Id.*) An EIR is required to evaluate environmental impacts only to the extent that it is reasonably feasible to do so. (*In Re Bay-Delta et. al.*, 43 Cal. 4th 1143, 1175 [3rd Dist. 2008].) The information in an environmental document prepared under a certified regulatory program should be guided by similar principles. Furthermore, CEQA “does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended,” and it does not require that all experts consulted on the matter agree as to the best methods by which to proceed. (14 C.C.R. § 15204[a] and § 15151.)

II. GENERAL OBJECTIONS

Carrizo objects to all of Mr. Strobridge’s data requests because they are almost nine months late. Carrizo notes that the time to submit data requests has long passed and continued requests for additional information this late in the Project certification process will cause undue delay. California Code of Regulations, Title 20, Section 1716(e) states: “All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown.” The Commission determined the Project AFC to be complete on December 19, 2007. Therefore, the last day to submit data requests without a showing of good

cause was June 16, 2008. Mr. Strobridge has not made any showing of good cause for seeking this information at this point in the Project's proceedings. The February 13, 2009 Committee Order granting Mr. Strobridge's Petition to Intervene states at page 2: "The deadlines for conducting discovery and other matters shall not be extended by the granting of these petitions." Thus, Carrizo is under no obligation to respond to any data requests from any party at this time.

Carrizo has responded in writing to public comments from a very early point in the Project's proceedings, and has continued to do so long after the deadline for information requests specified in section 1716(e) of the Commission's regulations. Unlike most Commission proceedings, Carrizo has transcribed workshops and provided written responses to questions asked by members of the public from those workshops. In the interest of maintaining a reasonable certification timeframe, Carrizo requests that the Commission adhere to its regulations regarding the submission of data requests from intervenors and other parties and refrain from requiring Carrizo to respond to these data requests. This will ensure that the proceedings will continue as scheduled.

In addition, Carrizo objects to several of Mr. Strobridge's data requests because the information they seek is not reasonably available to Carrizo, not relevant to the notice or application proceedings, and/or not necessary to make any decision on Carrizo's AFC, as required by the Commission's regulations discussed above. (*See* 20 C.C.R. § 1716[b].) These specific objections are indicated below in the "Specific Objections and Responses" section.

III. SPECIFIC OBJECTIONS AND RESPONSES

In addition to the general objections described above, Carrizo provides the following specific objections, and responses where feasible, to Mr. Strobridge's individual data requests. In providing these selected responses, Carrizo in no way waives any general or specific objections to these data requests, nor does Carrizo imply that it will respond to any additional data requests.

A. Objections to Data Request 1

Data Request 1 asks Carrizo to "[p]rovide a complete water basin study for the Carrizo Basin." Mr. Strobridge claims that the need for a complete basin study is essential in

determining “whether the CESF, First Solar,² and Sunpower projects will not exhaust local water supplies.” Mr. Strobridge also asserts that the existing water analysis for the Project relies on outdated information. Carrizo objects to this request on the following grounds.

1. Data Request 1 Asks for Information Not Reasonably Available to Carrizo

Carrizo objects to conducting an additional water basin study because such a study is not “information reasonably available” to Carrizo. (*See* 20 C.C.R. § 1716.) Carrizo already conducted a study that reviewed water resources in the Carrizo basin. On February 7, 2009, Carrizo submitted to the Commission a revised version of its Hydrology and Hydrogeology Report for the Vicinity of the Proposed Carrizo Energy Solar Farm (the “Carrizo Hydrology Report”).³ This report contains almost 400 pages of comprehensive analysis of the Project’s water use.

The additional study requested by Mr. Strobridge is not information reasonably available to Carrizo, because such a study is extremely costly to conduct, and it would cause undue delay to the project at a point long after the time for discovery has ended. A complete basin study would cost at least \$500,000, and would take several years. Such a study would need to identify the wells in the basin, obtain access to those wells, measure water levels for a period of time, observe pumping rates (including getting information from electric bills if necessary), create a model of the entire basin and calibrate the model to the data collected during the study. Producing such a study would therefore be extremely burdensome to Carrizo. (*See* Cal. Code Civ. Proc. § 2030.090[b].) Furthermore, such a study would be of minimal utility since it would largely duplicate analysis already done for the Project, and is not necessary to evaluate the Project’s impacts to groundwater resources. At this point in the process, the studies and analysis must come to an end.

2. Data Request 1 Asks for Information Not Reasonably Necessary to Make Any Decision on the Project’s Application

Carrizo also objects to conducting an additional water basin study because such a study is

² Where Mr. Strobridge refers to the “First Solar” project, Carrizo understands Mr. Strobridge to refer to the Topaz Solar Farm project.

³ The Carrizo Hydrology Report was originally docketed on June 26, 2008, and has been revised twice since then, on September 24, 2008 and February 27, 2009.

not necessary to make any decision on the Project's application. As discussed in the "Applicable Law" section above, the law provides that "an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible." (14 C.C.R. § 15151.) CEQA "does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended," and it does not require that all experts consulted on the matter agree as to the best methods by which to proceed. (14 C.C.R. § 15204[a] and § 15151.)

As already discussed, Carrizo has already conducted a basinwide study. Contrary to Mr. Strobridge's assertions, the Project's analysis does not rely on "outdated data." As a starting point for its analysis, the Carrizo Hydrology Report began with the 1967 report by W.J. Kemnitzer, titled *Groundwater in the Carrizo Plain* (the "Kemnitzer report"). The Kemnitzer report is the only available basin-wide study of groundwater in the Carrizo Plain. It is proper for a groundwater evaluation to rely on the available information regardless of when it was completed, as subsurface geology has not changed. (*See Carrizo Hydrology Report at page 5.*)

In addition, URS Corporation ("URS") (consultant for Carrizo) prepared a basin-wide model for the Project to simulate steady-state flow and estimate the movement of groundwater in the basin and to evaluate the potential effects that the proposed groundwater withdrawals for the Project may have on surrounding wells and the aquifers. (*See Carrizo Hydrology Report § 3.6.*) URS created this model to overestimate the potential effects of the Project on groundwater levels. (*See Carrizo Hydrology Report § 3.6.*) This model was developed conservatively, assuming future dry periods in order to overestimate drawdown. (*Id.*)

Furthermore, the model includes water use by another nearby proposed solar power project, the Topaz Solar Farm ("Topaz") project. (Carrizo Hydrology Report § 3.6.2.3.) To produce conservative results, the model assumed that the well for the Topaz project will be as close as possible to the Project site, and that the Topaz project will use the maximum permitted amount of water.⁴ (Carrizo Hydrology Report § 3.6.2.3.) This model demonstrated that pumping for both of these projects will not have a significant effect on neighboring wells and groundwater levels in the basin. (Carrizo Hydrology Report § 3.6.3.3.) The model further

⁴ The well used by Mr. Strobridge is located between the Project site and the Topaz well location used in the model. Therefore, Mr. Strobridge's well was included in the model.

showed that pumping of the wells will not have a significant effect on water quality in the area or in the basin. (*Id.*) Alternative models and levels of sensitivity will not reveal any significant impacts to groundwater supply or quality, because the water use rates for both of the solar projects are relatively low. (*Id.*) The analysis presented by the Carrizo Hydrology Report is more than sufficient to support a finding that the Project, along with the Topaz, and SunPower projects, will not create a significant cumulative impact to local water supplies.

Additionally, Staff will conduct its own independent assessment on this matter as part of the certification process. While Carrizo’s analysis of this issue is sufficient, it is only a part of the review process required for certification of the Project. Therefore, another water basin study is unnecessary for the Commission to make a decision on the Project’s application.

3. Data Request 1 Asks for Information Not Relevant to the Project’s AFC Proceedings

As discussed above, the law for civil discovery requests requires that such requests seek information that might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Stewart*, 87 Cal. App. 4th at 1013.) In this case, the Carrizo Hydrology Report has already addressed Mr. Strobridge’s concerns expressed in Data Request 1. Therefore, the requested additional analysis is unnecessary, since it is unlikely to provide Mr. Strobridge with any additional relevant information. Furthermore, the law provides that “relevancy” must be considered with regard to the burden and value of the information sought (among other factors). (*See Bridgestone/Firestone, Inc.*, 7 Cal. App. 4th at 1391.) Because the burden to Carrizo of producing an additional water basin study is extremely high in terms of costs and project delays, and the information it would produce is likely to be of little additional value, the information sought by Data Request 1 is not relevant to the Project’s AFC proceedings.

4. The Burden of Proof On This Issue Has Shifted to Mr. Strobridge, And He Has Not Met That Burden

Carrizo also objects to this data request because Carrizo has already met the burden of proving that the Project will not have a significant adverse impact on local water supplies. Section 1748 of the Commission’s regulations provides:

Except where otherwise provided by law, the applicant shall have the burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facility.
(20 C.C.R. § 1748[d].)

Once this burden has been met, the Commission’s regulations shift the burden of supporting any additional condition, modification, or other provision relating to the design or operation of a project to the person who proposes it:

The proponent of any additional condition, modification, or other provision relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety shall have the burden of making a reasonable showing to support the need for and feasibility of the condition, modification, or provision. The presiding member may direct the applicant and/or staff to examine and present further evidence on the need for and feasibility of such modification or condition.
(20 C.C.R. § 1748[e].)

Carrizo has already presented sufficient substantial evidence to support a finding that the Project will not have a significant impact on water resources, including groundwater levels in the basin. (*See, e.g., Carrizo Hydrology Report at § 3.6.3.2 and 3.6.3.3.*) Once this has been done, the burden of proof shifts to the intervenor to demonstrate the need for further measures to address the Project’s impact on water resources. Because Mr. Strobridge has not provided sufficient information to meet this burden, no further information is required from Carrizo.

B. Objections to Data Request 2

Data Request 2 asks Carrizo to “[p]rovide an aquifer test of the CESF on-site well pumping from the lower aquifer for ten days, with the size submersible that is going to be implemented during operation of the CESF, while monitoring the upper aquifer for draw down.” Mr. Strobridge is concerned that the Project’s on-site well may significantly draw down the upper aquifer, and that this will significantly impact the wells of Mr. Strobridge and his neighbors. Carrizo objects to this data request on the following grounds.

1. Data Request 2 Asks for Information Not Reasonably Available to Carrizo

Carrizo objects to this data request because a ten-day aquifer test is not information “reasonably available” to Carrizo. Such a test is costly (approximately \$150,000) and is unnecessary, since well yield has been reported to be considerably greater than the water needed

for construction and operation of the Project. (Carrizo Hydrology Report § 3.4.4.) Furthermore, a pump test was conducted on a Lower Aquifer well immediately adjacent to the site. (*Id.*) A further aquifer test would be burdensome and oppressive to Carrizo. (*See* Cal. Code Civ. Proc. § 2030.090[b].) Such a test would be of minimal utility, since it is unlikely to produce any useful new information. As a result, the requested test is not information “reasonably available” to Carrizo, especially this late in the certification process.

2. Data Request 2 Asks for Information Not Reasonably Necessary to Make Any Decision on the Project’s Application

Carrizo also objects to this data request because the requested aquifer test is not reasonably necessary to make any decision on the application. This data request assumes that the Project could create a significant impact to the upper aquifer and, therefore, to the wells of nearby groundwater users. Carrizo disagrees with this assumption, because the studies conducted to date have demonstrated that the Project will not significantly affect the upper aquifer. (*See* Carrizo Hydrology Report at § 3.6.3.2 and 3.6.3.3.) The construction of the Project will cause a small, temporary amount of drawdown at the property boundary.⁵ However, as the required pumping rate decreases through construction and into operation, groundwater levels will actually rise at the property boundary due to decreased evapotranspiration and added infiltration due to installation of onsite stormwater infiltration areas and shading from the mirrors. (Carrizo Hydrology Report § 3.6.3.2, and at pages ES-2 and ES-3.) In fact, once construction is complete, the model demonstrated that the Project will cause a water level increase in the Upper Aquifer, from which Carrizo assumes Mr. Strobridge draws his well water. (Carrizo Hydrology Report § 4.)

Previous agricultural activities on the property pumped the existing well and other wells at considerably higher pumping rates compared to that proposed for the Project. There has been no indication that previous water use on the property affected nearby wells. Therefore, the proposed pumping that is considerably less than the historical pumping rate will not significantly affect water levels, well flow rates, or water quality on adjacent properties. (Carrizo Hydrology

⁵ The Project’s first year of construction is anticipated to cause a small drawdown at the project boundary of 0.9 feet. This analysis is based on conservative aquifer parameter and response assumptions, and this drawdown is temporary and will decrease as the Project uses less water in the transition from construction to operation. (Carrizo Hydrology Report § 3.6.3.4.)

Report § 4.) As discussed above, studies conducted for the Project demonstrated that the Project will cause a water level increase in the Upper Aquifer, from which Carrizo assumes Mr. Strobridge draws his well water. (Carrizo Hydrology Report § 4.)

As discussed in the response to Data Request 1, Staff will also conduct its own independent assessment on this matter as part of the certification process. While Carrizo's analysis of this issue is sufficient, it is only a part of the review process required for certification of the Project. Therefore, further analysis by Carrizo is not necessary to support a finding that the Project will not cause a significant impact to groundwater resources.

3. Data Request 2 Asks for Information Not Relevant to the Project's AFC Proceedings

As discussed above, the law pertaining to civil discovery requires that discovery requests seek information that might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Stewart*, 87 Cal. App. 4th at 1013.) In this case, the Carrizo Hydrology Report has already addressed Mr. Strobridge's concerns expressed in Data Request 2. Therefore, the requested additional analysis is unlikely to provide Mr. Strobridge with any additional relevant information. Furthermore, the law provides that "relevancy" must be considered with regard to the burden and value of the information sought (among other factors). (*See Bridgestone/Firestone, Inc.*, 7 Cal. App. 4th at 1391.) Because the burden of producing an aquifer test is very high, and the information it would produce is likely to be of little additional value, the information sought by Data Request 2 is not relevant to the Project's AFC proceedings.

4. The Burden of Proof On This Issue Has Shifted to Mr. Strobridge, And He Has Not Met That Burden

As discussed above in Carrizo's response to Data Request 1, where the applicant has met its burden of proving that an impact will be less than significant, the burden of proof then shifts to the party who requests further measures to address this impact. (20 C.C.R. § 1748[e].) Carrizo has met its burden of presenting sufficient substantial evidence to support a finding that the Project will not significantly affect the groundwater level in the upper aquifer. Because Mr. Strobridge has not submitted evidence sufficient to make a reasonable showing to support the need for and feasibility of an aquifer test, Carrizo is not required to conduct such a test.

C. **Objections to Data Request 3**

Data Request 3 asks Carrizo to “[c]heck the on-site well for current depth using a well sounder.” Mr. Strobridge states that the well has partially collapsed in the past, and that this event has the potential to cause the well to pull from the upper aquifer, causing significant impacts to Mr. Strobridge’s well.

1. Data Request 3 Asks for Information Not Reasonably Necessary to Make Any Decision on the Project’s Application

Carrizo objects to Data Request 3 because it requests a study not reasonably necessary to make any decision on the application. The requested depth measurement has already been done, as described in the Carrizo Hydrology Report. On February 14, 2008, URS personnel measured the depth to groundwater to the nearest 0.01 foot. (Carrizo Hydrology Report § 3.4.3.1.) This study indicated that the depth to groundwater was approximately 37.49 feet below ground surface (bgs). A pump was temporarily installed in the well at a depth of approximately 120 feet bgs. This well is currently screened down to 600 feet bgs. (Carrizo Hydrology Report § 3.6.3.2.) The total depth of this well is 630 feet bgs. (Carrizo Hydrology Report, Appendix E, Water Well Driller’s Report.) If Carrizo chooses to use this well for water production, it would observe the condition of the well and sleeve the Upper Aquifer so that no water would enter the well from that interval. (Carrizo Hydrology Report at ES-5.)

Carrizo also objects to Data Request 3 because it is based on the unfounded assumption that the Project could create a significant adverse impact to the upper aquifer and, therefore, to the wells of nearby groundwater users. Carrizo disagrees with this assumption, because as discussed above, the studies conducted to date have demonstrated that the Project will not significantly affect the upper aquifer. (See Carrizo Hydrology Report § 3.6.3.2 and 3.6.3.3.) As discussed above, Carrizo has satisfied its burden of presenting sufficient evidence to support a finding of no significant adverse impacts to groundwater resources. Since Mr. Strobridge has not demonstrated the need for an additional well depth test, Carrizo is not required to conduct such a test.

2. Data Request 3 Asks for Information Not Relevant to the Project's AFC Proceedings

Carrizo further objects to this data request because the information it seeks is not relevant to the AFC proceedings. As discussed above, the law pertaining to civil discovery requires that discovery requests seek information that might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Stewart*, 87 Cal. App. 4th at 1013.) In this case, Carrizo has already met its burden of providing sufficient substantial evidence that the onsite well offers more than enough water to serve the Project, and that this water use would not cause significant adverse impacts to other groundwater users. Carrizo has therefore answered the relevant question, which is the sufficiency of the local groundwater supply to support the Project. Therefore, the requested additional analysis would not provide Mr. Strobridge with any additional relevant information.

3. The Burden of Proof On This Issue Has Shifted to Mr. Strobridge, And He Has Not Met That Burden

As discussed above in Carrizo's response to Data Request 1, where the applicant has met its burden of proving that an impact will be less than significant, the burden of proof then shifts to the party who requests further measures to address this impact. (20 C.C.R. § 1748[e].) Carrizo has met its burden of presenting sufficient substantial evidence to support a finding that the Project will not significantly affect the groundwater level in the upper aquifer. Because Mr. Strobridge has not submitted evidence sufficient to make a reasonable showing to support the need for and feasibility of a well depth test, Carrizo is not required to conduct such a test.

D. Objections to Data Request 4

Data Request 4 asks Carrizo to “[p]rovide a video log of the CESF on-site well.” Mr. Strobridge is concerned that the on-site well's casing “could potentially be compromised from rust and decay.”

1. Data Request 4 Asks for Information Not Relevant to the Project's AFC Proceedings

Carrizo objects to Data Request 4 because the information it seeks is not relevant to the Project's AFC proceedings. As discussed above in Carrizo's response to Data Request 3, Carrizo has already demonstrated that the onsite well can serve the Project without causing any

significant adverse impacts to neighboring water users. Therefore, the relevant question has already been answered.

2. Data Request 4 Asks for Information Not Reasonably Necessary to Make Any Decision on the Project's Application

Furthermore, the information requested by Data Request 4 is unnecessary to make a decision on the AFC. Carrizo has already met its burden of providing sufficient substantial evidence that the onsite well offers more than enough water to serve the Project, and that this water use would not cause significant adverse impacts to other groundwater users. Carrizo does not anticipate that the onsite well has been compromised, and there has been no indication of damage to the well from rust and decay. Carrizo has created a sufficient degree of analysis to provide decision-makers with information which enables them to make decisions which intelligently take account of environmental consequences. (*See* 14 C.C.R. § 15151.) Therefore, a video log of the onsite well is not reasonably necessary at this point to any decision on the application.

3. The Burden of Proof On This Issue Has Shifted to Mr. Strobridge, And He Has Not Met That Burden

As discussed above in Carrizo's response to Data Request 1, where the applicant has met its burden of proving that an impact will be less than significant, the burden of proof then shifts to the party who requests further measures to address this impact. (20 C.C.R. § 1748[e].) Carrizo has met its burden of presenting sufficient substantial evidence to support a finding that the onsite well will provide a sufficient amount of water to support the Project. Because Mr. Strobridge has not submitted evidence sufficient to make a reasonable showing to support the need for and feasibility of a video log of the well, Carrizo is not required to create such a log.

E. Objections to Data Request 5

Data Request 5 asks Carrizo to “[e]xplain what mitigation measures will be implemented if local residential wells are impacted and or exhausted.”

1. Data Request 5 Is Not a Proper Data Request

Data Request 5 is not a proper data request because it does not ask for specific

information that is reasonably available to Carrizo. (*See* 20 C.C.R. § 1716[b].) Instead, it asks Carrizo to speculate as to potential measures to mitigate an impact that has not been shown to be significant. This inquiry is not a request for data, and therefore it is not an appropriate data request.

2. Data Request 5 Asks for Information Not Reasonably Available to Carrizo

Carrizo objects to this data request because it seeks information which is not reasonably available to Carrizo. As discussed above, the regulations pertaining to data requests limit the scope of such requests to information which is “reasonably available to the applicant.” (20 C.C.R. § 1716[b].) As part of the AFC process, California Energy Commission Staff (“Staff”) will conduct its own independent analysis of what mitigation measures may be required for any potential impacts to local residential wells. Staff will include any such mitigation measures as conditions of certification for the Project. Because Staff will make its own conclusions regarding potential significant impacts and mitigation to address those impacts, this information is not “reasonably available” to Carrizo as that term is used in section 1716(b) of Title 20 of the California Code of Regulations, and therefore Carrizo is not required to provide it.

3. Data Request 5 Asks for Information Not Relevant to the Project’s AFC Proceedings or Reasonably Necessary to Make Any Decision on the Project’s Application

As discussed in Carrizo’s responses to Data Requests 1 and 2, above, there is absolutely no indication that the Project’s water use has the potential to significantly impact or exhaust any neighboring wells. In fact, all of the evidence is to the contrary. Since there is no anticipated significant adverse impact to mitigate, Carrizo objects to Data Request 5 as not relevant to the AFC proceedings.

F. **Response to Data Request 6**

Data Request 6 asks Carrizo to “[c]larify where the water trucks are going to be receiving water during the construction of the CESF.”

All of the untreated raw water for the Project will be drawn from the existing well on the Project site. (Carrizo Hydrology Report § 1.1.) Trucking of water to the Project site would only occur in the event of an operational issue with the well pump. (Carrizo Hydrology Report at

page 1-4.) Water will not be pumped from the onsite well for use offsite. The only water that Carrizo plans to bring in from offsite is potable water for consumption. (See Appendix A.)

G. **Objections to Data Request 7**

Data Request 7 asks Carrizo to “[a]ddress cumulative impacts in regards to water consumption between Carrizo, First Solar,⁶ and Sunpower.”

Data Request 7 Asks for Information Not Relevant to the Project’s AFC Proceedings or Reasonably Necessary to Make Any Decision on the Project’s Application

Carrizo objects to this data request because the information it seeks is not reasonably necessary to make any decision on the application, as this information has already been provided. As discussed in the response to Data Request 1, the revised groundwater model included the hypothetical Topaz project well. This analysis was as conservative as possible, assuming that the Topaz site would use the maximum anticipated rate of water use. (Carrizo Hydrology Report § 3.6.2.3.) Potential pumping for the proposed SunPower project was not included in the revised groundwater model for three reasons: (1) the well is located approximately 6 miles east of the Project, which is too far away to have a combined impact on the Project vicinity; (2) the proposed groundwater withdrawals for SunPower and any other well that may be located in the site vicinity are essentially accounted for in the range of withdrawals considered for the basin in the model runs; and (3) previous model runs that considered groundwater withdrawals for the residential wells of 12 acre feet per year (“afy”) did not result in any significant impact of the pumping site well on surrounding wells. (Carrizo Hydrology Report § 3.6.2.3.)

As discussed above in the response to Data Request 1, the model developed by URS assumed that the wells for the Topaz project will be as close as possible to the Project site, and that the Topaz project will use the maximum permitted amount of water. (Carrizo Hydrology Report §3.6.2.3.) This model demonstrated that pumping for both of these projects will not have a significant effect on neighboring wells and groundwater levels in the basin. (Carrizo Hydrology Report §3.6.3.3.) The model further showed that pumping of the wells will not have a significant effect on water quality in the area or in the basin. (*Id.*) Therefore, the information

⁶ Where Mr. Strobridge refers to the “First Solar” project, Carrizo understands Mr. Strobridge to refer to the Topaz Solar Farm project.

requested in Data Request 7 has already been provided, and it is not necessary for Carrizo to re-create this analysis.

H. **Response to Data Request 8**

Data Request 8 asks Carrizo whether concrete for the Project will be trucked to the site, and if so, where this concrete would come from.

Carrizo noted in its response to Commission Data Request 91 that it will purchase cement, aggregate, and other construction materials locally when they are available at competitive prices. This would reduce the distance over which these materials need to be transported and, therefore, truck mileage on the roads. To offer a conservative analysis of the Project's impacts, Carrizo's application has made an assumption that all of the construction materials (including cement and aggregate) will be brought in by truck.⁷ All construction materials delivery trips are included in the total "Onsite Manufacturing" and "Construction Trucks" trip calculations shown in Table 2.11-1 of the AFC Supplement, and Table 1 from the Traffic Mitigation Plan. (AFC Supplement at page 2.11-2; Traffic Mitigation Plan at page 1-2, Table 1.) Carrizo provided more specific analysis of the truck trips required to deliver cement and aggregate for the onsite manufacturing facility, as part of the supplement to the AFC. This supplement provides that approximately 900 cubic yards of concrete will be required to create the onsite manufacturing building flooring. (AFC Supplement § 1.4.7.1.) This will require approximately 115 round trips total to transport the raw materials for the onsite manufacturing facility to the Project area. (*Id.*)

In its Response to Comments from the August 5, 2008 Commission Workshop, Carrizo provided further information regarding these peak and daily construction traffic figures, and the routes the trucks will use. (*See Applicant's Responses to Comments from the CEC Workshop Held on August 5, 2008, Attachment 2.*) In addition, potential impacts to traffic from these building material deliveries have been addressed in the Traffic Mitigation Plan, which URS submitted to the Commission on February 17, 2009.

⁷ Appendix A to the Carrizo Hydrology Report notes that a total of 75,000 cubic yards of concrete will be required for the Project.

I. Response to Data Request 9

Data Request 9 asks Carrizo to “[e]xplain if a concrete mix plant will be installed on-site.” Mr. Strobridge is concerned that if the Project includes an onsite concrete mix plant, then water consumption “would be much higher than predicted.”

Due to the remote location of the site, Carrizo anticipates that concrete will be transported dry to the site in mixer trucks, where water will be added from the onsite water well. (AFC § 3.4.5.1 and 5.5.2.1.) Mr. Strobridge’s concerns regarding water use for concrete hydration have already been addressed in the Carrizo Hydrology Report. This report includes the use of water for concrete hydration, which will require approximately 3.7 afy of water during construction. (Carrizo Hydrology Report § 1.2.1 and Table 1-1.) Mr. Strobridge’s contention that water consumption “would be much higher than predicted” if the Project includes an onsite concrete mix plant is unfounded, since the predicted water consumption figures already take into account the water used for concrete hydration. Therefore, the information sought by Data Request 9 has already been provided.

J. Response to Data Request 10

Data Request 10 asks Carrizo to “[e]xplain how the water consumption complies” with Agriculture Policy 11 of the San Luis Obispo County (“County”) General Plan, which states the goal of maintaining water resources for production agriculture, both in quality and quantity.

Carrizo notes that Data Request 10 is not a proper data request because it asks for legal analysis rather than specific information. However, Carrizo can demonstrate that the Project will comply with this General Plan policy and with all other applicable laws, ordinances, regulations, and standards (“LORS”). The Project’s impact upon local water resources will be minimal. As described by the Carrizo Hydrology Report, pumping from wells to serve both the Project and the Topaz project will not have a significant effect on neighboring wells and groundwater levels in the basin. (Carrizo Hydrology Report § 3.6.3.3.) Carrizo has already implemented extensive on-site mitigation. Conventional power generating facilities use large quantities of water for cooling; even solar facilities often use water for cooling. (Carrizo Hydrology Report § 1.3.3.) However, the Project is designed to use an air cooling system, which consumes about 40 times less water than a water-cooled facility. (*Id.*) An air-cooled solar facility such as the Project will

use less water per megawatt produced than other types of power generation facilities, such as new hybrid types, those with flow-through cooling, and conventional cooling towers. (*Id.*) For purposes of comparison, the anticipated infiltration rate for the Project site after the Project has been built (230 afy) is over ten times greater than the estimated operational groundwater use by the Project (20.8 afy), and 1.5 times the projected water use during Year 1 of construction. (Carrizo Hydrology Report at ES-3.)

Furthermore, the Project will use a tiny fraction of the amount of water used per square foot for irrigated agriculture. (*See* Carrizo Hydrology Report, Table 1-4 at page 1-7.) Because the pumping of the wells will not cause a significant change in groundwater levels, the wells will not draw water from great distances (for example, poor quality water from the Soda Lake area 10 miles away.) (Carrizo Hydrology Report § 3.6.3.3.) Therefore, pumping of the wells will not have a significant effect on water quality in the area or basin. (*Id.*) The Project complies with Agriculture Policy 11 because it will consume the minimum amount of water feasible to produce needed electricity, and it will not significantly impact the supply of water for agricultural uses.

K. Response to Data Request 11

Data Request 11 asks Carrizo to “[g]ive explanation how the CESF complies with . . . County Open Space Policy WR 1.5 Water Dependent Species.” The goal of this policy is to “[p]rotect water resources for water-dependent species and the continuity of riparian communities.”

Carrizo begins by noting that Data Request 11 is not a proper data request because it asks for legal analysis rather than specific information. Carrizo also notes that General Plan Policy WR 1.5 is not currently in force; it is in draft form and has yet to be adopted by the County Board of Supervisors. Carrizo can only be expected to comply with applicable laws in their adopted form, not draft policies that may undergo changes before their adoption.

Nevertheless, Carrizo is confident that the Project will comply with General Plan Policy WR 1.5 as it is currently drafted. The Project will be designed to protect water resources and the continuity of riparian communities by maintaining pre-project water flows through the site. (AFC § 3.4.7.3.) As the site exists today in its pre-project state, the portion of stormwater runoff that does not infiltrate into the ground moves via sheet flow and follows the terrain to the south

and west, and then is tributary to Soda Lake over 10 miles downstream. (Carrizo Hydrology Report at ES-2.) The Project’s design will ensure that this existing flow is preserved. The pre-project potential surface stormwater volume for the total watershed that drains to the north end of Soda Lake is approximately 23,584 afy. (Carrizo Hydrology Report at ES-3.) The corresponding post-project rainfall volume is approximately 23,429 afy. (*Id.*) Therefore, the reduction in the overall potential annual surface water flow volume to Soda Lake will be less than significant, at approximately one percent. (*Id.*)

Furthermore, Carrizo has taken steps to ensure that the Project will not significantly affect the quality of water upon which water-dependent species rely. The Project’s stormwater drainage system will be designed to match existing drainage patterns and meet all applicable regulations. (AFC § 3.4.7.3.) Carrizo submitted a draft Drainage Erosion and Sediment Control Plan (“DESCP”), which Staff agreed would avoid significant adverse impacts to stormwater drainage and water quality. (Carrizo Energy Solar Farm Preliminary Staff Assessment at 4.9-20.) Therefore, the Project will comply with Policy WR 1.5.

L. **Response to Data Request 12**

Data Request 12 asks Carrizo to “[e]xplain how the CESF complies with Open Space Policy WR 1.6 Agricultural Operations,” which provides the following goals: (1) “Groundwater management strategies will give priority to agriculture operations;” (2) “Protect agricultural water supplies from competition by incompatible development through land use controls.”

Carrizo begins by noting that Data Request 12 is not a proper data request because it asks for legal analysis rather than specific information. Carrizo also notes that General Plan Policy WR 1.5 is not currently in force; it is in draft form and has yet to be adopted by the County Board of Supervisors. However, Policy WR 1.5 is a consolidation of two existing General Plan policies, GM 9 and AGP 11, which are substantially similar to the proposed General Plan Policy WR 1.5.

As discussed in the response to Data Request 10, the Project is consistent with the goal of managing groundwater use and maintaining the maximum possible amount for agricultural purposes. The project will employ dry cooling, consuming a scant 20.8 afy of water once operational. The Project also complies with Policy WR 1.6 because the Project is compatible

with agricultural development. It supplies needed electrical power while using less water per megawatt produced than many other forms of power generation. (Carrizo Hydrology Report § 1.3.3.) Furthermore, electricity generation is by no means a use incompatible with agriculture. The Williamson Act, California's primary farmland preservation law, provides:

Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing makes a finding to the contrary, the erection, construction, alteration, or maintenance of gas [or] electric . . . facilities are hereby determined to be compatible uses within any agricultural preserve.
(Cal. Govt. Code § 51238[a][1].)

The Project will not be located on any land subject to Williamson Act contracts. (Preliminary Staff Assessment at 4.5-4 and 4.5-5.) However, the fact that electric facilities such as the Project are considered to be compatible uses even within an agricultural preserve indicates that the Project is not an example of development which is generally incompatible with agriculture. The Project complies with the County's policy of protecting agricultural water supplies from competition by incompatible development.

M. Objections to Data Request 13

Data Request 13 asks Carrizo to explain how the Project complies with "Open Space Policy WR 1.7," which provides: "Surface water will only be used to serve development within urban and village reserve lines and will not be used to serve development in rural areas."

1. Data Request 13 Is Not a Proper Data Request

Carrizo begins by noting that Data Request 13 is not a proper data request because it asks for legal analysis rather than specific information. Carrizo also notes that General Plan Policy WR 1.5 is not currently in force; it is in draft form and has yet to be adopted by the County Board of Supervisors. Carrizo can only be expected to comply with applicable laws in their adopted form, not draft policies that may undergo changes before their adoption.

2. Data Request 13 Asks for Information Not Relevant to the Project's AFC Proceedings or Reasonably Necessary to Make Any Decision on the Project's Application

Carrizo further objects to this data request because the Project will not use any surface

water. Therefore, Policy WR 1.7 does not apply.

N. Response to Data Request 14

Data Request 14 asks Carrizo to explain how the Project complies with “Open Space Policy WR 3.2 Protect watersheds,” which states the goal of protecting watersheds, groundwater and aquifer recharge areas, and natural drainage systems from potential adverse impacts of development projects.

Carrizo begins by noting that Data Request 14 is not a proper data request because it asks for legal analysis rather than specific information. Carrizo also notes that General Plan Policy WR 3.2 is not currently in force; it is in draft form and has yet to be adopted by the County Board of Supervisors.

Carrizo can only be expected to comply with applicable laws in their adopted form, not draft policies that may undergo changes before their adoption. Nevertheless, Carrizo is confident that the Project will comply with General Plan Policy WR 3.2 as it is currently drafted. Carrizo responds that much of the Carrizo Hydrology Report addresses this issue. As discussed above in Carrizo’s response to Data Request 11, the Project will not significantly affect the watershed and natural drainages because it will be designed to maintain pre-project water flows through the site. (AFC § 3.4.7.3.) As the site exists today in its pre-project state, the portion of stormwater runoff that does not infiltrate into the ground moves via sheet flow and follows the terrain to the south and west, and then is tributary to Soda Lake over 10 miles downstream. The Project’s design will ensure that this existing flow is preserved. (Carrizo Hydrology Report at ES-3.) Therefore, the reduction in the overall potential annual surface water flow volume to Soda Lake will be less than significant, at approximately one percent. (*Id.*)

The Project will have no significant adverse impacts on groundwater and aquifer recharge areas. The anticipated infiltration rate for the Project site after the Project has been built (230 afy) is over ten times greater than the estimated groundwater use for the Project (20.8 afy). (Carrizo Hydrology Report at ES-3.) In fact, the Project is expected to increase the onsite infiltration from a pre-project level of 144 afy to a post-project level of 230 afy. (Carrizo Hydrology Report § 2.2.3.4.)

Finally, as discussed above in Carrizo's response to Data Request 10, Carrizo has already implemented extensive on-site mitigation for water use. Conventional power generating facilities use large quantities of water for cooling; even solar facilities often use water for cooling. (Carrizo Hydrology Report § 1.3.3.) However, the Project is designed to use an air cooling system, which consumes about 40 times less water than a water-cooled facility. (*Id.*) An air-cooled solar facility such as the Project will use less water per megawatt produced than any other type of power generating facility. (*Id.*) The Project will use a tiny fraction of the amount of water used per square foot for irrigated agriculture. (*See* Carrizo Hydrology Report, Table 1-4 at page 1-7.) Therefore, the Project complies with proposed General Plan Policy WR 3.2.

IV. CONCLUSION

Without waiving its objections, Carrizo provides the responses included above to Mr. Strobridge's March 8, 2009 Data Requests. However, in the interest of preventing any further delay, Carrizo emphasizes that it may not be able to furnish responses to future untimely data requests.

DATED: March 30, 2009

DOWNEY BRAND LLP

By: _____ /s/
Jane E. Luckhardt

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR
THE CARRIZO ENERGY SOLAR FARM BY
CARRIZO ENERGY, LLC**

DOCKET NO. 07-AFC-8

**PROOF OF SERVICE
(Revised 2/18/2009)**

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Declaration of Service

I, Lois Navarrot, declare that on March 30, 2009, I served and filed copies of the attached **Carrizo Energy LLC's Objections to Michael Strobridge's March 8, 2009 Data Requests, (Set 3)**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/carrizo/index.html. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service List) and to the Commission's Docket Unit, in the following manner:

(check all that apply)

For Service to All Other Parties

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service List above to those addresses **NOT** marked "email preferred."

AND

For Filing with the Energy Commission

- sending an original paper copy and one electronic copy, mailed and e-mailed respectively, to the address below (preferred method);

OR

_____ depositing in the mail an original and 12 paper copies as follow:

California Energy Commission
Attn: Docket No. 07-AFC-8
1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct.

/s/
Lois Navarrot