

Hingtgen, Robert J

From: Kelly Fuller <kelly@kellyfuller.net>
Sent: Wednesday, January 14, 2015 4:02 PM
To: Hingtgen, Robert J; Fogg, Mindy
Subject: FW: Supplemental Comments on the Boulevard Soitec Solar FPEIR
Attachments: POC_Soitec_FEIR_SupplementalComments_01-14-15.pdf

Hi Mindy and Robert,

My apologies for not cc:ing you on this.

Kelly Fuller

From: Kelly Fuller [<mailto:kelly@kellyfuller.net>]
Sent: Wednesday, January 14, 2015 3:56 PM
To: 'Gungle, Ashley'; 'Fitzpatrick, Lisa'
Subject: Supplemental Comments on the Boulevard Soitec Solar FPEIR

Dear Ms. Gungle and Ms. Fitzpatrick,

Attached are supplemental comments of The Protect Our Communities Foundation on the Soitec Solar projects. Thank you for the County's consideration of them.

Best wishes,

Kelly Fuller
Executive Director
Protect Our Communities
kelly@kellyfuller.net
www.protectourcommunities.org

Protect Our Communities defends communities and nature in San Diego County, Imperial County, and Northern Baja California from harmful energy projects and advances better energy solutions through advocacy and law.



The Protect Our Communities Foundation
P.O. Box 305
Santa Ysabel, CA 92070
send correspondence to kelly@kellyfuller.net

January 14, 2015

Planning Commission
County of San Diego
Planning & Development Services
5510 Overland Avenue, Suite 110
San Diego, CA 92123

San Diego County Planning & Development Services (PDS)
Project Processing Counter
5510 Overland Avenue, Suite 110
San Diego, California 92123

Sent via email

Subject: Soitec Solar Project FPEIR – Supplemental Comments

Dear Planning Commissioners and Planning & Development Services staff:

Thank you for this opportunity to comment on the Final Programmatic Environmental Impact Report (FPEIR) for the Soitec Solar projects. These are supplemental comments of The Protect Our Communities Foundation, sent in addition to our letter of January 13, 2015.

The Protect Our Communities Foundation (POC) defends communities and nature in San Diego County, Imperial County, and Northern Baja California from harmful energy projects and advances better energy solutions through advocacy and law. We strongly support greater development of rooftop solar and energy efficiency programs, as well as efforts to create a municipal utility in San Diego through California's Community Choice Aggregation law.

POC would like to thank Soitec and the County for adding avian mortality monitoring and reporting as a mitigation measure. Because it is currently unknown whether the Soitec Solar technology will result in significant avian mortality due to "lake effects" experienced with other solar technologies, it is very important that monitoring and reporting take place if the projects are built. POC requests that these monitoring reports be available to the public. This disclosure is in Soitec's and the County's best interests. Keeping the monitoring reports from the public will create suspicion and distrust regardless of the outcome of the monitoring, and could potentially expose the County to litigation risk related to the California Public Records Act.¹ In contrast, if the Boulevard Soitec Solar projects are truly safe for birds, making the monitoring reports available will promote public acceptance of Soitec's technology. If the projects should turn out to be less safe for birds than Soitec anticipates, making the monitoring reports available will make possible informed

¹ Avian mortality monitoring data has been a hot topic in recent years. For example, American Bird Conservancy brought Freedom of Information Act (FOIA) lawsuits against the federal government in 2012 and 2013, and successfully obtained avian mortality data. Last year, Pacificorp brought a reverse FOIA suit against the federal government to prevent the Associated Press from obtaining avian mortality monitoring data from some of its wind energy facilities. However, Pacificorp voluntarily dismissed the suit around the same time it entered into a plea bargain with the Department of Justice regarding the deaths of legally protected birds at some of those same facilities.

discussion by knowledgeable members of the public and environmental NGOs to help improve the projects' avian safety. Making the monitoring reports available to the public will also demonstrate the County's commitment to transparency and good public process.

POC continues to oppose the Boulevard Soitec Solar projects because of their unnecessary potential impacts to local communities and natural resources. In addition, there are significant flaws in the FPEIR and its public review process, some of which may leave the County vulnerable to a legal challenge.² POC urges the Planning Commissioners to delay their vote on these projects until Planning & Development Services can correct the FPEIR and recirculate it for public review. If for some reason the Planning Commissioners are unable to delay their vote until then, POC urges them not to support the projects or recommend they go forward.

The Boulevard Soitec Solar projects would have significant impacts, as described in POC's two comment letters on the projects' Draft Programmatic Environmental Impact Report (DPEIR).³ These include impacts to groundwater supply and quality during project construction and operation, direct and indirect impacts to wildlife species protected by federal and state law (e.g., Golden Eagles and other raptors, Quino checkerspot butterflies), noise impacts, electric and magnetic fields effects, glare impacts, and increased fire risk in an already high fire risk area.

In addition, as described in POC's comment letters, the DPEIR contains California Environmental Quality Act (CEQA)-related flaws, including in the DPEIR's project description, project objectives, alternatives analyzed, claim that the Project must be located in San Diego County, analysis of project impacts, and mitigation of impacts to wildlife.⁴ These flaws do not appear to have been fully corrected in the FPEIR. In most cases, the FPEIR notes that it disagrees with the comments that our letters presented.

The FPEIR does not only disagree with POC's comments. It also disagrees frequently with comments from other environmental organizations and even the expert state and federal wildlife agencies. The extent of this disagreement, especially with the expert government wildlife agencies, is something I have not often seen in 10 years of commenting on environmental review documents throughout the United States.

For example, the U.S. Fish and Wildlife Service commented that "Based on information collected at existing solar facilities, solar panels and other project components are likely to present a collision hazard to migratory birds" and that impacts to birds would be potentially significant and unavoidable. However, the FPEIR responded that the County does not agree that the impacts would be significant and unavoidable and that take (of birds protected by the MBTA) is not expected.⁵ However, birds protected by the MBTA (and thus the California Fish and Game Code) have been killed at solar facilities in California not just by solar panels, but also on fences and masts constructed for solar panels that had not yet been installed. The U.S. Fish and Wildlife Service has been collecting data on these deaths in California since at least 2013 and is in a much better position than the County to judge the degree of risk.

² Richard Blaisdell, Vice President of the nonprofit group Backcountry Against Dumps, has stated publicly that his organization is prepared to sue the County, in a prepared statement made during public comment at the January 8, 2015 Boulevard Planning Group meeting. His statement is available at <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-08-RichardBlaisdell-Backcountry-Against-Dumps-Soitec-FEIR-Public-Statement-Made-At-Boulevard-CPG-Meeting.pdf>. At the meeting, Blaisdell followed the reading of his statement with the words, "See you in court."

³ See POC's letter of March 1, 2014, available at http://protectourcommunities.org/wp-content/uploads/2014/04/POC_Soitec_Solar_DPEIR_comments_3-1-14. See also POC's letter of March 3, 2014, available at http://protectourcommunities.org/wp-content/uploads/2014/04/POC_supplemental_SOITEC_comments_030314.

⁴ POC's 62-page comment letter of March 1, 2014, prepared by Law Offices of Stephan C. Volker, was also prepared on behalf of Backcountry Against Dumps.

⁵ See discussion on pages F1 4 and F1 5, available at http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/Commentletters/F1_RTC.pdf.

In addition, in the FPEIR, the County disagrees with the California Department of Fish and Wildlife's assessment of the projects' locations to state and federally protected Swainson's Hawks and has chosen to disregard the expert state wildlife agency's recommendation that surveys for Swainson's Hawk be conducted.⁶

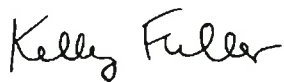
These are just two of the many examples of disagreeing with the opinions and disregarding the advice of the expert state and federal wildlife agencies that could be cited here.

We would also like to note that the noise readings for the battery energy storage facility that was not analyzed in the DPEIR but was included in the FPEIR's Additional Information Statement do not include noise readings for the facility itself, but instead appear to have been taken at the property boundary line. This should be corrected and potential impacts to wildlife analyzed because there will likely be wildlife at the battery energy storage facility. There is quite a bit of scientific literature available about the effects of noise on wildlife. See, for example, the National Park Service's Annotated Bibliography of the impacts of noise on wildlife.⁷

Because of this missed analysis, as well as the inadequate analysis of potential for avian collisions at the battery energy storage facility (see POC's letter of 1-13-15), POC urges the County to correct and recirculate the FPEIR. This will improve the final document's compliance with CEQA.

Thank you for this opportunity to comment on the FEIR for the Soitec Solar projects.

Sincerely yours,



Kelly Fuller
Executive Director

⁶ See discussion on pages S3 30 and S3 31, available at http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/Commentletters/S3_RTC.pdf.

⁷ National Park Service (2011). Annotated Bibliography, Noise Impacts on Wildlife, available at http://www.nature.nps.gov/sound/assets/docs/Wildlife_AnnotatedBiblio_Aug2011.pdf.

