

August 11, 2010

Mr. Christopher Meyer
CEC Project Manager
Attn: Docket No. 08-AFC-13
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET	
08-AFC-13	
DATE	<u>AUG 11 2010</u>
RECD.	<u>AUG 11 2010</u>

RE: Calico Solar (formerly Solar One) Project (08-AFC-13)
Applicant's Brief Regarding Access to Patrick Jackson's Property

Dear Mr. Meyer:

Tessera Solar hereby submits the Applicant's Brief Regarding Access to Patrick Jackson's Property. I certify under penalty of perjury that the foregoing is true, correct, and complete to the best of my knowledge.

Sincerely,

Felicia L. Bellows
Vice President of Development

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

Calico Solar (formerly known as
SES Solar One) Project
Calico Solar, LLC

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)
)
Docket No. 08-AFC-13

APPLICANT CALICO SOLAR'S
BRIEF RE ACCESS TO PATRICK JACKSON'S
PROPERTY

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STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

Calico Solar (formerly known as SES Solar One) Project Calico Solar, LLC)))))	Docket No. 08-AFC-13 Applicant Calico Solar's Brief re Access to Patrick Jackson's Property
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Patrick Jackson owns property located at the South-West corner of Section 36, which constitutes the northern half of Not A Part 1. See Ex. 82, Attachments B and D, Applicant's Submittal of Rebuttal Testimony (showing the location of Not A Part 1). Mr. Jackson purports to speak for all of the property owners in Not A Part 1 in objecting to being landlocked. However, the properties in Not A Part 1 will not be landlocked. As is shown in Attachment B to Exhibit 82, there are Proposed Public Access Routes And Post-Construction Route Designations that will continue to provide access to the properties in Not A Part 1. Mr. Jackson still has access to his property via roads to the east and to the west of the BNSF crossing at the Hector Road exit from I-40.

Mr. Jackson also seeks to move beyond issues of access, and use these proceedings to establish the type of access he has to his property. He argues that the current railroad crossing, which BLM has concluded is not a legal crossing, must be maintained without restriction. As Mr. Jackson acknowledges, BLM has rejected all of Mr. Jackson's contentions. Noting that Mr. Jackson will have continued access to his property, BLM has found that "[t]he crossing was established as a BNSF ROW for access to, and maintenance of, the rail line and, and therefore, the crossing is not a public road. Therefore, the installation of the gate at this crossing does not result in a conflict with any applicable laws or regulations." FEIS, Appendix G, G-129. Staff has also properly noted BLM's position. See SSA C.8-13 ("BLM representatives stated that the crossing was established as a BNSF ROW for access to, and maintenance of, the rail line and, and therefore, the crossing is not a legal road with authorized access for the public.").

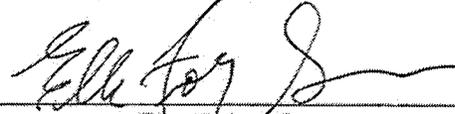
The Warren-Alquist Act requires the Commission to make findings whether a project complies with applicable federal standards or laws. Pub. Res. Code § 25523(d)(1). However, the BLM is entitled to deference. 20 C.C.R. § 1744(e). Deference is particularly appropriate where the issues presented are squarely within BLM's expertise: Mr. Jackson seeks to use these proceedings to challenge a federal land management agency's determinations regarding issues of federal land law. BLM deals with these issues on a daily basis. Moreover, the Act does not and cannot make it the role of the

Commission to conduct appellate review of the decisions of a federal agency regarding federal law.

Finally, Mr. Jackson complains that BLM has not complied with FOIA. Mr. Jackson's FOIA contentions are beyond the Commission's jurisdiction, and in any case are entirely irrelevant to any issue before the Commission. Accordingly, Mr. Jackson's argument that the project does not comply with LORS due to the closing of the non-public railroad crossing should be rejected as meritless.

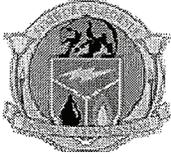
Date: August 11, 2010

Respectfully submitted,



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APPLICATION FOR CERTIFICATION

For the CALICO SOLAR (Formerly SES Solar One)

Docket No. 08-AFC-13

PROOF OF SERVICE
(Revised 8/9/10)

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