

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



3.13

(MT 13672)

On motion of Supervisor Perez, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the recommendation from Transportation Department regarding to CONSIDER ADDENDUM FOR ENVIRONMENTAL IMPACT REPORT NO. 532 AND ADOPT RESOLUTION NO. 2020-235 for Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086). Applicant: Renewable Resources Group – Representative: Power Engineers – Fourth Supervisorial District – Chuckwalla Zoning District – Palo Verde Area Plan – Agriculture (AG), Open Space: Rural (OS:RUR) – Location: northerly of Interstate-10, west of Neighbors Boulevard – Zoning: Controlled Development Areas – 10 Acre Minimum (W-2-10), Light Agriculture – 10 Acre Minimum (A-1-10) – The Addendum addresses the peremptory writ of mandate issued by the court regarding the lawsuit on the EIR for the project. The EIR was originally certified by the Riverside County Board of Supervisors on August 29, 2017. District 4, is continued to Tuesday, December 15, 2020, at 9:30 a.m. or as soon as possible thereafter.

Roll Call:

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on November 3, 2020 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: November 3, 2020
Kecia R. Harper, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

By:  Deputy

AGENDA NO.
3.13

xc: COB

From: COB

Sent: Tuesday, November 3, 2020 9:05 AM

To: George Johnson (GAJohnson@RIVCO.ORG) <GAJohnson@RIVCO.ORG>; Young, Alisa <AYoung@RIVCO.ORG>; Perez, Juan <JCPEREZ@RIVCO.ORG>; District 4 Supervisor V. Manuel Perez (District4@RIVCO.ORG) <District4@RIVCO.ORG>; District2 <District2@Rivco.org>; District3 <District3@Rivco.org>; District5 <District5@Rivco.org>; Supervisor Jeffries - 1st District (district1@rivco.org) <district1@rivco.org>

Cc: Leach, Charissa <cleach@rivco.org>; Russell Brady (rbrady@RIVCO.ORG) <rbrady@RIVCO.ORG>

Subject: November 3 2020 Item No 3.13 Public Comments on Palo Verde Mesa Solar Project (Adams Broadwell-Citizens for Responsible Solar)

Good morning,

Forwarding email received via COB (with attachments and link below) for November 3, 2020 Item No 3.13, continued to December 8, 2020 (MinuteTraQ No 13672).

Will be added to Agenda back-up.

Thank you kindly,

Clerk of the Board of Supervisors
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From: Christina Caro <ccaro@adamsbroadwell.com>

Sent: Tuesday, November 3, 2020 8:36 AM

To: COB <COB@RIVCO.ORG>; Leach, Charissa <cleach@rivco.org>; Brady, Russell <rbrady@RIVCO.ORG>

Cc: Alisha C. Pember <apember@adamsbroadwell.com>; Cushman, Melissa <MCushman@RIVCO.ORG>; Beaumont, Anne B. (Perkins Coie) <ABeaumont@perkinscoie.com>

Subject: Comments on Item 3.13 - Palo Verde Mesa Solar Project

Dear Chairman Perez, Board Members, Ms. Leach, Mr. Brady, Clerk:

These comments are submitted on behalf of Citizens for Responsible Solar regarding Agenda Item Number 3.13: (13672) Transportation & Land Management Agency/Planning: Consider Addendum for Environmental Impact Report No. 532 and Adopt Resolution No. 2020-235 for Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086).

Citizens' comment letter and Exhibits A and B are attached. Below is a Dropbox link containing Exhibits C through Exhibit M:

<https://www.dropbox.com/sh/h4szepk0cInI733/AABHYiIPDbNua6x-viOM-rUqa?dl=0>

Please include these comments and all attachments in the record of proceedings for the Palo Verde Project.

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Licensed in Colorado.

November 3, 2020

Via Email and Webform Submission

Agenda Item No. 3.13

Chairman V. Manuel Perez
Members of the Board of Supervisors, County of Riverside
c/o Clerk of the Board
1st. Floor Board Chambers
4080 Lemon Street
Riverside, California 92501
Email: cob@rivco.org

Via Email and Overnight Mail

Charissa Leach, Assistant TLMA Director
Russell Brady, Project Planner
Riverside County Planning Department
4080 Lemon Street, 12th Floor
Riverside, CA 92501
Email: cleach@rivco.org; rbrady@rivco.org

Re: Agenda Item 3.13: (13672) Transportation & Land Management Agency/Planning: Consider Addendum for Environmental Impact Report No. 532 and Adopt Resolution No. 2020-235 for Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086)

Dear Chairman Perez, Board Members, Ms. Leach, Mr. Brady:

These comments are submitted on behalf of Citizens for Responsible Solar (“Citizens”) regarding Agenda Item Number 3.13, the Palo Verde Mesa Solar Project (“Project”). Citizens is the prevailing party in *Citizens for Responsible Solar, et al., vs. County of Riverside, et al., Riverside County Superior Court Case No. RIC1718458* (“Citizens Action”), one of two California Environmental Quality Act (“CEQA”) lawsuits which challenged the County’s 2017 Project approvals due to violations of CEQA. The lawsuits resulted in judgments which partially vacated the Project’s original environmental impact report (“EIR”) due to the County’s failure to

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adequately analyze and mitigate the Project's soil contamination and biological impacts under CEQA.

After participating in the Project's permitting process since 2016, winning the Citizens Action in 2019, and waiting a year for the County to revise the EIR in response to the lawsuit, the County suddenly released a new 500-page CEQA Addendum for the Project on October 30, 2020, just two (2) business days before this hearing. The Addendum was prepared in response to the October 1, 2019 Judgment ("Judgment") and December 22, 2019 Writ of Mandate ("Writ") in the Citizens' Action, yet the County failed to provide Citizens with any prior notice of its proposed actions. The Planning Department now asks the Board to approve the Addendum and recertify the FEIR without allowing Citizens or any other members of the public the opportunity to comment on the Addendum or the proposed reapproval of the Project. It would violate CEQA and California writ of mandate law if the Board were to reapprove the Project on these terms.

The County's last-minute release of the Addendum has prejudiced Citizens, and provides inadequate time for us, our experts, or any other members of the public to meaningfully review and comment on the Project's revised environmental analysis. This tactic is just one in a series of actions in which the County has obstructed Citizens' participation in the County's response to the Writ.

In the past two months, the County failed to recirculate the EIR for public comment to address the required elements of the Court's Judgment and Writ, failed to provide legally required notice to Citizens of the Board's September 15, 2020 action to rescind the EIR, misrepresented the Project's status in written correspondence to Citizens, and waited until the last minute to provide notice of a Project hearing scheduled on Election Day, when many members of the public will be out participating in the national democratic process. The County's process for responding to the Writ has resulted in violations of CEQA and other State laws. The County's failure to provide basic public information about the status of the Project has deprived Citizens and other members of the public of the right to meaningfully participate in the Project's second round of CEQA review. The County's actions must not be upheld by the Board.

We are reviewing the Addendum with our experts. Our preliminary review demonstrates that the Addendum does not comply with CEQA, the Judgment, or the Writ. In order to comply with CEQA, the County must revise and recirculate

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the EIR for a 30-day public comment period. As discussed herein, an Addendum was not the proper CEQA document to prepare in response to a lawsuit which partially decertified the original EIR, and is not authorized by the Citizens Writ. Our preliminary review of the Addendum also demonstrates that the Addendum fails to meet the substantive requirements of CEQA and the procedural requirements of the Writ to fully analyze and mitigate the Project's soil contamination and burrowing owl impacts.

In order to comply with CEQA, the Judgment, and the Writ, the Board must ensure that the revised EIR, and the County's subsequent approval process, comply with CEQA in all respects before the Project can be reapproved. The Addendum and Staff Report fail to meet these requirements. The Board should continue this hearing to allow Citizens and other members of the public a meaningful opportunity to continue to participate in the CEQA process for the Project. The Board should also require the County to prepare and recirculate the EIR for public comment prior to any continued hearing.

These comments were prepared with the assistance of hazardous materials consultant Matt Hagemann, P.G, C.Hg., of Soil/Water/Air Protection Enterprise ("SWAPE")¹ and biological resources expert Scott Cashen, M.S.² We reserve the right to supplement these comments at later hearings on this Project.³

I. STATEMENT OF INTEREST

Citizens for Responsible Solar is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential health, safety, public service, and environmental impacts of the Project. The association includes Blythe resident George Ellis, Riverside County resident James Hennegan, and California Unions for Reliable Energy ("CURE") and its members and families and other individuals that live and/or work in east Riverside County.

¹ SWAPE's comments and Mr. Hagemann's curriculum vitae are attached hereto as Exhibit A ("SWAPE Comments").

² Mr. Cashen's comments and curriculum vitae are attached hereto as Exhibit B ("Cashen Comments")

³ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

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The individual members of Citizens for Responsible Solar live, work, recreate and raise their families in east Riverside County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on constructing the Project itself. They will be first in line to be exposed to any health and safety hazards that may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary adverse environmental and public health impacts.

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

Finally, the organizational members of Citizens are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. The CEQA process allows for a balanced consideration of a project's socioeconomic and environmental impacts. It is for the purpose of achieving this balance that Citizens offers these comments and continues to participate in the Project's permitting process.

II. PROCEDURAL BACKGROUND

A. Initial Permitting Process

On August 8, 2012, the County circulated a Notice of Preparation for the Draft EIR ("DEIR") for the Project. On September 29, 2016, the County circulated the Draft EIR for public comment. The original public comment period ended on November 24, 2016.

During the public comment period, Citizens, their experts, and other members of the public submitted written comments and supporting evidence detailing the errors, omissions and deficiencies in the DEIR. Citizens' DEIR

comments included technical reports from Mr. Hagemann and Mr. Cashen which identified the defects in the County's analysis of soil contamination impacts and burrowing owl mitigation that were the subject of the Judgment and Writ in the Citizens' Action.

In August 2018, the County released the Final EIR ("FEIR"), which included responses to comments received during the DEIR public comment period. That same month, the County Board of Supervisors held a hearing on the Project during which Petitioners presented additional written and oral comments on the FEIR, including further technical reports from Mr. Hagemann and Mr. Cashen which addressed the unremedied deficiencies in the FEIR's responses to their comments.

On August 29, 2017, the Board approved the Project, pursuant to the County's expedited entitlement process for industrial solar projects, and certified the FEIR, without correcting the deficiencies identified by Citizens.⁴

B. CEQA Lawsuits

On September 28, 2017, two lawsuits were filed challenging the County's 2017 Project approval – the Citizens Action and *Golden State Environmental Justice Alliance v. County of Riverside et al.*, Riverside Superior Court Case No. RIC171865 ("GSEJA Action").

On April 12, 2019, the Court conducted a consolidated hearing on the two Actions. On July 11, 2019, the Court issued a Notice of Ruling which partially granted the Actions in two grounds: (1) the EIR failed to adequately analyze and mitigate soil contamination at the Project site which could cause potentially significant public health impacts during Project construction; and (2) the EIR failed to provide adequate mitigation for impacts on the burrowing owl, a special-status species.⁵

⁴ The certified Administrative Record from the Citizens Action and GSEJA Action is attached hereto as Exhibit C.

⁵ See Exhibit D, Notice of Ruling.
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On October 1, 2019, the Court issued the Judgment in the Citizens Action, but did not issue a writ.⁶ On December 23, 2019, following a motion by the petitioners to clarify the status of the judgments and writs in the Actions, the Court issued the Writ in the Citizens Action.⁷ Citizens served the Writ on the County on January 28, 2020.⁸

The Writ required the County to file a Return to Writ with the Court by April 27, 2020 to specify the actions taken by the County to comply with the Writ.⁹ To date, the County has not filed a Return to Writ.

C. Subsequent Actions by Citizens and the County

On February 7, 2020, Citizens filed a written request with the County, pursuant to CEQA and State land use law, for prior notice of all County actions and hearings related to the Project (“Notice Request”).¹⁰

On April 17, 2020, Citizens’ counsel emailed Deputy County Counsel requesting an update on the County’s timeline for subsequent CEQA review for the Project, and inquired about the Return to Writ. County Counsel responded that the County’s work on the Project’s subsequent CEQA review had been slowed due to COVID-19.¹¹

Citizens maintained email contact with the Project’s assigned planner, Mr. Russel Brady, to request updates on the Project’s status, including regular monthly email inquiries since January 2020.¹² The County has consistently advised Citizens that the Project was delayed and that there has been no new Project activity since 2019.¹³

⁶ See Exhibit E, Citizens Judgment.

⁷ See Exhibit F, Citizens Writ.

⁸ See Exhibit G, Proof of Service of Citizens Writ.

⁹ Exhibit F, par. 4.

¹⁰ See Exhibit H, 2/7/20 Renewal of Request for Mailed Notice of Actions and Hearings – Palo Verde Mesa Solar Project (EIR No. 532).

¹¹ See Exhibit I, 4/2020 email correspondence between C. Caro and M. Cushman re Palo Verde Solar.

¹² See Exhibit J, 9/2017 to 9/2020 email correspondence between S. Sannadan and R. Brady re Palo Verde Mesa Solar Project – Status.

¹³ *Id.*

On June 18, 2020, Mr. Brady confirmed in writing that he was the assigned planner for the anticipated recirculation of the EIR and that he would “make sure you are noticed when that does occur.”¹⁴ The planner responded to Citizens’ subsequent email inquiries on August 6, 2020 and September 21, 2020 by again stating that there had been no new Project-related activity.¹⁵

The planner’s statements were false. On September 15, 2020, the Board took agendized action on the Project to decertify portions of the FEIR in response to the Citizens Action.¹⁶ The County failed to provide Citizens with prior notice of the September 15, 2020 Board action, and the planner failed to inform Citizens of the Board’s action when Citizens requested a Project update on September 21, 2020.

On October 29, 2020, Citizens sent another email to the planner requesting an update on the status of the Project. In response to Citizens’ email, the planner informed Citizens on October 29, for the first time, that the County had already prepared a CEQA Addendum, that the Board had decertified the FEIR on September 15, 2020, and that the Board had scheduled this November 3, 2020 hearing to consider the Addendum.¹⁷ The Addendum was not released to the public until October 30, 2020.

III. THE COUNTY VIOLATED CITIZENS’ DUE PROCESS RIGHTS BY FAILING TO PROVIDE NOTICE OF THE COUNTY’S POST-JUDGMENT ACTIONS ON THE PROJECT

The County violated Citizens’ due process rights to participate in the County’s subsequent administrative proceedings for the Project by failing to inform Citizens about the County’s actions to rescind the FEIR approvals and its intent to adopt an Addendum.

Petitioners who obtain a writ of mandate have a due process right to participate in the agency’s subsequent proceedings in response to the writ.¹⁸ The

¹⁴ See Exhibit K, 6/18/20 email correspondence between C. Caro and R. Brady.

¹⁵ See Exhibit J.

¹⁶ See Exhibit L, 9/15/20 Staff Report and minutes.

¹⁷ Exhibit M, 10/29/20 email correspondence between S. Sannadan and R. Brady.

¹⁸ See e.g. *Cole v Los Angeles Community College Dist.* (1977) 68 Cal. App.3d 785, 793; 3934-061acp

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lack of notice or opportunity to present argument to an agency during the court-ordered reconsideration of an agency decision constitutes denial of due process, particularly where, as here, the agency must exercise discretion in responding to the writ.¹⁹ The agency must also file and serve on petitioners a return to writ specifying the actions it takes in response to the writ. The court has continuing jurisdiction until the writ is fully satisfied.²⁰

CEQA and State land use law provide additional notice requirements which require local agencies to provide prior written notice of the agency's discretionary actions and hearings on a project to any person who has filed a written request for them with the clerk of the agency's governing body.²¹ Citizens filed a Notice Request with the Clerk of the Board on February 7, 2020, triggering the County's duty to notify Citizens of all subsequent discretionary actions related to the Project.

The County failed comply with these requirements. The County violated mandamus rules by failing to meet its initial April 27, 2020 deadline to file a Return to Writ describing the actions the County was taking to comply with the Writ, and by subsequently failing to provide Citizens with notice of the Board's September 15, 2020 discretionary action to decertify portions of the FEIR. Both County actions were required by law to comply with the Writ. Citizens were therefore entitled to receive notice from the County of these actions under Code of Civil Procedure mandamus rules.²² The County failed to provide the required notice.

The County's failure to provide prior notice of the September 15, 2020 decertification action deprived Citizens of the opportunity to provide input to the Board on which sections of the FEIR required decertification in response to the

William Dal Porto & Sons, Inc. v ALRB (1987) 191 Cal. App. 3d 1195, 1214 (at minimum on remand, agency should afford petitioner opportunity to present legal arguments and argue orally before agency in advance of board's decision); *Conti v Board of Civil Serv. Comm'rs* (1969) 1 Cal.3d 351, 362.

¹⁹ *Id.*; PRC § 21168.9(c); CCP § 1094.5(f).

²⁰ CCP § 1097; *County of Inyo v City of Los Angeles* (1977) 71 Cal. App. 3d 185, 205 (court had continuing jurisdiction to ensure preparation of adequate EIR and compliance with other obligations that constituted satisfaction of court's peremptory writ).

²¹ Public Resources Code Sections 21092.2, 21080.4, 21083.9, 21092, 21108 and 21152 and Government Code Section 65092.

²² CCP §§ 1084-1097.

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Writ. The Staff Report for the September 15 action also stated that the County was “in the process of assessing additional information as required by the writs” and promised to “bring other applicable actions to the Board of Supervisors at a future meeting for consideration and decision.”²³ The County’s failure to notify Citizens of the September 15 hearing left Citizens in the dark about its ongoing actions to comply with the Writ.

The County’s procedural violations were compounded by the planner’s inaccurate written statements to Citizens’ counsel on August 6, 2020 and September 21, 2020 that “nothing new” had occurred with the Project.²⁴ The planner’s emails not only failed to inform Citizens about ongoing actions, but told Citizens exactly the opposite – that *no action* had been taken on the Project. The County’s statements therefore led Citizens to believe that the Project was stalled, when, in fact, the County was actively engaged in proceedings to reapprove it. This substantially prejudiced Citizens’ ability to respond to the County’s actions.

The County also failed to notify Citizens about the Addendum when it was completed on September 16, 2020.²⁵ Citizens was unaware that the County had prepared an Addendum until the planner mentioned it in his October 29 email response to Citizens’ counsel.²⁶ The Addendum was not made available to Citizens until October 30, 2020.

If Citizens had been aware of the September 15 Board action and the Addendum earlier, Citizens would have participated in the Board hearing, and would have commented on the Addendum at the earliest opportunity in order to facilitate compliance with the Writ. In particular, Citizens would have explained to the Board that the County was required to revise and recirculate the EIR in response to the Judgment and Writ, not simply to prepare an addendum. Citizens was denied the opportunity to provide this input to the Board prior to the Board’s action on the Project, leaving Citizens with no opportunity to comment on the decertification and inadequate time to meaningfully review and comment on the Addendum.

²³ Exhibit L, p. 3.

²⁴ See Exhibit J.

²⁵ See Staff Report, Draft RESOLUTION NO. 2020-235, p. 4.

²⁶ See Exhibit M.

Finally, the County failed to provide prior notice of the September 15 hearing in response to Citizens' Notice Request, resulting in a separate and distinct violation of CEQA and State land use law.

The Board should remedy these errors by continuing this hearing and requiring staff to revise and recirculate the EIR for public comment.

IV. THE COUNTY CANNOT RELY ON AN ADDENDUM TO CORRECT A DECERTIFIED EIR; RECIRCULATION IS REQUIRED

The County's reliance on a CEQA addendum to remedy the analytical omissions and inadequate mitigation in the Project's original FEIR violates CEQA by depriving the public of the right to comment on its revised CEQA document and applying an inapplicable "subsequent review" legal standard to certification the FEIR.

CEQA requires the information in an EIR to be presented in a manner calculated to adequately inform the public and decision makers about the details of the project, and the nature and extent of a project's impacts.²⁷ The courts have consistently held that information scattered in EIR appendices or a separate report "is not a substitute for a good faith reasoned analysis."²⁸ The deficiencies identified in the Court's Notice of Ruling represent threshold informational deficiencies that the public had a right to review and comment on when the original EIR was circulated.²⁹ Because the EIR must be decertified in response to the Writ, any revisions to the EIR therefore require that the EIR be recirculated for a new public comment period prior to recertification.³⁰

Recirculation of an EIR prior to certification is addressed in CEQA Section 21092.1, and CEQA Guidelines Section 15088.5. "When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 ... **but prior to certification**, the public agency shall give notice

²⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* ("Vineyard") (2007) 40 Cal.4th 412, 442; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517.

²⁸ *Vineyard* at 442, citing *California Oak*, 133 Cal.App.4th at p. 1239; *Santa Clarita*, 106 Cal.App.4th at 722–723.

²⁹ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517.

³⁰ PRC § 21092.1; 14 CCR § 15088.5(a).
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again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.”³¹ “Significant new information” includes situations like this one in which “the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”³²

In *Mountain Lion*, the court held that when a detailed project analysis is not prepared until the FEIR stage, the document must be recirculated for public comment:

If we were to allow the deficient analysis in the draft EID³³ to be bolstered by a document that was never circulated for public comment ... we would be subverting the important public purposes of CEQA. Only at the stage when the draft EID is circulated can the public and outside agencies have the opportunity to analyze a proposal and submit comment. No such right exists upon issuance of a final EID unless the project is substantially modified or new information becomes available. (See Cal. Code Regs., tit. 14, § 15162.) To evaluate the draft EID in conjunction with the final EID in this case would only countenance the practice of releasing a report for public consumption that hedges on important environmental issues while deferring a more detailed analysis to the final EID that is insulated from public review.³⁴

In *Laurel Heights Impr. Assn. v. Reg. of Univ. of Cal.*,³⁵ the Supreme Court explained that Section 21092 favors recirculation of an EIR prior to certification. The Court stated:

Section 21092.1 was intended to encourage meaningful public comment. Therefore, new information that demonstrates that an EIR commented upon by the public was so fundamentally and basically

³¹ PRC § 21092.1.

³² 14 CCR § 15088.5; *Mountain Lion Coal. v. Fish and Game Comm’n* (1989) 214 Cal.App.3d 1043.

³³ EID is essentially the same as an EIR since the Dept. of Fish and Game had a certified environmental program.

³⁴ *Mountain Lion*, 214 Cal.App.3d at 1052.

³⁵ (1993) 6 Cal. 4th 1112 (“*Laurel Heights II*”).

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inadequate or conclusory in nature that public comment was in effect meaningless triggers recirculation under section 21092.1.³⁶

By contrast, an agency may only prepare an addendum to a previously certified EIR if minor changes have been made to the project or minor additions to a previously certified EIR are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.³⁷ Addendums do not require a public comment period because they are intended to be minor additions to a final, certified EIR.

Here, the County was required to decertify non-compliant sections of the existing FEIR, then recertify the FEIR after revising it to comply with CEQA. The Writ nullified the original FEIR certification, rendering it ineligible for an addendum. The County's revisions to the EIR instead fall under the public comment and recirculation requirements of Sections 21092.1 and 15088.5.

In response to the Writ, the County prepared a Phase II Environmental Site Assessment ("ESA") to analyze the nature and extent of soil contamination at the Project site, and substantially modified Mitigation Measure HAZ-1 to enhance the required soil management practices to be implemented at the Project site during construction. This analysis and mitigation should have been part of the original EIR, but was missing. Therefore, the public had no opportunity to review and comment on the Phase II ESA or the revised soil mitigation during the Project's original approval process. The Addendum similarly includes a new analysis of its burrowing owl mitigation, and substantial revisions to Mitigation Measure BIO-6. The public had a right to review and comment on this information and analysis when the original DEIR was circulated for public comment, but could not because the information was missing from the DEIR. The County cannot circumvent CEQA's public notice and comment requirements by relying on a CEQA document that is solely intended for modifications to a previously approved project.

The Board should order County Staff to recirculate the revisions to the EIR for public comment.

³⁶ See *Laurel Heights II*, 6 Cal.4th at 1130 (internal citations omitted), citing *Mountain Lion.*, 214 Cal.App.3d 1043.

³⁷ 14 CCR § 15164.
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V. THE ADDENDUM FAILS TO COMPLY WITH CEQA AND THE WRIT

The County contends that an addendum is an appropriate response to the Writ because the Writ purports to authorize it.³⁸ However, the fundamental requirement of the Writ – and all writs under CEQA – is that the County comply with CEQA in all respects before the Court can discharge the writ.³⁹ As discussed above, the County cannot demonstrate compliance with CEQA through an addendum. The County must revise and recirculate the new sections of the FEIR for public comment in order to comply with CEQA. For this reason, the Addendum fails to comply with CEQA or the Writ.

An addendum is also an inappropriate response to the Writ in the Citizens Action because the Citizens Writ does not authorize an addendum. The Citizens Writ merely requires the County to comply with CEQA in all respects before reapproving the Project.⁴⁰

On August 26, 2019, following issuance of the Court's Notice of Ruling, Citizens and GSEJA lodged proposed Judgments and proposed Writs with the Court. On September 6, 2019, the County and the Applicant filed competing proposed Judgments and proposed Writs with the Court. On October 1, 2019, the Court sustained the County's objections and issued the Judgment in the Citizens Action, but did not issue a writ.⁴¹ On October 7, 2019, Citizens and GSEJA filed objections to the judgments and writs that had been proposed by the County, which disputed the legality of Respondents' Proposed Judgments and Proposed Writs. On December 23, 2019, Citizens and GSEJA presented a motion to the Court requesting clarification on the status of the judgments and writs in the two Actions. The motion acknowledged that the Court had sustained the County's objections to Petitioners' proposed Judgments and proposed Writs, and anticipated that the Court would issue the County's Judgments and proposed Writs. However, the Court issued Citizens' proposed Writ in the Citizens Action.⁴²

³⁸ See Addendum, pp. 21-22.

³⁹ PRC § 21168.9(a)(3).

⁴⁰ Exhibit F, par. 3.

⁴¹ See Exhibit E, Citizens Judgment.

⁴² See Exhibit F, Citizens Writ.

Citizens served its Writ on the County on January 28, 2020.⁴³ The County did not appeal or object to the Citizens' Writ. Therefore, the Citizens Writ governs the County's response to the Citizens' Action. The Citizens Writ does not authorize use of an addendum.⁴⁴ The County's revised CEQA document must comply with the Citizens Writ in order to have the Citizens Action dismissed by the Court.

Finally, the Addendum fails to comply with CEQA and the Writ because the County's revised mitigation for soil contamination and burrowing owl impacts are inadequate and do not support the Addendum's proposed findings that Project impacts will be less than significant. Administrative agencies are required in their findings "to bridge the analytic gap between the raw evidence and ultimate decision or order" in a way that describes "the analytic route... from evidence to action."⁴⁵ The Addendum fails to support the County's proposed findings regarding soil contamination and burrowing owl impacts with substantial evidence, as required by law. No cases have held that the *Topanga* duty is lessened in any way after a remand.⁴⁶ The Addendum's failure to support the FEIR's conclusions with substantial evidence render it fatally defective. A supplemental or revised EIR is required.

A. Soil Contamination

The Addendum includes a Phase II ESA to assess residual pesticide and petroleum hydrocarbon concentrations in soils on the Project site.⁴⁷ Soil sampling detected mostly non-controversial levels of residual contaminants, save for a detection of the pesticide dieldrin, which exceeded residential screening levels but fell below the industrial exposure threshold.⁴⁸

The Addendum explains that the Project has not undergone site design or final engineering work, and as a result, the precise locations for excavation and

⁴³ See Exhibit G, Proof of Service of Citizens Writ.

⁴⁴ The Writ cited in the Addendum and attached to the Board's Staff Report is the Writ from the GSEJA Action, not the Citizens Action. See Staff Report, Attachment A (Writ in Case No. RIC 1718565, the GSEJA Action). The Court issued separate judgments and writs in each action.

⁴⁵ *Topanga Ass'n for a Scenic Community v County of Los Angeles* (1974) 11 C3d 506, 515.

⁴⁶ See California Administrative Mandamus, § 15.24.

⁴⁷ See Addendum, Appendix A.

⁴⁸ Addendum, p. 10.

soil sampling could not be identified for the Phase II ESA.⁴⁹ The Addendum states that construction is not expected to involve extensive grading, excavation, long-term stockpiling, or removal of soil,⁵⁰ and that exposure to impacted soil with detectible levels of residual pesticides and herbicides, if any, during construction would be limited in scope and duration.⁵¹ However, the Addendum acknowledges that these activities may occur, and that some unexpected soil contamination could be discovered during construction due to the uncertainty about the proposed locations for excavation.⁵²

The Addendum also includes revisions to Mitigation Measure HAZ-1 to address all soil contamination to be disturbed or removed during Project construction. Revised Mitigation Measure HAZ-1 requires a Soil Management Plan (“SMP”) to identify the steps to be taken in the event unexpected soil contamination is discovered during construction.⁵³ Mr. Hagemann concludes that the draft SMP provides inadequate mitigation for potential human exposure because it calls for construction workers to assess potential soil contamination during excavation activities by providing that “project construction crews would, if needed, identify, handle, and dispose of potentially contaminated soil.”⁵⁴ As Mr. Hagemann explains, “[c]onstruction workers are not qualified to perform these tasks and asking them to perform them may put them at risk from exposure to unanticipated contaminants in soil that cannot be seen or smelled.”⁵⁵ He concludes that soil samples should be collected by environmental professionals, before earth moving activities take place, to assess potential pesticide and petroleum contaminants once precise excavation locations are identified.

The Board should require County staff to revise Mitigation Measure HAZ-1 to include Mr. Hagemann’s recommendations, and to recirculate the revised analysis and mitigation for public comment in a revised EIR.

⁴⁹ Addendum, p. 7, FN 3.

⁵⁰ Addendum, p. 10.

⁵¹ Addendum, p. 10.

⁵² *Id.* If the CEQA Guidelines 15162 and 15164 subsequent review standards were applied to the County’s revised CEQA analysis, these findings would constitute new information of substantial importance triggering the need for a supplemental EIR under CEQA Guidelines section 15162(a)(3).

⁵³ Addendum, pp. 12-15.

⁵⁴ Addendum, p. 14.

⁵⁵ Exhibit A, p. 1.

B. Burrowing Owl

The Court ordered the County to provide further analysis of the FEIR's proposed burrowing owl mitigation that would be sufficient to explain whether and how the EIR's proposed 146 acres of mitigation lands would be adequate to compensate for the total 3,000-acre loss of potential habitat on the solar facility site. The Addendum provides no new analysis of this issue. Instead, it repeats information and arguments from the EIR, and includes unsubstantiated conclusions which are not supported by any new evidence in the record. The Addendum also proposes revisions to the compensatory mitigation requirements of Mitigation Measure BIO-6 which would render it less effective than the previous version in the FEIR. Mr. Cashen concludes that the Addendum fails to provide any new substantial evidence to support the County's burrowing owl mitigation analysis, as required by the Court, and still fails to ensure that impacts to burrowing owl will be mitigated to less than significant levels.

The Addendum contends that Mitigation Measure BIO-6 provides adequate mitigation because it requires compensatory mitigation only for habitat that is occupied, rather than all 3,000 acres.⁵⁶ However, as explained by Mr. Cashen, the compensatory mitigation adopted in the original FEIR was not contingent on the number of owls detected during preconstruction surveys. Rather, the FEIR selected 146 acres as a fixed amount needed to compensate for potentially significant direct and indirect impacts to burrowing owls in activity areas in the entire northern part of the Project site.⁵⁷ Thus, the Addendum fails to provide any new information supporting the County's reliance on 146 acres, and contradicts existing information in the FEIR.

The Addendum includes proposed revisions to Mitigation Measure BIO-6 which would limit compensatory mitigation to addressing impacts to burrowing owls detected during the Applicant's preconstruction survey. As Mr. Cashen explains, this approach fails to ensure adequate compensatory mitigation for the Project site because a single survey does not provide reliable information on the total number of burrowing owls at a site.⁵⁸

⁵⁶ Addendum, pp. 16 and 17.

⁵⁷ Exhibit B, p. 2.

⁵⁸ Exhibit B, p. 2.

The Addendum also fails to explain how 146 acres could be adequate mitigation lands for the Project, when the same mitigation acres are already designated as mitigation lands for the Blythe Mesa Solar Project.⁵⁹ The Addendum fails to include any discussion of the current status of the 146-acre mitigation site, including how many acres have already been applied as mitigation for the Blythe Mesa Project, and thus, how many acres remain as potential mitigation lands for the Project.⁶⁰

The Addendum next asserts that if, for “unforeseen reasons,” the 146-acre mitigation acreage turned out to be insufficient, the EIR identified an additional 132 acres that could also be used to offset impacts.⁶¹ However, as Mr. Cashen explains, the EIR for the Blythe Mesa Project relied on the same 132 acres, establishing the same omission in the County’s analysis about the efficacy of this alternative mitigation plan.⁶²

Finally, the Addendum revised Mitigation Measure BIO-6 to render it internally inconsistent and less effective than its prior version in the FEIR. Mitigation Measure BIO-6 states that it complies with CDFW’s 2012 Staff Report on Burrowing Owl Mitigation.⁶³ However, Mitigation Measure BIO-6’s compensatory mitigation standards rely on outdated 1993 California Burrowing Owl Consortium (“CBOC”) guidelines, which Mr. Cashen explains have been proven to be ineffective and were superseded by CDFW’s more robust 2012 guidance.⁶⁴

Mr. Cashen concludes that the Addendum fails to provide a reasoned analysis to support the FEIR’s reliance on the 146-acre mitigation site, because the mitigation is patently inadequate. As Mr. Cashen explains, “there is no scientific literature that supports the conclusion that 146 acres of potential habitat can effectively replace the Project’s impacts to approximately 3,000 acres of potential habitat.”⁶⁵ As a result, the County’s conclusion that the 146-acre mitigation site coupled with Mitigation Measure BIO-6’s defective compensatory

⁵⁹ Exhibit B, p. 4.

⁶⁰ Exhibit B, p. 5.

⁶¹ Exhibit B, p. 5.

⁶² Exhibit B, p. 5.

⁶³ Addendum, p. 18.

⁶⁴ Exhibit B, p. 6.

⁶⁵ Exhibit B, p. 8.

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mitigation proposal would offset the loss of thousands of acres of habitat from the Project and adjacent solar projects “is not supported by evidence and defies common sense.”⁶⁶

The County should revise and recirculate the EIR to incorporate new and more robust mitigation for the Project’s admittedly significant impacts to burrowing owl.

VI. CONCLUSION

The County has invested almost a decade of public resources into this Project without complying with CEQA. The Board must not allow the Project to proceed until the County has prepared and circulated a legally adequate revised EIR for public comment which fully discloses and mitigates the Project’s soil contamination and burrowing owl impacts, as mandated by the Court.

Citizens urges the Board to continue this hearing and remand the Project to staff to revised and recirculate the EIR for public comment, and to correct the County’s procedural violations. The County must remedy all substantial defects in the EIR, and in the Project as a whole, before the County can demonstrate to the Court that it has fully complied with CEQA and the Writ. Thank you for your consideration of these comments.

Sincerely,



Christina M. Caro

CMC:
Attachments

cc. Melissa Cushman
Anne Beaumont

⁶⁶ *Id.*
3934-061acp

EXHIBIT A



Technical Consultation, Data Analysis and
Litigation Support for the Environment

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Santa Monica, CA 90405

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(949) 887-9013
mhagemann@swape.com

November 2, 2020

Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080

Subject: Review of the Addendum, Palo Verde Mesa Solar Project

Dear Ms. Caro:

We have reviewed the September 16, 2020 Addendum to the Final Environmental Impact Report (FEIR) for the Palo Verde Mesa Solar Project (“Project”). The Addendum addresses comments we made on potential soil contamination by including a Phase Environmental Site Assessment (ESA) conducted to assess residual pesticide and petroleum hydrocarbon concentrations in soil. Based on the findings of the Phase II ESA, the Addendum includes additional mitigation and a best management practice to address construction worker safety during site excavation. We find those measure to be insufficient.

The Addendum states that the Project has not undergone site design or final engineering work, and as a result, the precise locations for excavation and soil sampling could not be identified.¹ The Addendum states that construction is not expected to involve extensive grading, excavation, long-term stockpiling, or removal of soil,² and that exposure to impacted soil with detectible levels of residual pesticides and herbicides, if any, during construction would be limited in scope and duration.³ The proposed Site Management Plan (SMP) would therefore leave subsequent detection of potentially contaminated soils in the hands of on-site construction workers. The Addendum calls for construction workers to be on the front lines of assessing potential soil contamination when excavation is proceeding by stating that the SMP will “outline how project construction crews would, if needed, identify, handle, and dispose of potentially contaminated soil” (p. 14). Construction workers are not qualified to perform these tasks and asking them to perform them may put them at risk from exposure to unanticipated contaminants in soil that cannot be seen or smelled.

¹ Addendum, p. 7, FN 3.

² Addendum, p. 10.

³ Addendum, p. 10.

Instead, upon identification of precise Project areas that will be excavated, samples should be collected at those locations by environmental professionals to assess potential pesticide and petroleum contaminants, not by construction workers. The sampling should be conducted before earth moving activities take place. The results of the sampling should be evaluated by environmental professionals to determine appropriate actions, including the need for further testing, soil removal and disposal, and the appropriate level of personal protective equipment for construction personnel.

The bottom line is that construction crews should not be expected to “identify, handle and dispose” potential contaminants and should not be allowed to conduct earth moving activities without proper personal protective equipment (PPE). Instead, in areas where excavation is to be undertaken, samples should be collected and evaluated by an environmental professional before dirt is overturned and, on the basis of the results, proper PPE should be prescribed. The SMP should also require that PPE be provided at all appropriate times during earthmoving activities to provide respiratory protection, in addition to times when exposure to dust is unavoidable.

Sincerely,



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

Tel: (949) 887-9013

Email: mhagemann@swape.com

Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

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

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

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

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt’s responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

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

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

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

Hydrogeology:

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

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

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

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

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

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

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

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

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

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

Policy:

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

Activities included the following:

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

principles into the policy-making process.

- Established national protocol for the peer review of scientific documents.

Geology:

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

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

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

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

Teaching:

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

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

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Experience:

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

EXHIBIT B

November 2, 2020

Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on the Addendum to the Environmental Impact Report Prepared for the Palo Verde Mesa Solar Project

Dear Ms. Caro:

I submitted extensive comments on both the Draft Environmental Impact Report (“DEIR”) and Final Environmental Impact Report (“FEIR”) prepared for the Palo Verde Mesa Solar Project (“Project”) by Riverside County (“County”). My DEIR comment letter established my professional qualifications as a wildlife biologist. The County recently released an Addendum to the EIR in response to the peremptory writ of mandate issued in *Citizens for Responsible Solar v. County of Riverside*, Case No. RIC1718458.

The writ states, in relevant part: “[r]espondent shall add to its EIR, a further analysis of the issue of mitigation on the solar facility site for the burrowing owl sufficient to explain: (a) whether and how the mitigation lands are adequate to compensate for the total loss of potential habitat on the solar facility site and (b) whether and how the mitigation lands would be maintained for the burrowing owl in perpetuity, all as needed to comply with the Notice of Ruling.” The subsequent comments address these two issues.

1. Whether and how the mitigation lands are adequate to compensate for the total loss of potential habitat on the solar facility site.

The Court ordered the County to provide further analysis of the issue of mitigation on the solar facility site for the burrowing owl sufficient to explain whether and how the mitigation lands are adequate to compensate for the total loss of potential habitat on the solar facility site. The Addendum provides no further analysis of this issue. Instead, it repeats the information and arguments that were provided in the EIR. The Addendum fails to provide a direct response to the Court’s “whether” and “how” questions, although it implies no compensatory mitigation whatsoever would be adequate to compensate for the *total loss of potential habitat* on the solar facility site. The Addendum states:

EIR No. 532 accordingly concluded that potential direct impacts to BUOW and their habitat could include direct loss of active burrows and loss of BUOW nesting or foraging habitat, but only if active BUOW burrows are present at the time of construction. BUOW seek refuge in burrows at all times of the year, therefore, without burrows present, BUOW cannot forage in suitable habitat. Because the loss of potential habitat that is not occupied by BUOW would result in less than significant impacts, Mitigation Measure BIO-6 requires compensatory mitigation only for the habitat that is occupied rather than

all 3,000 acres; it bases its mitigation requirement on the number of owls occupying the project site at the time of construction and requires passive relocation.¹

The EIR concluded: “[i]f active burrows are present at the time of construction, construction activities on both the solar facility site and the gen-tie line could cause the direct loss of active nests or loss of BUOW nesting or foraging habitat.” However, this was only a portion of the EIR’s analysis. The EIR did not conclude that there would be no impacts whatsoever if BUOW were not detected during the preconstruction survey. Indeed, the EIR concluded: “potential direct and indirect impacts to BUOW and their habitat would remain potentially significant prior to the implementation of mitigation measures.”² The EIR then pointed to MM BIO-6 as the measure that would reduce the impacts to less than significant levels.³

According to the FEIR’s version of MM BIO-6: “[t]o compensate for impacts to burrowing owls in activity areas on the northern part of the Project, 146 acres of habitat have been identified adjacent to the Project area. A letter agreeing to dedicate the existing compensation lands must be approved by CDFW and the County prior to ground disturbance.”⁴ Thus, the compensatory mitigation adopted by the County was not contingent on the number of owls detected during the preconstruction survey; but rather, was a fixed amount. The FEIR represented these 146 acres as the amount needed to compensate for potentially significant direct and indirect impacts to burrowing owls in activity areas in the northern part of the Project.

According to the EIR, the solar facility site provides habitat for BUOW: “[t]he solar array site contains habitat, particularly near washes, that would support BUOW burrows, and some burrows were observed in the field that had the potential to be BUOW burrows (POWER, 2013a).”⁵ However, the County is now proposing to revise MM BIO-6 so compensatory mitigation for impacts to BUOW habitat would only be required if the Applicant detects burrowing owls during the preconstruction survey. This approach is unacceptable because a single survey⁶ does not provide reliable information on owls at a site—especially because the majority of the Project site has never been surveyed for BUOW.⁷

1. Several researchers suggest three or more survey visits during daylight hours (Haug and Diduik 1993, CBOC 1997, Conway and Simon 2003) and recommend each visit occur at least three weeks apart during the peak of the breeding season, commonly accepted in California as between 15 April and 15 July (CBOC 1997).⁸
2. As discussed in my DEIR comments, the CDFW survey protocol entails four survey visits: (1) at least one site visit between 15 February and 15 April, and (2) a minimum of

¹ Addendum, pp. 16 and 17.

² DEIR, p. 3.4-40.

³ *Ibid.*

⁴ FEIR, p. 3-34.

⁵ DEIR, p. 3.4-39.

⁶ MM BIO-6 defers to the Applicant’s Draft Burrowing Owl Monitoring and Mitigation Plan (Plan). The Plan indicates the preconstruction survey would adhere to the survey guidelines in Appendix D of the CDFW (2012) Staff Report on Burrowing Owl Mitigation. Based on the timing specified in MM BIO-6 (i.e., no less than 14 days prior to ground disturbance), the Applicant would conduct the “take avoidance” survey described in Appendix D, not the four “detection surveys” designed to determine the presence, abundance, and distribution of BUOW at a site.

⁷ AR010205.

⁸ See California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. p. 6.

three survey visits, at least three weeks apart, between 15 April and 15 July, with at least one visit after 15 June.⁹ This survey protocol is based on detection probabilities reported in scientific studies.¹⁰ For example, Conway and Simon (2003) reported detection probabilities of 37.5% to 64.3% (depending on the survey method) for burrowing owl surveys conducted during the breeding season.¹¹ Thus, even when surveys are conducted during the breeding season when BUOW are most detectable,¹² there is at least a 35.7% chance that the surveyor will fail to detect an owl that is present. Indeed, even when the surveyor knows the location of an occupied nest site, there is a 21% to 53% chance that the surveyor will not detect an owl associated with that nest site.¹³

3. According to the CDFW Staff Report on Burrowing Owl Mitigation: “failure to locate burrowing owls during one field season does not constitute evidence that the site is no longer occupied, particularly if adverse conditions influenced the survey results.”¹⁴
4. The County’s proposal to make compensatory mitigation contingent on the results of a single preconstruction survey is compounded by its failure to require breeding season surveys when BUOW are most detectable. CDFW’s Staff Report notes: “[b]urrowing owls are more difficult to detect during the non-breeding season and their seasonal residency status is difficult to ascertain...In addition, the numbers of owls and their pattern of distribution may differ during winter and breeding seasons.”¹⁵ Because the County’s revisions to MM BIO-6 fail to account for seasonal variation in owl detectability, distribution, and abundance, the compensatory mitigation requirement would be a function of when the Applicant elects to conduct the preconstruction survey, as opposed to robust data capable of reflecting the severity of Project impacts to burrowing owls.

Proposed Mitigation Site

The EIR allows the Applicant to satisfy compensatory mitigation requirements at 146 acres of land that has already been adopted as mitigation for impacts to habitat at the Blythe Mesa Solar Project (“BMSP”). The Court noted: “the specific nexus Respondents asserted is between the 146-acre mitigation lands and the gen-tie corridor. The cited portions of the EIR do not discuss the solar facility site itself. (AR 3013-3014.) There is confusion in the EIR due to the lack of a sufficient explanation as to whether and how the 146-acre mitigation lands adjacent to the gen-tie corridor is to compensate for the loss of more than 3,000 acres of total land.”¹⁶

The Addendum’s discussion of this issue is limited to the following: “[t]he question whether the mitigation lands may be considered adequate when those lands may serve another project that

⁹ AR010204.

¹⁰ See *Appendix D In*: California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation.

¹¹ Conway CJ, Simon JC. 2003. Comparison of Detection Probability Associated with Burrowing Owl Survey Methods. *Journal of Wildlife Management*. 67(3):501–511.

¹² California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. p. 6.

¹³ Conway CJ, Simon JC. 2003. Comparison of Detection Probability Associated with Burrowing Owl Survey Methods. *Journal of Wildlife Management*. 67(3):501–511.

¹⁴ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. p. 29.

¹⁵ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. p. 6.

¹⁶ Addendum, p. 16.

would use the same gen-tie corridor has conclusively been resolved in favor of the EIR's conclusion⁷ and accordingly no additional analysis or mitigation is required." The County's assertion is ridiculous. The Court specifically ruled that the County needed to provide additional analysis to explain "whether and how the mitigation lands are adequate to compensate for the total loss of potential habitat *on the solar facility site.*"¹⁷ The Addendum fails to provide that analysis.

With respect to impacts associated with the gen-tie corridor, the Court concluded: "the other solar Project (BMSP) that would share the mitigation lands also shares the gen-tie corridor. Under the circumstances, the decision to share the mitigation lands for purposes of the gen-tie corridor presented is supported by substantial evidence." It is important to note that the two projects only share the portion of the gen-tie corridor south of I-10. The portion north of I-10 entails 5.6 miles of new transmission lines for the Palo Verde Mesa Solar Project ("PVMSP"), only.¹⁸ This is important because the gen-tie segment north of I-10 goes through the middle of the proposed mitigation site. The County (and BLM) did not contemplate impacts associated with construction of a new gen-tie line through the middle of the mitigation site when it adopted mitigation for the BMSP.¹⁹ Thus, not only is the Applicant attempting to use the same land as mitigation for two projects, but the Project would impact the habitat that is supposed to serve as compensatory mitigation for the BMSP.

The EIR admits the gen-tie transmission line would have a variety of direct and indirect impacts on burrowing owls and their habitat, including: (1) direct loss of habitat during construction; (2) increased common raven and raptor predation on BUOW due to the new elevated perching sites associated with the gen-tie structures and lines; (3) human activities that attract coyotes, cats, dogs, and other BUOW predators; and (4) the spread of invasive non-native plants (among other Project-related impacts that degrade habitat for BUOW).²⁰ It further states that these impacts "can be avoided to some extent by the implementation of BMPs," but that they "**would remain potentially significant prior to the implementation of mitigation measures.**"²¹ According to the EIR, MM BIO-6 would reduce the impacts to less than significant because: "[t]his mitigation measure requires development and implementation of a BUOW mitigation and monitoring plan to further reduce potential impacts."²² However, the BUOW mitigation and monitoring plan fails to incorporate any additional measures to address the potentially significant impacts associated with the gen-tie corridor, nor does it adopt performance standards for mitigating those impacts. As a result, the gen-tie's impacts on the 146-acre mitigation site remain potentially significant and unmitigated.

¹⁷ [Emphasis added].

¹⁸ DEIR, p. 2-22.

¹⁹ Blythe Mesa Solar Project FEIR/FEA, Vol. III, Appendix A (Burrowing Owl Mitigation and Monitoring Plan) to Appendix C4 (Avian and Bat Protection Plan).

²⁰ DEIR, pp. 3.4-39 and -40.

²¹ *Ibid.* [emphasis added].

²² *Ibid.*

The gen-tie corridor would occupy approximately 35 acres of the 146-acre mitigation site.²³ In addition, approximately 24 acres of the mitigation site is comprised of irrigated row crops, which the Applicant's biologist classified as unsuitable habitat for BUOW.²⁴ The EIR allows the Applicant to use these 59 acres as compensatory mitigation for impacts to burrowing owls and their habitat.

The Addendum claims: “[e]ven if, for unforeseen reasons, that mitigation acreage turned out to be insufficient, then EIR No. 532 identifies an additional 132 acres that could also be used to offset impacts.” The EIR for the BMSP made the same claim.²⁵ The Addendum fails to include any discussion of the current status of the 146-acre mitigation site or the additional 132 acres that could be used to offset Project impacts. Specifically, the Addendum fails to identify how many acres have already been applied as mitigation for impacts associated with the BMSP (solar facility site or gen-tie), and thus, how many acres remain as potential mitigation for impacts associated with the PVMSP. The BUOW Monitoring and Mitigation Plan for the BMSP assumed the need to mitigate for impacts to nine active burrowing owl burrows.²⁶ The CBOC guidelines require 19.5 acres of compensatory habitat per pair or single bird if replacement habitat is not contiguous to currently occupied habitat. Therefore, the BMSP Plan assumed the need for 175.5 acres of compensatory habitat. Thus, the 146-acre mitigation is not capable of satisfying the BMSP mitigation requirements, even if the outdated (CBOC) mitigation guidelines are applied.

The Addendum fails to describe the condition of the “additional 132 acres,” and thus, their suitability as habitat for burrowing owls. Based on my review of Google Earth imagery, the “additional 132 acres” appear heavily degraded and lack attributes that would offset impacts to occupied (or potential) burrowing owl habitat at the Project site (Figures 1 through 6).

The County has identified a total of 278 acres of potential mitigation lands to replace BUOW habitat impacted by the PVMSP and BMSP. The County has not identified habitat conditions associated with the “additional 132 acres.” At a minimum, the 24 acres of irrigated row crops at the 146-acre mitigation site are unsuitable habitat for BUOW according to the Applicant's biologist. If habitat in the gen-tie corridor is removed from consideration, only 219 total acres of potential replacement habitat are available. If the BMSP requires 175.5 acres, there are only 43.5 acres available for impacts associated with the PVMSP. This would satisfy the mitigation requirement for two owls within the PVMSP solar facility site (if the outdated CBOC guidelines are applied). However, the Addendum indicates the Project may require mitigation for up to seven owls.²⁷ This means the Applicant would need to acquire an additional 93 acres of compensatory habitat beyond the 278 acres that have already been identified as potential

²³ Based on measurements taken in Google Earth. According to the EIR, the gen-tie corridor is 500 feet wide. The corridor would run approximately 2,460 feet through the middle of the mitigation site, and approximately 1,250 feet along the northern boundary of the mitigation site.

²⁴ Blythe Mesa Solar Project FEIR/FEA, Vol. III, Appendix A (Burrowing Owl Mitigation and Monitoring Plan) to Appendix C4 (Avian and Bat Protection Plan), Figure 2.

²⁵ Blythe Mesa Solar Project DEIR/DEA, Vol III, Appendix A (Western Burrowing Owl Monitoring and Mitigation Plan) to Appendix C1 (Biological Resources Technical Report), p. 16 and Figure 4: Potential Burrowing Owl Mitigation Land.

²⁶ *Ibid*, p. 16.

²⁷ Addendum, p. 17.

mitigation sites. The Addendum fails to identify where those 93 acres might be located, or how they would be selected to ensure impacts to burrowing owls have been mitigated to less than significant levels.

Habitat Compensation Ratio

The County revised MM BIO-6 such that the compensatory mitigation requirement is contingent on the number of owls detected during the preconstruction survey. Specifically, MM BIO-6 requires 9.75 to 19.5 acres of compensatory mitigation per pair or single bird (depending on the location of off-site habitat in relation to occupied BUOW habitat). These amounts were derived from the 1993 California Burrowing Owl Consortium (“CBOC”) guidelines. The County’s revision does not rectify the issue raised by the Court. As discussed in both my DEIR comments and FEIR comments, the CBOC mitigation guidelines have proven to be ineffective, were superseded by the guidelines in CDFW’s 2012 Staff Report on Burrowing Owl Mitigation, and are no longer accepted by the CBOC, CDFW, or any other natural resource agency.²⁸

According to the Addendum, the County assumed the 146-acre mitigation site proposed in the EIR would satisfy the Applicant’s mitigation obligations “due to the requirement that they be approved by public agencies.” Assumptions are not substantial evidence. Moreover, there was no need to make assumptions regarding the efficacy of the proposed mitigation because CDFW informed the County that 146 acres would not be sufficient to mitigate the Project’s impacts on burrowing owls. Specifically, CDFW stated:

1. The Project’s Burrowing Owl Mitigation Plan “should include mitigation roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355);” and
2. “Current scientific literature supports the conclusion that mitigation for permanent burrowing owl habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow.”²⁹

The Court concluded that the EIR failed to provide substantial evidence that the proposed mitigation would compensate for the loss of more than 3,000 acres of potential BUOW habitat. The only additional “evidence” the Addendum provides is that the County would require compensation in accordance with the CBOC guidelines, which have proven ineffective. Although CDFW’s 1995 Staff Report adopted the CBOC guidelines, the 2012 Staff Report states:

- a) “[t]he Department has determined that reversing declining population and range trends for burrowing owls will require implementation of *more effective conservation actions*,” and thus,

²⁸ AR010229, AR012505, and AR012506.

²⁹ FEIR, Comment A5-12.

- b) “[t]his Report sets forth the Department’s recommendations for implementing the third approach identified above by revising the 1995 Staff Report, drawing from the most relevant and current knowledge and expertise, and incorporating the best scientific information available pertaining to the species. It is designed to provide a compilation of the best available science for Department staff, biologists, planners, land managers, California Environmental Quality Act (CEQA) lead agencies, and the public to consider when assessing impacts of projects or other activities on burrowing owls.”³⁰

The EIR concluded the Project would cause significant direct and indirect impacts to burrowing owl habitat but never quantified the amount of habitat that would be impacted. However, according to the Applicant’s Burrowing Owl Survey Report:

1. “Agricultural fields comprise approximately 90% of the solar facility site. The agricultural land use within the site includes drip-irrigated citrus orchards [313.9 acres] and fallow agricultural fields [2,665.3 acres]. These fallow fields are increasingly being used by ground squirrels and other small, non-listed mammals.”³¹
2. “Several kit fox dens were found in the northeast corner of the study area, and rodent burrow complexes were scattered abundantly throughout the entire study area.”³²

The overriding characteristics of suitable habitat for BUOW are burrows for roosting and nesting, and relatively short vegetation with only sparse shrubs or taller vegetation.³³ Burrowing owls most frequently use ground squirrel burrows, but they will also use fox dens and burrows associated with other mammals.³⁴ Thus, suitable burrows (and prey) for BUOW occurred throughout the entire study area and were increasing in abundance in 2013 when surveys were last conducted for the Project. Furthermore, BUOW will forage considerable distances from burrows. Therefore, even if no owls are detected in “active burrows” at the Project site during the preconstruction survey, the site could be essential foraging habitat for owls that have been documented outside of solar facility footprint.³⁵ Indeed, for the BMSP, the Applicant’s biologist concluded: “[t]he Study Area supports a relatively small population of burrowing owl, and *supports burrowing owl that may occupy habitat outside of the Study Area limits.*”³⁶ The biologist observed nine suitable burrows or burrow complexes in the northern portion of the BMSP site; no suitable burrows were observed in the southern portion of the site.³⁷ The PVMSP is immediately north of the BMSP site. Therefore, based on the biologist’s reasoning, the BMSP site supports owls that may occupy habitat at the PVMSP site, and vice versa. There is no analysis of what will happen to all the owls once their habitat is eliminated by the BMSP,

³⁰ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. pp. 1 and 2. [emphasis added].

³¹ FEIR, Appendix C (Western Burrowing Owl Survey Report), p. 7.

³² *Ibid*, p. 13.

³³ Gervais JA, DK Rosenberg, LA Comrack. 2008. Burrowing Owl (*Athene cunicularia*). Pages 218-226 *In*: Shuford WD, T Gardali, editors. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

³⁴ *Ibid*.

³⁵ See DEIR, Appendix D (Burrowing Owl Mitigation and Monitoring Plan), Table 2.

³⁶ Blythe Mesa Solar Project FEIR/FEA, Vol III, Appendix A (Western Burrowing Owl Mitigation and Monitoring Plan) to Appendix C1 (Biological Resources Technical Report), p. 1. [emphasis added].

³⁷ *Ibid*, p. 10.

PVMSP, and adjacent projects. According to the County, the 146-acre mitigation site and a forthcoming mitigation plan would offset the loss of thousands of acres of habitat from the BMSP and PVMSP project sites. This conclusion is not supported by evidence and defies common sense. Burrowing owl home ranges have been documented to comprise anywhere from 280 acres (in intensively irrigated agroecosystems) to 600 acres (in pasture), but may be much larger in other ecosystems, perhaps by an order of magnitude.³⁸

There is no scientific literature that supports the conclusion that 146 acres of potential habitat can effectively replace the Project's impacts to approximately 3,000 acres of potential habitat. As stated in my previous comments, the burrowing owls that occur in the agricultural fields near Blythe comprise a significant portion of the population of burrowing owls in California.³⁹ As a result, there is substantial evidence that the Project could have a relatively severe impact on statewide conservation of the species.⁴⁰

The Addendum makes the following argument in an attempt to justify the County's conclusion that compensatory mitigation is only needed if active burrows are detected during the preconstruction survey:

As described in EIR No. 532, no active BUOW burrows were identified on the solar facility site during surveys conducted in 2011 and 2013. However, BUOW sign was observed in the north and northeast portion of the site in 2011, and the site contains habitat and burrows that could support BUOW. In addition, EIR No. 532 identifies three active BUOW burrows within the gen-tie line study area. Thus, the EIR addressed habitat on the solar facility site and the gen-tie lines. EIR No. 532 accordingly concluded that potential direct impacts to BUOW and their habitat could include direct loss of active burrows and loss of BUOW nesting or foraging habitat, but only if active BUOW burrows are present at the time of construction. BUOW seek refuge in burrows at all times of the year, therefore, without burrows present, BUOW cannot forage in suitable habitat. Because the loss of potential habitat that is not occupied by BUOW would result in less than significant impacts, Mitigation Measure BIO-6 requires compensatory mitigation only.⁴¹

The Addendum's argument is flawed and confusing on several levels. First, the fact that no active burrows were detected at the solar facility site during the surveys does not mean there were no active BUOW burrows, as the Addendum suggests. The 2011 surveys were conducted for the BMSP project and did not encompass the PVMSP solar facility site.⁴² Of the 3,311 acres within the solar facility site, only 645 acres were analyzed for BUOW habitat suitability,⁴³ and only 323 acres were surveyed for BUOW.⁴⁴ Thus, the Addendum has no basis for suggesting the EIR adequately addressed BUOW habitat on the solar facility site because the majority of the solar facility site was never subject to a BUOW habitat assessment, nor was it surveyed to determine presence of owls.

³⁸ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. p. 21.

³⁹ AR010201.

⁴⁰ AR010201 and AR010202.

⁴¹ Addendum, p. 16.

⁴² AR010204 and AR010205. *See also* FEIR, Appendix C (Western Burrowing Owl Survey Report), Figure 3.

⁴³ DEIR, Appendix D (Burrowing Owl Mitigation and Monitoring Plan), p. 7.

⁴⁴ AR010204 and AR010205. *See also* FEIR, Appendix C (Western Burrowing Owl Survey Report), Figure 3.

Second, nowhere does the EIR conclude that direct impacts to habitat would occur only if active BUOW burrows are present at the time of construction. In fact, the EIR concluded: “potential direct and indirect impacts to BUOW *and their habitat* would remain potentially significant prior to the implementation of mitigation measures.”⁴⁵

Third, the Addendum argues the loss of potential habitat that is not occupied by BUOW would result in less than significant impacts because: “without burrows present, BUOW cannot forage in suitable habitat.” This argument is not supported by evidence and is inconsistent with the biology of the species (i.e., BUOW fly away from burrows to forage). It is also inconsistent with the Applicant’s survey data, which depict BUOW sign (e.g., whitewash and pellets), but no BUOW burrows, in the middle of the BMSP solar facility site.⁴⁶ Ultimately, the Addendum’s argument is irrelevant because ground squirrel and other mammal burrows that are suitable for BUOW are in fact present throughout the Project site (as discussed previously). Burrowing owl occupation of burrows created by ground squirrels and other mammals is a dynamic process. For example, when the surveys were conducted in 2013, the Applicant’s biologist noted the fallow fields within the solar facility site “are increasingly being used by ground squirrels and other small, non-listed mammals.”⁴⁷ Thus, the distribution and suitability of BUOW habitat was increasing in 2013. Presumably it has increased even further over the past seven years. This has implications on the adequacy of the County’s proposed mitigation and the analysis mandated by the Court. Specifically, the County has no basis for concluding the mitigation proposed in MM BIO-6 would adequately compensate for the total loss of *potential habitat* on the solar facility site without an assessment of the current habitat conditions at the site.

Revisions to MM BIO-6

Mitigation Measure BIO-6 begins with the following statement:

A Draft Burrowing Owl Monitoring and Mitigation Plan (Plan) has been developed to describe monitoring, reporting, and management of the burrowing owl during the construction, O&M, and decommissioning of the proposed Project, as required by California Department of Fish and Wildlife and the County of Riverside. It has been prepared following the 2012 Staff Report on Burrowing Owl Mitigation (CDFW, 2012), and describes a multitiered approach to prevent or reduce impacts during construction and operation of the Project. Below is a general summary of the revised Plan requirements: [summary provided]

Although the Addendum indicates it provides a “general summary of the revised Plan requirements” the Plan itself was never revised. As a result, the Addendum’s summary of the Plan’s requirements is not consistent with what is stated in the Plan. Furthermore, MM BIO-6 continues to call it a “Draft” Plan, which indicates the County has not prepared a Final Plan. MM BIO-6 does not require a Final Plan, nor does it incorporate language that makes compliance with the (Draft or Final) Plan an enforceable mitigation measure. As a result, it is

⁴⁵ DEIR, p. 3.4-40.

⁴⁶ FEIR, Appendix C (Western Burrowing Owl Survey Report), Figure 3.

⁴⁷ FEIR, Appendix C (Western Burrowing Owl Survey Report), p. 7.

unclear whether the Applicant would be required to comply with the BUOW mitigation and monitoring measures identified in the Addendum, Draft Plan, or a forthcoming Final Plan.

The suggestion that CDFW somehow “required” the Plan is false, as is the claim that the Plan complies with the CDFW Staff Report on Burrowing Owl Mitigation.⁴⁸ The Draft Burrowing Owl Monitoring and Mitigation Plan makes several references to CDFW’s 2012 Staff Report on Burrowing Owl Mitigation. However, when it comes to compensatory mitigation section of the Plan, the Plan suddenly reverts to the outdated 1993 CBOC guidelines. As I have repeatedly stated to the County, the current guidelines call for a 1:1 compensation ratio based on the acres of BUOW habitat permanently impacted by a project (i.e., not the number of owls impacted by a project).⁴⁹

Quality and Value of Mitigation Lands

According to the Addendum:

EIR No. 532 also required that the quality and value of the mitigation lands be approved by the California Department of Fish & Wildlife and the County prior to excavation, that the land used for compensation be of equal value or better than the land impacted. (FEIR, p. 2-211) EIR No. 532 presumed that these agencies would discharge this duty in a manner protective of the species. This Addendum further ensures that appropriate criteria will be applied by these agencies, by editing Mitigation Measure BIO-6 to add additional criteria for mitigation lands.⁵⁰

The Addendum misrepresents the requirements in the EIR. MM BIO-6 requires CDFW’s approval of the “letter agreeing to dedicate the required compensation lands;” however, it does not require CDFW’s approval of the compensation lands (i.e., that they are appropriate mitigation for the Project’s significant impacts to BUOW habitat). To the contrary, the County denied CDFW’s request to approve the BUOW Mitigation Plan prior to any ground disturbance.⁵¹ Furthermore, the Addendum fails to identify how impacts would be mitigated if CDFW *does not* approve the proposed mitigation lands. The Applicant proposed the potential BUOW mitigation sites at least eight years ago (in 2012).⁵² The Addendum fails to explain why the County has yet to obtain CDFW’s approval of the proposed mitigation lands. The County’s response to CDFW’s comment on the mitigation lands issue was that: “[a]dditional governmental review of the [BUOW] plan is not necessary to assure that impacts will be less than significant.”⁵³ As a result, the County needs to revise MM BIO-6 to clearly articulate what aspects of MM BIO-6 and the overall BUOW mitigation strategy would be subject to CDFW approval.

The Addendum states: “the EIR assumed that the mitigation lands would be of high quality due to the requirement that they be approved by public agencies. Measure BIO-6 is revised by this Addendum to make the nature of these requirements clearer, and to impose criteria the public

⁴⁸ AR010229 through AR011233; AR012505 through AR012508.

⁴⁹ AR010229 and AR012506.

⁵⁰ Addendum, p. 17.

⁵¹ FEIR, Response to Comment A5-12.

⁵² AR012504.

⁵³ FEIR, Response to Comment A5-12.

agencies must apply in determining the adequacy of proposed mitigation lands.”⁵⁴ It is unclear what criteria and public agencies the Addendum is referring to, but MM BIO-6 does not incorporate any criteria that public agencies “must apply in determining the adequacy of proposed mitigation lands.”

2. Whether and how the mitigation lands would be maintained for the burrowing owl in perpetuity.

The Court ordered the County to provide further analysis to explain whether and how the mitigation lands would be maintained for the burrowing owl in perpetuity. The Addendum added two bullet points to MM BIO-6 to address the Court’s order: one pertaining to long-term management of the mitigation lands, and one pertaining to financial security for implementation of mitigation

The bullet point pertaining to long-term management states:

The Plan shall describe monitoring and management of the passive relocation, including a three-year monitoring program. For compensatory mitigation lands, the project owner shall develop a long-term management plan to be implemented in perpetuity to ensure compliance with and effectiveness of identified management actions for the mitigation lands. A recommended outline with related vegetation management goals and monitoring success criteria can be found in Appendix E of the 2012 CDFW Staff Report.

This addition to MM BIO-6 fails to address the Court’s order. There is no information or analysis pertaining to maintenance of the mitigation lands for BUOW conservation. Instead, the County defers this task to the Project owner to develop at a later date. This is compounded by the following:

- Nowhere has the County identified the “identified management actions for the mitigation lands.” Therefore, even if Project owner develops a long-term management plan that ensures effectiveness of the management actions, the management actions might be totally incompatible with BUOW conservation.
- The County has denied CDFW’s request to approve the BUOW Mitigation Plan, so there is no mechanism to ensure the Project owner would develop a long-term management plan with any value to BUOW conservation.
- The County mentions the recommended outline in Appendix E of the CDFW Staff Report, but does not require a management plan that adheres to the outline in Appendix E.

⁵⁴ Addendum, p. 16.

Based on the numerous issues discussed above, it is my professional opinion that the County's Addendum fails to provide the analysis necessary to comply with the Court's ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Cashen", with a stylized flourish at the end.

Scott Cashen, M.S.
Senior Biologist



Figure 1. Other potential burrowing owl mitigation lands (red polygons) identified by the Applicant. Corresponds to BMSP *Western Burrowing Owl Monitoring and Mitigation Plan*, Figure 4.

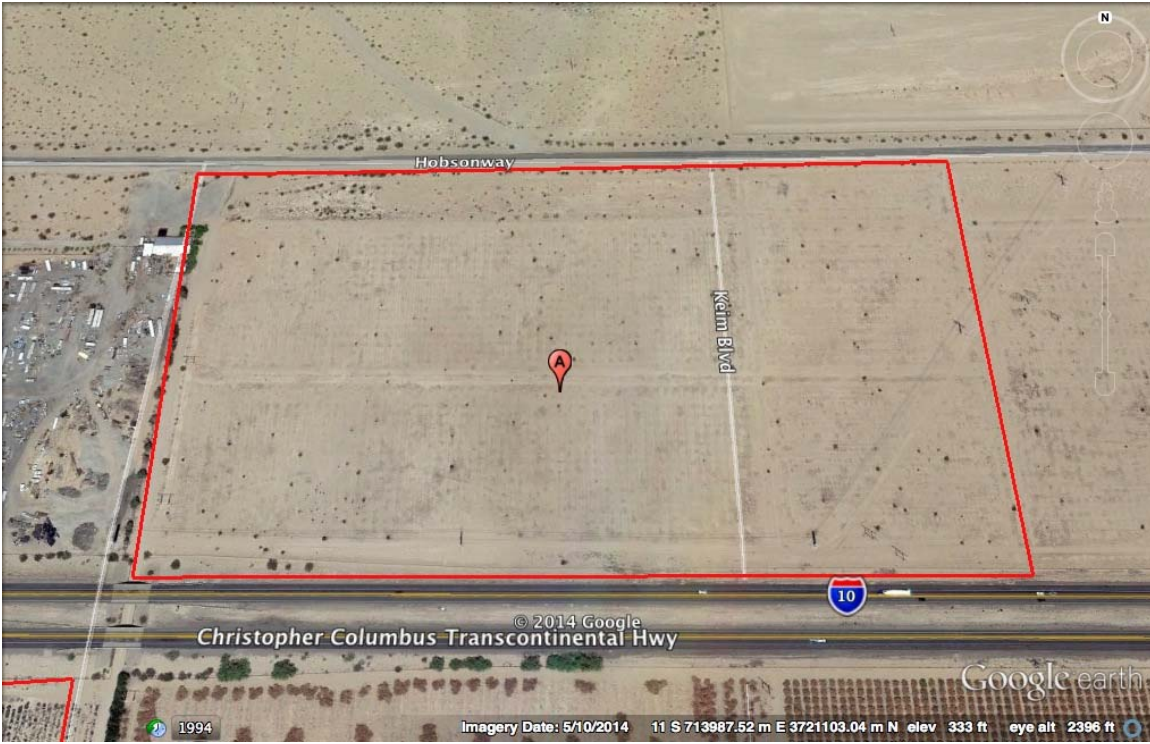


Figure 2. Mitigation site “A.” Site is largely barren.



Figure 3. Google Earth Street View of Site A.

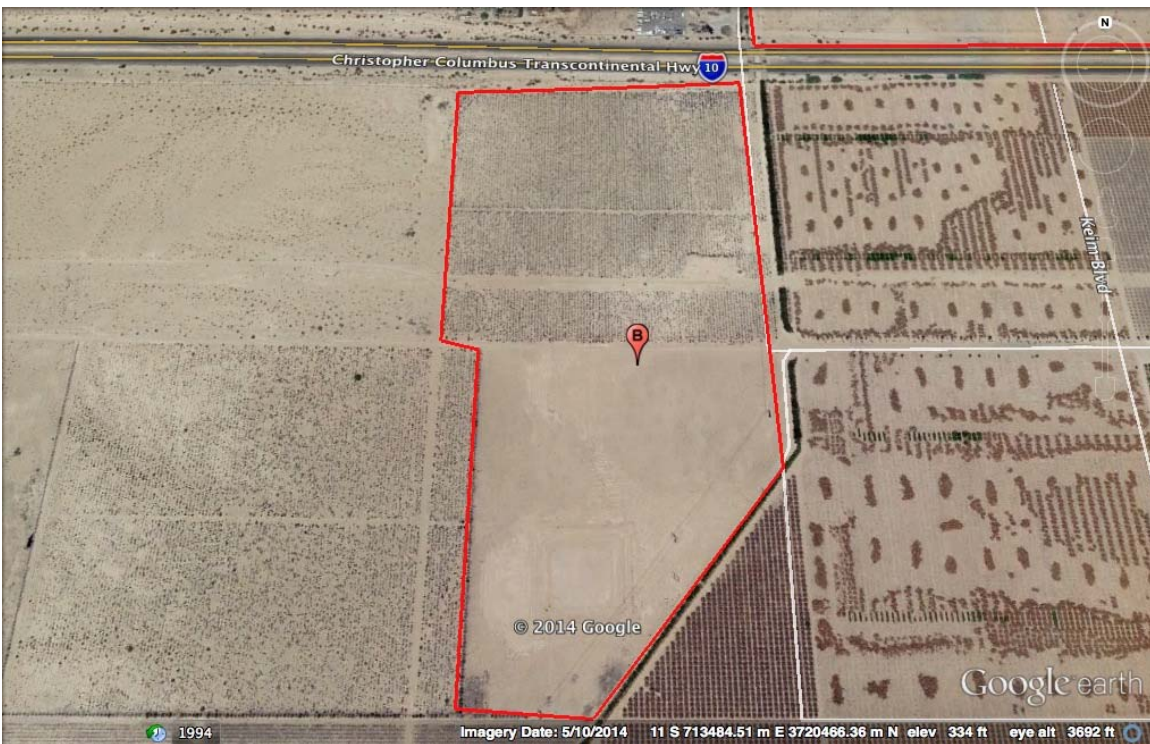


Figure 4. Mitigation site “B.” Southern portion of site is largely barren; northern portion

appears to be abandoned jojoba.



Figure 5. Mitigation site “C.” Site appears to consist of road shoulder.



Figure 6. Mitigation Site “D.” Site consists of rural residence and other unsuitable burrowing owl habitat.

Scott Cashen, M.S.

Senior Biologist / Forest Ecologist

3264 Hudson Avenue, Walnut Creek, CA 94597. (925) 256-9185. scottcashen@gmail.com

Scott Cashen has 20 years of professional experience in natural resources management. During that time he has worked as a field biologist, forester, environmental consultant, and instructor of Wildlife Management. Mr. Cashen currently operates an independent consulting business that focuses on CEQA/NEPA compliance issues, endangered species, scientific field studies, and other topics that require a high level of scientific expertise.

Mr. Cashen has knowledge and experience with many taxa, biological resource issues, and environmental regulations. This knowledge and experience has made him a highly sought after biological resources expert. To date, he has been retained as a biological resources expert for over 40 projects. Mr. Cashen's role in this capacity has encompassed all stages of the environmental review process, from initial document review through litigation support and expert witness testimony.

Mr. Cashen is a recognized expert on the environmental impacts of renewable energy development. He has been involved in the environmental review process for 28 renewable energy projects, and he has been a biological resources expert for more of California's solar energy projects than any other private consultant. In 2010, Mr. Cashen testified on 5 of the Department of the Interior's "Top 6 Fast-tracked Solar Projects" and his testimony influenced the outcome of each of these projects.

Mr. Cashen is a versatile scientist capable of addressing numerous aspects of natural resource management simultaneously. Because of Mr. Cashen's expertise in both forestry and biology, Calfire had him prepare the biological resource assessments for all of its fuels treatment projects in Riverside and San Diego Counties following the 2003 Cedar Fire. Mr. Cashen has led field studies on several special-status species, including plants, fish, reptiles, amphibians, birds, and mammals. Mr. Cashen has been the technical editor of several resource management documents, and his strong scientific writing skills have enabled him to secure grant funding for several clients.

AREAS OF EXPERTISE

- CEQA, NEPA, and Endangered Species Act compliance issues
- Comprehensive biological resource assessments
- Endangered species management
- Renewable energy
- Forest fuels reduction and timber harvesting
- Scientific field studies, grant writing and technical editing

EDUCATION

M.S. Wildlife and Fisheries Science - The Pennsylvania State University (1998)

B.S. Resource Management - The University of California, Berkeley (1992)

PROFESSIONAL EXPERIENCE

Litigation Support / Expert Witness

As a biological resources expert, Mr. Cashen reviews CEQA/NEPA documents and provides his client(s) with an assessment of biological resource issues. He then prepares written comments on the scientific and legal adequacy of the project's environmental documents (e.g., EIR). For projects requiring California Energy Commission (CEC) approval, Mr. Cashen has submitted written testimony (opening and rebuttal) in conjunction with oral testimony before the CEC.

Mr. Cashen can lead field studies to generate evidence for legal testimony, and he can incorporate testimony from his deep network of species-specific experts. Mr. Cashen's clients have included law firms, non-profit organizations, and citizen groups.

REPRESENTATIVE EXPERIENCE

Solar Energy Facilities

- Abengoa Mojave Solar Project
- Avenal Energy Power Plant
- Beacon Solar Energy Project
- Blythe Solar Power Project
- Calico Solar Project
- Calipatria Solar Farm II
- Carrizo Energy Solar Farm
- Catalina Renewable Energy Project
- Fink Road Solar Farm
- Genesis Solar Energy Project
- Heber Solar Energy Facility
- Imperial Valley Solar Project
- Ivanpah Solar Electric Generating
- Maricopa Sun Solar Complex
- Mt. Signal and Calexico Solar
- San Joaquin Solar I & II
- Solar Gen II Projects
- SR Solis Oro Loma
- Vestal Solar Facilities
- Victorville 2 Power Project

Geothermal Energy Facilities

- East Brawley Geothermal
- Mammoth Pacific 1 Replacement
- Western GeoPower Plant and

Wind Energy Facilities

- Catalina Renewable Energy Project
- Ocotillo Express Wind Energy
- San Diego County Wind Ordinance
- Tres Vaqueros Repowering Project
- Vasco Winds Relicensing Project

Biomass Facilities

- Tracy Green Energy Project

Development Projects

- Alves Ranch
- Aviano
- Chula Vista Bayfront Master Plan
- Columbus Salame
- Concord Naval Weapons Station
- Faria Annexation
- Live Oak Master Plan
- Napa Pipe
- Roddy Ranch
- Rollingwood
- Sprint-Nextel Tower

Project Management

Mr. Cashen has managed several large-scale wildlife, forestry, and natural resource management projects. Many of these projects have required hiring and training field crews, coordinating with other professionals, and communicating with project stakeholders. Mr. Cashen's experience in study design, data collection, and scientific writing make him an effective project manager, and his background in several different natural resource disciplines enable him to address the many facets of contemporary land management in a cost-effective manner.

REPRESENTATIVE EXPERIENCE

Wildlife Studies

- Peninsular Bighorn Sheep Resource Use and Behavior Study: (*CA State Parks*)
- "KV" Spotted Owl and Northern Goshawk Inventory: (*USFS, Plumas NF*)
- Amphibian Inventory Project: (*USFS, Plumas NF*)
- San Mateo Creek Steelhead Restoration Project: (*Trout Unlimited and CA Coastal Conservancy, Orange County*)
- Delta Meadows State Park Special-status Species Inventory: (*CA State Parks, Locke*)

Natural Resources Management

- Mather Lake Resource Management Study and Plan – (*Sacramento County*)
- Placer County Vernal Pool Study – (*Placer County*)
- Weidemann Ranch Mitigation Project – (*Toll Brothers, Inc., San Ramon*)
- Ion Communities Biological Resource Assessments – (*Ion Communities, Riverside and San Bernardino Counties*)
- Del Rio Hills Biological Resource Assessment – (*The Wyro Company, Rio Vista*)

Forestry

- Forest Health Improvement Projects – (*CalFire, SD and Riverside Counties*)
- San Diego Bark Beetle Tree Removal Project – (*SDG&E, San Diego Co.*)
- San Diego Bark Beetle Tree Removal Project – (*San Diego County/NRCS*)
- Hillslope Monitoring Project – (*CalFire, throughout California*)

Biological Resources

Mr. Cashen has a diverse background with biological resources. He has conducted comprehensive biological resource assessments, habitat evaluations, species inventories, and scientific peer review. Mr. Cashen has led investigations on several special-status species, including ones focusing on the foothill yellow-legged frog, mountain yellow-legged frog, desert tortoise, steelhead, burrowing owl, California spotted owl, northern goshawk, willow flycatcher, Peninsular bighorn sheep, red panda, and forest carnivores.

REPRESENTATIVE EXPERIENCE

Avian

- Study design and Lead Investigator - Delta Meadows State Park Special-Status Species Inventory (*CA State Parks: Locke*)
- Study design and lead bird surveyor - Placer County Vernal Pool Study (*Placer County: throughout Placer County*)
- Surveyor - Willow flycatcher habitat mapping (*USFS: Plumas NF*)
- Independent surveyor - Tolay Creek, Cullinan Ranch, and Guadacanal Village restoration projects (*Ducks Unlimited/USGS: San Pablo Bay*)
- Study design and Lead Investigator - Bird use of restored wetlands research (*Pennsylvania Game Commission: throughout Pennsylvania*)
- Study design and surveyor - Baseline inventory of bird species at a 400-acre site in Napa County (*HCV Associates: Napa*)
- Surveyor - Baseline inventory of bird abundance following diesel spill (*LFR Levine-Fricke: Suisun Bay*)
- Study design and lead bird surveyor - Green Valley Creek Riparian Restoration Site (*City of Fairfield: Fairfield, CA*)
- Surveyor - Burrowing owl relocation and monitoring (*US Navy: Dixon, CA*)
- Surveyor - Pre-construction raptor and burrowing owl surveys (*various clients and locations*)
- Surveyor - Backcountry bird inventory (*National Park Service: Eagle, Alaska*)
- Lead surveyor - Tidal salt marsh bird surveys (*Point Reyes Bird Observatory: throughout Bay Area*)
- Surveyor – Pre-construction surveys for nesting birds (*various clients and locations*)

Amphibian

- Crew Leader - Red-legged frog, foothill yellow-legged frog, and mountain yellow-legged frog surveys (*USFS: Plumas NF*)

- Surveyor - Foothill yellow-legged frog surveys (*PG&E: North Fork Feather River*)
- Surveyor - Mountain yellow-legged frog surveys (*El Dorado Irrigation District: Desolation Wilderness*)
- Crew Leader - Bullfrog eradication (*Trout Unlimited: Cleveland NF*)

Fish and Aquatic Resources

- Surveyor - Hardhead minnow and other fish surveys (*USFS: Plumas NF*)
- Surveyor - Weber Creek aquatic habitat mapping (*El Dorado Irrigation District: Placerville, CA*)
- Surveyor - Green Valley Creek aquatic habitat mapping (*City of Fairfield: Fairfield, CA*)
- GPS Specialist - Salmonid spawning habitat mapping (*CDFG: Sacramento River*)
- Surveyor - Fish composition and abundance study (*PG&E: Upper North Fork Feather River and Lake Almanor*)
- Crew Leader - Surveys of steelhead abundance and habitat use (*CA Coastal Conservancy: Gualala River estuary*)
- Crew Leader - Exotic species identification and eradication (*Trout Unlimited: Cleveland NF*)

Mammals

- Principal Investigator – Peninsular bighorn sheep resource use and behavior study (*California State Parks: Freeman Properties*)
- Scientific Advisor – Study on red panda occupancy and abundance in eastern Nepal (*The Red Panda Network: CA and Nepal*)
- Surveyor - Forest carnivore surveys (*University of CA: Tahoe NF*)
- Surveyor - Relocation and monitoring of salt marsh harvest mice and other small mammals (*US Navy: Skagg's Island, CA*)
- Surveyor – Surveys for Monterey dusky-footed woodrat. Relocation of woodrat houses (*Touré Associates: Prunedale*)

Natural Resource Investigations / Multiple Species Studies

- Scientific Review Team Member – Member of the science review team assessing the effectiveness of the US Forest Service's implementation of the Herger-Feinstein Quincy Library Group Act.
- Lead Consultant - Baseline biological resource assessments and habitat mapping for CDF management units (*CDF: San Diego, San Bernardino, and Riverside Counties*)

- Biological Resources Expert – Peer review of CEQA/NEPA documents (*Adams Broadwell Joseph & Cardoza: California*)
- Lead Consultant - Pre- and post-harvest biological resource assessments of tree removal sites (*SDG&E: San Diego County*)
- Crew Leader - T&E species habitat evaluations for Biological Assessment in support of a steelhead restoration plan (*Trout Unlimited: Cleveland NF*)
- Lead Investigator - Resource Management Study and Plan for Mather Lake Regional Park (*County of Sacramento: Sacramento, CA*)
- Lead Investigator - Biological Resources Assessment for 1,070-acre Alfaro Ranch property (*Yuba County, CA*)
- Lead Investigator - Wildlife Strike Hazard Management Plan (*HCV Associates: Napa*)
- Lead Investigator - Del Rio Hills Biological Resource Assessment (*The Wyro Company: Rio Vista, CA*)
- Lead Investigator – Ion Communities project sites (*Ion Communities: Riverside and San Bernardino Counties*)
- Surveyor – Tahoe Pilot Project: Validation of California’s Wildlife Habitat Relationships (CWHR) Model (*University of California: Tahoe NF*)

Forestry

Mr. Cashen has five years of experience working as a consulting forester on projects throughout California. Mr. Cashen has consulted with landowners and timber operators on forest management practices; and he has worked on a variety of forestry tasks including selective tree marking, forest inventory, harvest layout, erosion control, and supervision of logging operations. Mr. Cashen’s experience with many different natural resources enable him to provide a holistic approach to forest management, rather than just management of timber resources.

REPRESENTATIVE EXPERIENCE

- Lead Consultant - CalFire fuels treatment projects (*SD and Riverside Counties*)
- Lead Consultant and supervisor of harvest activities – San Diego Gas and Electric Bark Beetle Tree Removal Project (*San Diego*)
- Crew Leader - Hillslope Monitoring Program (*CalFire: throughout California*)
- Consulting Forester – Forest inventories and timber harvest projects (*various clients throughout California*)

Grant Writing and Technical Editing

Mr. Cashen has prepared and submitted over 50 proposals and grant applications. Many of the projects listed herein were acquired through proposals he wrote. Mr. Cashen's clients and colleagues have recognized his strong scientific writing skills and ability to generate technically superior proposal packages. Consequently, he routinely prepares funding applications and conducts technical editing for various clients.

PERMITS

U.S. Fish and Wildlife Service Section 10(a)(1)(A) Recovery Permit for the Peninsular bighorn sheep

CA Department of Fish and Game Scientific Collecting Permit

PROFESSIONAL ORGANIZATIONS / ASSOCIATIONS

The Wildlife Society (Conservation Affairs Committee member)

Cal Alumni Foresters

Mt. Diablo Audubon Society

OTHER AFFILIATIONS

Scientific Advisor and Grant Writer – *The Red Panda Network*

Scientific Advisor – *Mt. Diablo Audubon Society*

Grant Writer – *American Conservation Experience*

Scientific Advisor and Land Committee Member – *Save Mt. Diablo*

TEACHING EXPERIENCE

Instructor: Wildlife Management - The Pennsylvania State University, 1998

Teaching Assistant: Ornithology - The Pennsylvania State University, 1996-1997

Maxwell, Sue

From: cob@rivco.org
Sent: Sunday, November 1, 2020 3:03 PM
To: COB; ccaro@adamsbroadwell.com
Subject: Board comments web submission

CAUTION: This email originated externally from the **Riverside County** email system.
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First Name: Christina
Last Name: Caro
Address (Street, City and Zip): 601 Gateway Blvd., Suite 1000, South San Francisco, CA 94080
Phone: 5104696604
Email: ccaro@adamsbroadwell.com
Agenda Date: 11/03/2020
Agenda Item # or Public Comment: Item #3.13 (13672 Trans. & Land Mgmt Agency/Planning-Palo Verde Mesa Solar Project(CUP03684, PUP00916, EIR5321)
State your position below: Oppose
Comments: [Speaker will provide oral comments by telephone and will submit written comments to the Clerk of the Board prior to the hearing]

Thank you for submitting your request to speak. The Clerk of the Board office has received your request and will be prepared to allow you to speak when your item is called. To attend the meeting, please call (669) 900-6833 and use Meeting ID #864-4411-6015. Password is 20201103. You will be muted until your item is pulled and your name is called. Please dial in at 9:00 am with the phone number you provided in the form so you can be identified during the meeting.

From: COB

Sent: Monday, November 2, 2020 11:18 AM

To: George Johnson (GAJohnson@RIVCO.ORG) <GAJohnson@RIVCO.ORG>; Perez, Juan <JCPEREZ@RIVCO.ORG>; Young, Alisa <AYoung@RIVCO.ORG>; District 4 Supervisor V. Manuel Perez (District4@RIVCO.ORG) <District4@RIVCO.ORG>; District2 <District2@Rivco.org>; District3 <District3@Rivco.org>; District5 <District5@Rivco.org>; Supervisor Jeffries - 1st District (district1@rivco.org) <district1@rivco.org>

Cc: Russell Brady (rbrady@RIVCO.ORG) <rbrady@RIVCO.ORG>; Leach, Charissa <cleach@rivco.org>; COB-Agenda (COB-Agenda@rivco.org) <COB-Agenda@rivco.org>

Subject: November 3 2020 Item No 3.13 Public Comment on Palo Verde Mesa Solar (Jim Rush)

Greetings,

Forwarding email received via COB as Public Comment related to November 3, 2020 Item No 3.13 (MinuteTraQ No 13672), which includes a request to continue.

This will be added to Agenda back-up.

With best regards,

Clerk of the Board of Supervisors
4080 Lemon Street, 1st Floor, Room 127
Riverside, CA 92501
(951) 955-1060 Fax (951) 955-1071
Mail Stop #1010
cob@rivco.org
website: <http://rivcocob.org/>
<https://www.facebook.com/RivCoCOB/>



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From: Jim Rush <jim@ibew440.org>

Sent: Monday, November 2, 2020 10:20 AM

To: COB <COB@RIVCO.ORG>

Subject: Item 3.13

Good Morning,

My name is Jim Rush, Business Manager of the International Brotherhood of Electrical Workers Local Union 440. We represent over 1300 electricians throughout Riverside County, many of whom build these large utility scale solar projects. In 2019, we won a lawsuit challenging the County's environmental review for the Palo Verde Mesa project on two grounds:

(1) The County's environmental impact report (EIR) failed to analyze soil contamination at the project site which could cause public health impacts during project construction: and

(2) the EIR failed to provide adequate mitigation for impacts on the burrowing owl, a sensitive species.

The court agreed with us and ordered the County to revise the EIR to correct these errors.

We have been waiting for the county to prepare a new environmental document since 2019, and have been checking in with the county monthly for an update on the Project's status. The county has consistently told us that the project was delayed and that there has been no new Project activity since 2019.

On Friday, October 30th, the County released a new 500-page environmental document called an "Addendum", and notified us that the Board of Supervisors will be considering the new environmental document for approval next Tuesday, November 3. This leaves no time for us, our experts, or any other members of the public to review and comment on the county's new environmental analysis, which was prepared specifically in response to our lawsuit. I would respectfully ask for a continuance on item 3.13 to allow adequate time for all parties to review this new addendum.

Thank You,

James R. Rush

IBEW Local Union 440

Business Manager/Financial Secretary

Office: 951-684-5665

Cell: 951-544-2225



11/3/20

3.13



From: COB

Sent: Tuesday, November 3, 2020 9:05 AM

To: George Johnson (GJohnson@RIVCO.ORG) <GJohnson@RIVCO.ORG>; Young, Alisa <AYoung@RIVCO.ORG>; Perez, Juan <JCPEREZ@RIVCO.ORG>; District 4 Supervisor V. Manuel Perez (District4@RIVCO.ORG) <District4@RIVCO.ORG>; District2 <District2@Rivco.org>; District3 <District3@Rivco.org>; District5 <District5@Rivco.org>; Supervisor Jeffries - 1st District (district1@rivco.org) <district1@rivco.org>

Cc: Leach, Charissa <cleach@rivco.org>; Russell Brady (rbrady@RIVCO.ORG) <rbrady@RIVCO.ORG>

Subject: November 3 2020 Item No 3.13 Public Comments on Palo Verde Mesa Solar Project (Adams Broadwell-Citizens for Responsible Solar)

Good morning,

Forwarding email received via COB (with attachments and link below) for November 3, 2020 Item No 3.13, continued to December 8, 2020 (MinuteTraQ No 13672).

Will be added to Agenda back-up.

Thank you kindly,

Clerk of the Board of Supervisors
4080 Lemon Street, 1st Floor, Room 127
Riverside, CA 92501
(951) 955-1060 Fax (951) 955-1071
Mail Stop #1010
cob@rivco.org
website: <http://rivcocob.org/>
<https://www.facebook.com/RivCoCOB/>



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From: Christina Caro <ccaro@adamsbroadwell.com>

Sent: Tuesday, November 3, 2020 8:36 AM

To: COB <COB@RIVCO.ORG>; Leach, Charissa <cleach@rivco.org>; Brady, Russell <rbrady@RIVCO.ORG>

Cc: Alisha C. Pember <apember@adamsbroadwell.com>; Cushman, Melissa <MCushman@RIVCO.ORG>; Beaumont, Anne B. (Perkins Coie) <ABeaumont@perkinscoie.com>

Subject: Comments on Item 3.13 - Palo Verde Mesa Solar Project

Dear Chairman Perez, Board Members, Ms. Leach, Mr. Brady, Clerk:

These comments are submitted on behalf of Citizens for Responsible Solar regarding Agenda Item Number 3.13: (13672) Transportation & Land Management Agency/Planning: Consider Addendum for Environmental Impact Report No. 532 and Adopt Resolution No. 2020-235 for Palo Verde Mesa Solar Project (CUP03684, PUP00916, DA00086).

Citizens' comment letter and Exhibits A and B are attached. Below is a Dropbox link containing Exhibits C through Exhibit M:

<https://www.dropbox.com/sh/h4szepk0c1n1733/AABHYliPDbNua6x-vjOM-rUqa?dl=0>

Please include these comments and all attachments in the record of proceedings for the Palo Verde Project.

Christina M. Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
Tel: (650) 589-1660
Fax: (650) 589-5062
ccaro@adamsbroadwell.com

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11/3/20 3.13

