

**APPROVED November 8, 2016**

**MBCA BOARD MEETING MINUTES**

**Thursday, Sept. 8, 2016**

5:00 – 7:00 PM, Yucca Valley Community Center

**Regular Meeting Call to Order: 5:05pm**

  X   Steve Bardwell

  X   Ruth Rieman

  X   David Fick

  X   Claudia Sall *(left at 7:05pm)*

  X   Pat Flanagan

  X   Seth Shteir

  X   Meg Foley

  X   Laraine Turk

  x   Sarah Kennington

  X   Marina West

**Introduction of Guests, Board Directors, and Advisory Members**

*No guests present.*

**Agenda Input and Approval**

*CS adds "Recruitment Packet for Directors/Advisors" to "goals"*

*SK adds select nominating committee under Capacity Building, under Conservation Issues Op-Ed on Park Funding, and Chamber Membership, Air Quality Monitoring*

*Agenda approved as amended.*

**Approval of Minutes from July 14, 2016**

*Note No August Board Meeting due to Board Retreat (see retreat notes).*

**MSC: LT/SK unanimous**

**Treasurer's Report – Steve**

*SB gave the Treasurer's Report stating the account balance is \$49,121.86. SB further reported on membership/donations received since last report as well as expenses.*

*Treasurer's Report accepted.*

**Capacity Building & Organizational Issues**

1) Finance Committee report: SS & CS sign to finalize policies; etc. – SB

*Policies accepted and signatures obtained from all directors.*

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**2) D&O insurance status – appeal to William to reconsider (how we spend X & \$)**

*CS asked to table the issue as she hasn't written the appeal yet. MF suggested maybe seeking additional bids and will forward those references to SB/SK.*

**3) Grants status: Rose "Indigenous Place, Space, & Presence"; AWAC & Edison DWL**

*SK introduced this as a standing agenda item. Noting that the water agencies have also contributed to the DWL program. SB asked if there are grant deadlines the group should be aware of and calendar. CS summarized the SCE and AWAC grant processes. For Alliance for Water Awareness and Conservation (AWAC) the notice is usually circulated in February for an award of funds available no sooner than July 1.*

*PF reported on the November 12 and 13, 2016, Oasis of Mara, Indigenous Place, Space & Presence. Those willing to volunteer at the event should notify PF.*

*MF noted that this item would include notifying the BOD of any possible grant opportunities available and to also review grant application text for content. SK suggested the Finance Committee could review grant opportunities for Capacity Building.*

**4) Pilot Project (SPARC/Aspen) – RR**

*RR reported that a list of potential RE pilot projects has been circulated to the BOD and to outside organizations in an effort to draw attention to the projects and possibly find funding sources or project champions (i.e. others to implement). RR clarified that she is exploring opportunities for RE projects which could be project planning or construction.*

**5) MBCA Directors Retreat: Mission, Goals, Meeting Notes – SK**

*SK reported on the updated Mission Statement and Goals and the summary notes from the meeting. She further added that an Ethics Policy is the last policy needed and MW has agreed to draft for BOD consideration.*

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**6) MBCA Advisors Gathering: confirm Oct. 9<sup>th</sup> date + advance letter – SK**

*SK reminded directors of the BOA Gathering scheduled for Oct. 9 at the JTNP Black Rock facility. SK shared the invitation content seeking input from the BOD. Several directors made suggestions to improve the invitation and to deliver the intended message.*

**7) Emeritus Directors: consider adding Harry Bowkley & Chris Carraher**

*SK introduced the subject. Board noted that Chris has already received similar recognition so she will be removed from the current list. More discussion about Harry in the future. MF noted that DJ Masker Emeritus status was not completed because she was unable to attend the event to which she was invited.*

**8) Nominating Committee**

*SK noted that the Committee will be put in action in October to recruit both directors and advisors.*

**Outreach / Communication**

**1) mbconservation.org report – LT**

*LT projected the website to a screen and reviewed the changes and reorganization with the BOD.*

**2) DWL Sept. 24, Moving Toward Community-Based Renewable Energy – MW, CS, RR, LT**

*MW gave the reported on progress to date and asked the BOD if they desired a paid newspaper ad. It was agreed that no ad would be purchased this year. RR reported on the various folks she personally invited to the program.*

**3) Ruth Denison scholarship announcement & publicity timetable: application period Nov- Dec.; announce decision & make award March – SB; LT; MW**

*LT reported that the scholarship is ready to be announced, possibly at Sept. 24<sup>th</sup> meeting, and advertised at the schools.*

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- 4) Candidates Forum for Nov. 8<sup>th</sup> local elections: Congress; State Assembly; 29 Council; YV Council; JB Water District

*SK asked if we have capacity to conduct such a Forum this year. LT noted that it was a significant amount of work with the website last time. It was decided that we would table the event this season and perhaps bring it back in the next election cycle.*

- 5) Meeting w/ Feinstein's Deputy State Director (outgoing Kevin Chang & incoming Peter Muller ([Peter.Muller@Feinstein.Senate.Gov](mailto:Peter.Muller@Feinstein.Senate.Gov)) coordinated by NCL's Mariana Maguire – SK, MW, & MF attended

*SK summarized the brief meeting.*

- 6) MBCA endorses Basin Range Watch (BRW), Solar Done Right, and Desert Protective Council's PR document "Roof Top Solar is Better Alternative to DRECP"

*SK noted that the letter was approved by E-vote.*

- 7) Clean 'n Green Team possible mobilization for MBCA adopted stretch of 62 - SK

*SK reported on the possibility of mobilizing a team in the future.*

- 8) DWL 2016 Landscape Tour home in August Sunset Magazine – Leatart's in JT

*SK noted the article.*

- 9) MBCA to receive Excellence in Communication Award from LAURENELLOFTHEHIDESERT.com at 2<sup>nd</sup> Anniversary Party – Oct. 22 3:30-5PM at Cali Greens Café, 57754 Hwy 62, YV – *discuss renewable energy news and local updates; award ceremony; photo booth; food*

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*SK reported on the invitation.*

**Conservation Issues**

- 1) Soda Mountain Solar Energy; BOS rejected project Aug. 23 – DESERT VICTORY!

*SS reported that a letter is being drafted to federal leadership regarding the future of the site. As an aside, SS further reported that DRECP Record of Decision will be finalized soon and the Environmental Assessment for Eagle Crest will also be released soon.*

- 2) Palen Solar project / MBCA letter to BLM approved by e-vote (LT, MF, RR, SK, SB, PF, MW approved & no no's). Kudos Pat Flanagan!

*PF gave the report. MBCA had approved the comment letter via e-mail due to pending deadline. The main argument is lack of capability in measuring fugitive dust in order to provide background air quality data or to measure impacts after construction.*

- 3) Altamira Housing project appeal to BOS Sept. 13 – PF

*PF reported that she will represent the appellants in the appeal with the main points being lack of conformance with JT Community Plan, traffic studies, and density among other issues.*

- 4) JT Airport solar project: BOS rejected appeal Aug. 9; what's next?

*DF gave the report. Coalition for Responsible Solar, Ms. Caro, will file a CEQA lawsuit next week. The other appellant had already filed a CEQA lawsuit.*

- 5) Report: SPARC/ RECE Co. Planning Commission Study Session Workshop, Aug. 4

- 6) BEAT 1.3 – MW

*MW stated that the SPARC comment period continues up until the hearing but that LUS Staff wants comments now. MW is trying to bring together a comment letter after asking for assistance from a select group of folks with a background in planning.*

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**7) Report: BLM workshop Monuments' management planning**

*PF gave the report.*

**8) Solar installers in Basin / LT research into Basin Chambers' directories / SB to compile list for mbconservation.org**

*LT compiled a summary of local Chambers and their non-profit members.*

**MSC: SK/LT unanimous to join the Chambers**

*MW will forward membership forms to SB for payment of dues.*

**Community Reports & Events**

**1) Dollar General vs. JT goes to CA. Supreme Court**

*DF gave the report.*

**2) Community Plan Workshops for HVCC (Sept. 12 & Nov. 17) & Pioneertown (Sept. 13 & Nov. 14) & Morongo Valley (Sept. 12 & Nov. 7)**

*LT noted that these announcements are on the website "calendar".*

**3) SB Co. Environmental Element meeting – Sept. 21, 10AM**

*SK gave the report.*

**4) So. CA. energy + water + green living 2016 summit – Oct. 26 & 27, Rancho Mirage; Oct. 26 (opening evening reception) & 27 (summit); full conference pass: \$75. Featuring speakers, discussion, mini-debates on topics: Climate Change; Energy & Water Policy, Renewable Energy Development, Water Supply & Colorado River Management, Clean Transportation, The Salton Sea, Rooftop Solar, Urban Water Conservation, Sustainable Business Practices, Green Living Solutions, Future of the Electrical Grid, California Renewable Portfolio Standard, Innovative & Distributive Technologies, New Trends and Programs in Water & Energy**

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*SK gave the report.*

***MSC: RR/SK to pay registration fees for those directors that wish to attend.***

**REMEMBER DATE**

DWL Landscape Tour – April 23-24, 2017

**Meeting adjourned: 7:15 pm**

<b>Next Regular Meeting: Thursday, Oct. 13, 5:00 PM / YV Community Center</b>
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# MBCA



**morongo basin conservation association**

September 8, 2016 (from 6-10-16 through 9-8-16)

Assets –	Checking	\$27,741.28
	CD	<u>\$21,380.58</u>
	Total	\$49,121.86
Deposits:	memberships	\$25.00
	Donations(Bardwell, Lousignont, Zarki)	\$150.00
	MDLT for Green info hosting	\$300.00
	Interest checking	<u>\$3.69</u>
	Total	\$478.69
Expenditures	Quickbooks	\$38.85
	Nationbuilder	\$460.20
	Town of Yucca Valley (fall dwl rental)	\$702.50
	Claudia Sall (DWL essay reimb)	\$100.00
	Claudia Sall (DWL reimb)	\$63.86
	Pat Flanagan (printing reimbursement)	\$86.37
	PayPal fees	<u>\$5.26</u>
	Total	\$1457.04



**NOTES**  
**2016 MBCA Directors Retreat**  
Sunday, 14 August 2016  
11am-3pm

**Coffee, Meet & Greet**

**11:00 – 11:15 (15 min.)**

*Attendees: S. Kennington, D. Fick, M. Foley, S. Bardwell, L. Turk, R. Rieman, M West, P. Flanagan*

**President's Welcome**

**11:15 – 11:20 ( 5 min.)**

*SK opened the meeting noting that C. Sall and S. Shteir were absent with prior notice*

**Year in Review**

**11:20 – 11:45 (25 min)**

**Mission/Vision/Goals + Organizational best practices**

*SK introduced a review of the mission statement options that were developed, but not finalized, at the 2015 retreat. Following discussion the following statement was agreed upon:*

***MISSION STATEMENT***

***MBCA advocates for the healthy desert environment that nurtures the region's rural character, cultural wealth and economic well-being.***

*All present agreed to the mission statement as presented.*

***2015 Goals:***

*SK reviewed the goals noting that we distribute these goals to the public at the annual meeting. SK distributed a "proposal" for communicating goals as well as how do we execute the goals.*

*The specific goal of engaging with other community organizations was discussed. MW noted that our purpose in that goal was to let others know about MBCA, how we can work together, and so that we can know who these other groups are. It was mentioned that the Chambers and Gateway Communities groups are, at this time, are facing capacity issues. Still a question of whether or not membership is required for MBCA to engage these organizations. After further discussion it was agreed that membership is the mechanism to meet the objective.*

**Goal 1: Highlights the value of the natural environment for the arts, tourism and other segments of the local economy**

**Tie local economy to environmental concerns and discover common goal through outreach to business.**

**How: host a meeting focused on the local economy including MCAGCC, NPCA, JTNPA, Basin Wide Foundation, Joshua Tree Gateway Communities Group, Chambers, local solar installers,**

**How: Create a subcommittee to look into reaching out to the business community then distributing the workload to the Directors, Advisors and Members.**

**How: Join community associations and Chambers of Commerce to seek out new memberships, communicate events, seek volunteers and share information.**

**How: Maintain Conservation Priority Mapping Tool and emphasize use in land use decision-making, comment letters and correspondence.**

**How: Expand research & web information about economic issues. Capture data, use graphics & disseminate information.**

**How: Create a list of solar installers in the Morongo Basin.**

*RR & SK noted the connections between nature and art that have been expanding through Mojave Desert Land Trust and Joshua Tree Artists in Residency programs.*

**Goal 2: Engaged in issues impacting natural resources, quality of life and human health.**

**What: Renewable energy, residential and commercial development, protections for public lands, native plants and animals, water, air, etc.**

**How: Research issues and send comment letters to decision makers.**

**How: Emphasize use of Conservation Priority Maps in land use decisions.**

**How: Remain active in Basin, County, State and Federal policy forums such as SPARC; DRECP; RETI; County's RE & Conservation Planning Element (REC).**

**How: Continue relationships and collaboration with conservation organizations.**

**How: Maintain MBCA Invasive plant education**

**How: Monitor development of policies & projects that impact our mission.**

*PF noted that members of the community do not appear to understand what a wildlife corridor is and this should be defined on our website.*

*SK noted that it appears that MDLT has picked up the Invasives Program as they have a volunteer and funding. PF suggested continuation of the post cards that identify invasive species (i.e. fountain grass, thistle, etc.). All agree that we should maintain invasive plant education in the community. Further that engagement with Chambers of Commerce and community organizations is a mechanism to meet this objective.*

*DF recommends a web-listing of local solar installers to promote rooftop.*

*Several directors note the need to promote the Conservation Mapping tools and that discussion developed into a potential workshop topic which would educate our community on this mapping tool as well as DataBasin, USGS. SB noted that he thinks the community should know more about the resources that Land Use Services uses to evaluate permitting for buildings.*

*PF noted our engagement with the natural and cultural environment (e.g. Oasis of Mara Native American gathering for 2016 Parks celebration).*

***Goal 3: Maintain active community involvement through education in issues such as climate change, energy and water use.***

***How: Develop MBCA website (mbconservation.org) to tell our story & history, archive MBCA comment letters and campaigns and provide links to information on current targeted issues, show how & where to respond to decision makers. develop data library to provide the community with accurate, reliable, measurable data (ie. water, solar, air quality, etc.) upon which to base and defensible conclusions and comments.***

***How: Conduct audit to determine total solar PV installations in MB for accurate & measureable information.***

*Noting that website is the digital tool that supports our work and therefore this bullet need some massaging.*

*SK raises the point that MBCA needs to facilitate access to defensible data when preparing ourselves and others to make statements in public comment and written testimony. Of particular interest is Renewable Energy and the "Bill Powers Report". Suggestions were made to update the report with a real RE inventory of the Morongo Basin.*

*In terms of action, the group decided that an RE inventory and water data for the MB should be developed.*

*MW to work with SK to complete the Mission and Goals statements.*

***Organizational Best Practices: 501 c 3 status was recognized as a tremendous benefit to MBCA noting new avenues for grants such as Rose Foundation. RR noting that for every grant we also need to be clarifying "what it is that we are signing on to....."***

***Finance & Treasurers' Report***

***11:45 – 12:00 (15 min.)***

***Annual budget***

*MW/SB presented the budget for calendar year 2016.*

***MSC: RR/SB to adopt 2016 Budget – unanimous.***

*Rose grant: Tribal Relationships to JTNP & Oasis of Mara*

*SK noted that a \$4000 grant was awarded.*

## **Fund raising**

*MW reported that the following have been pledged/received:*

*AWAC \$3000 (awarded, must invoice w/receipts)*

*SCE \$1000 (received for 2016/17 cycle)*

*BDVWA: \$500 (pledged, need to invoice)*

*Amazon Smile program is under review.*

## **Insurance**

*D&O Insurance has not yet been purchased. SB noted a suggestion by MW that directors fund or partially fund a share of the policy. PF noted that we do volunteer our time. There was a question of what our personal insurance might cover in the event of some claim against the BOD.*

## **Lunch**

**12:00 – 12:30 (30 min.)**

## **Directors & Advisors**

**12:30 – 1:00 (30 min.)**

**Board of Directors: current terms; possible candidates; leadership succession.**

*SK reviewed terms with the BOD. All those in their 3<sup>rd</sup> year have agreed to continue in 2017.*

*MW to print for record the other handout which is descriptive of Officer and Director Tasks (position and task).*

**Advisors: new guidelines; ongoing role & participation; fall gathering; recruitment.**

*SK preparing a letter to the BOA's regarding their past participation and commitment to the future of MBCA. Further noting that our annual BOA gathering is typically held in the fall. LT believes this annual meeting should really focus on where the individual Advisors can serve the MBCA.*

*October 9<sup>th</sup> or 16<sup>th</sup> is the tentative date for the BOA's meeting.*

*SK and others noted possible candidates for BOA's.*

## **Committee Reports**

**1:00 – 1:45 (45 min.)**

*Each committee has 5 minutes to review successes, challenges, and raise any concerns:*  
**Finance:** members SB, RR, CS, MW, MF.

*See to lack an "ethics" policy. MW suggests that a policy be drafted that requires at least officers to take the "FPPC 2-hr. Ethics" training class (free on-line, or equivalent) in accordance with the guidance of AB1234. Policy basically to direct us to that. Ethics Policy to be drafted if warranted.*

*Finance Committee to draft a Policy and send out link to the on-line class.*

*SB noted that we don't have a policy on "how we provide grants" and should we have a policy for such. MF/RR reminded the group that we did not want to look like a "foundation" which would lead folks to expect that our purpose is to actually provide grants.*

***MSC: SB/MW – unanimous to adopt the following policies: Code of Conflict; Gift Acceptance; Scholarships; Emeritus Status; Records Retention; and Financial Reserves.***

*MW to scan, achieve, distribute and return originals to SB*

**Communications/Web Admin:** members LT, N, CZ, SB.

*LT reviewed the Web Team's recommendations for site improvements within the confines of NationBuilder, our web tool. She commended Nora for all the research that she has done towards this effort and her leadership in forcing us to a "best practices" format for our webpage.*

**Events:** members CS, RR, LT, MW

*MW gave a brief update and distributed a written summary of the last Committee meeting. MW further reported that she will chair the September 24<sup>th</sup> Workshop event. It was noted that there are additional sites in Rimrock, Pipes Canyon, and Landers to be explored.*

**Research & Comment Letters:** members PF, DF, MW.

*No further information provided.*

**Awards/Scholarship:** members LT, MW, SB

*LT reported that the Application package is ready but feels it should be vetted by Ms. Zacks and a CMC expert should review it. Thereafter, we are ready to release the announcement for a fall scholarship. LT suggested that the Scholarship Policy*

**MSC: SK/MW to approve 5year @ \$500 Ruth Denison Scholarship – unanimous.**

*The Committee will complete the application form and thereafter a press release will be warranted to announce the first scholarship opportunity.*

Publicity / Press: member RR.

*RR noted that with new website perhaps she can use an @mbconservation.org email address to distribute publicity and press. It was stated that RR does formulate a majority*

Volunteers: member CZ.

*No further information provided.*

Consider additional committees / working groups

*SK wondered if a “membership” committee would be useful. Perhaps for further discussion with the BOA’s.*

Other Issues 1:45 – 2:30 (45 min.)

New collaborations: CDC; SPARC – pilot project

*MW reports requested BEAT 1/3. No update from M. Lundquist, Field Rep, on request. No update from 1st District.*

*MW requested ideas for qualified participants to review the SPARC and ReVEAL documents. Names suggested: Carol Miller, Chuck Bell, Vic Fuller, Meg Foley*

Moth balled initiative: Invasives / Adopt-A-Highway

*MW to get photos of “before” CalTrans shoulder work (no invasives) and the completed work showing the invasives that now exist in the new shoulder area.*

*LT requested funding of approximately \$100 for additional “Let’s Go Native” flyers.*

**MSC: RR/MW – unanimous.**

Capacity building: anticipated trends & impacts

*No further information provided.*

Wrap-Up 2:30 – 3:00 (30 min.)

**Kennington/Bardwell residence 760/ 365.7291**  
**52015 Gamma Gulch Road, Pipes Canyon**



# MBCA

morongo basin conservation association

The following Policies dated  
August 14, 2016  
are hereby adopted by the  
Board of Directors of the Morongo Basin Conservation Association:

Conflict of Interest  
Document Management  
Emeritus Status  
Gift Acceptance  
Reserves  
Scholarship

Sarah Kennington, President

SK 8/14/16

David Fick, Vice President

DF 8/14/16

Steve Bardwell, Treasurer

SB 8/14/16

Marina West, Secretary

MW 8/14/16

Pat Flanagan, Director

PF 8/14/16

Meg Foley, Director

MF 8/14/16

Ruth Rieman, Director

RR 8/14/16

Claudia Sall, Director

CS 9/8/2016

Seth Shteir, Director

SS 9/8/2016

Laraine Turk, Director

LT 8/14/16





### **Conflict of Interest Policy**

August 14, 2016

A conflict of interest is defined as an actual or perceived interest by a staff or Board member in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain.

Officers and members are obligated to always act in the best interest of the organization. This obligation requires that any officer or member, in the performance of organization duties, seek only the furtherance of the organization mission. At all times, officers and board members are prohibited from using their job title or the organization's name or property, for private profit or benefit.

- A. The officers and members of the organization should neither solicit nor accept gratuities, favors, or anything of monetary value from contractors/vendors. This is not intended to preclude bona-fide organization fund raising-activities.
- B. No officer, or member of the organization shall participate in the selection, award, or administration of a purchase or contract with a vendor where, to his knowledge, any of the following has a financial interest in that purchase or contract: 1. The officer or member; 2. Any member of their immediate family; 3. Their partner; 4. An organization in which any of the above is an officer, director or employee; 5. A person or organization with whom any of the above individuals is negotiating or has an arrangement concerning prospective employment.
- C. Disclosure--Any possible conflict of interest shall be disclosed by the person or persons concerned.
- D. Board Action--When a conflict of interest is relevant to a matter requiring action by the Board, the interested person(s) shall call it to the attention of the Board and said person(s) shall not vote on the matter. In addition, the person(s) shall not participate in the final decision or related deliberation regarding the matter under consideration. When there is a doubt as to whether a conflict exists, the matter shall be resolved by vote of the Board of Directors, excluding the person(s) concerning whose situation the doubt has arisen.
- E. Record of Conflict--The official minutes of the Board shall reflect that the conflict of interest was disclosed and the interested person(s) did not participate in the final discussion or vote and did not vote on the matter.



### **Document Management Policy**

August 14, 2016

*Documents are stored in the homes of the directors There are no MBCA offices.*

Accounts payable ledgers and schedules: 10 years

Accounts receivable ledgers and schedules: 10 years

Audit reports of accountants: Permanently

Bank statements: 10 years

Capital stock and bond records: ledgers, transfer payments, stubs showing issues, record of interest coupon, options, etc.: Permanently

Cash books: 10 years

Checks (canceled, with exception below): 10 years

Checks (canceled, for important payments; i.e., taxes, purchase of property, special contracts, etc. [checks should be filed with the papers pertaining to the underlying transaction]): Permanently

Contracts and leases (expired): 10 years

Contracts and leases still in effect: Permanently

Correspondence, general: 4 years

Correspondence (legal and important matters): Permanently

Depreciation schedules: 10 years

Donation records of endowment funds and of significant restricted funds: Permanently

Donation records, other: 10 years

[Note: Donation records include a written agreement between the donor and the charity with regard to any contribution, an email communication or notes of or recordings of an oral discussion between the charity and the donor where the representative of the charity made representations to the donor with regard to the contribution on which the donor may have relied in making the gift.]

Duplicate deposit slips: 10 years

Employee personnel records (after termination): 7 years

Employment applications: 3 years

Expense analyses and expense distribution schedules (includes allowance and reimbursement of employees, officers, etc., for travel and other expenses: 10 years

Financial statements (end-of-year): Permanently

General ledgers and end-of-year statements: Permanently

Insurance policies (expired): Permanently

Insurance records, current accident reports, claims, policies, etc.: Permanently

Internal reports, miscellaneous: 3 years

Inventories of products, materials, supplies: 10 years

Invoices to customers: 10 years

Invoices from vendors: 10 years

Journals: 10 years

Minute books of Board of Directors, including Bylaws and Articles of Incorporation:  
Permanently

Payroll records and summaries, including payments to pensioners: 10 years

Purchase orders: 3 years

Sales records: 10 years

Scrap and salvage records: 10 years

Subsidiary ledgers: 10 years

Tax returns and worksheets, revenue agents reports, and other documents relating to  
determination of tax liability: Permanently

Time sheets and cards: 10 years

Voucher register and schedules: 10 years

Volunteer records: 3 years

**Warning:** All permitted document destruction shall be halted if the organization is being investigated by a governmental law enforcement agency, and routine destruction shall not be resumed without the written approval of legal counsel or by vote of the Board of Directors.



### **Emeritus Status Policy**

August 14, 2016

Emeritus status is an honor conferred by MBCA to a retired board member to show respect for distinguished service. The honor says “even though you are no longer an official member of this Board of Directors, you have shown such merit through your past service that we claim you as a continuing part of our professional group and honor you for your significant contribution.”

#### **I. The criteria for nomination are:**

A. Candidate must be retired from the board for one year

B. Emeritus Status is reserved for those who have made a positive significant contribution to the MBCA in one or more of the following areas:

1. Financial support
2. Leadership
3. Creative Activities
4. Outreach

#### **II. Procedure for Recommending Emeritus/Emerita Status**

1. Active board member nominates a candidate.
2. The Board of Directors convenes a committee that vets the candidates' eligibility & makes recommendation.
3. Board acts unanimously on recommendation.



### Gift Acceptance Policy

August 14, 2016

The Morongo Basin Conservation Association (MBCA) solicits and accepts gifts for purposes that will help the organization further and fulfil its mission: *MBCA advocates for a healthy desert environment that nurtures our rural character, cultural wealth and economic well-being.* MBCA urges all prospective donors to seek the assistance of personal legal and financial advisors in matters relating to their gifts, including the resulting tax and estate planning consequences. The following policies and guidelines govern acceptance of gifts made to the MBCA for the benefit of any of its operations, programs or services.

*Use of Legal Counsel*—MBCA will seek the advice of legal counsel in matters relating to acceptance of gifts when appropriate. Review by counsel is recommended for:

- A. Gifts of securities that are subject to restrictions or buy-sell agreements.
- B. Documents naming MBCA as trustee or requiring MBCA to act in any fiduciary capacity.
- C. Gifts requiring MBCA to assume financial or other obligations.
- D. Transactions with potential conflicts of interest.
- E. Gifts of property which may be subject to environmental or other regulatory restrictions.

*Restrictions on Gifts*—MBCA will not accept gifts that (a) would result in MBCA violating its corporate charter, (b) would result in MBCA losing its status as an IRC § 501(c)(3) not-for-profit organization, (c) are too difficult or too expensive to administer in relation to their value, (d) would result in any unacceptable consequences for the MBCA, or (e) are for purposes outside MBCA's mission. Decisions on the restrictive nature of a gift, and its acceptance or refusal, shall be made by the Board of Directors with appropriate legal counsel as needed.

#### *Gifts Generally Accepted Without Review—*

- *Cash.* Cash gifts are acceptable in any form, including by check, money order, credit card, or on-line. Donors wishing to make a gift by credit card must provide the card type (e.g., Visa, MasterCard, American Express), card number, expiration date, and name of the card holder as it appears on the credit card. Amounts over \$5000 from new donors to MBCA will be subject to approval by the Board of Directors.
- *Marketable Securities.* Marketable securities may be transferred electronically to an account maintained at one or more brokerage firms or delivered physically with the transferor's endorsement or signed stock power (with appropriate signature guarantees) attached. All marketable securities will be sold promptly upon receipt unless otherwise directed by MBCA's Board of Directors. In some cases marketable securities may be restricted, for example, by applicable securities laws or the terms of the proposed gift; in such instances the decision whether to accept the restricted securities shall be made by the Board of Directors.

- *Bequests and Beneficiary Designations under Revocable Trusts, Life Insurance Policies, Commercial Annuities and Retirement Plans.* Donors are encouraged to make bequests to MBCA under their wills, and to name MBCA as the beneficiary under trusts, life insurance policies, commercial annuities and retirement plans.
- *Charitable Remainder Trusts.* MBCA will accept designation as a remainder beneficiary of charitable remainder trusts.
- *Charitable Lead Trusts.* MBCA will accept designation as an income beneficiary of charitable lead trusts.

*Gifts Accepted Subject to Prior Review.* Certain forms of gifts or donated properties may be subject to review prior to acceptance. Examples of gifts subject to prior review include, but are not limited to:

- *Tangible Personal Property.* The Board of Directors shall review and determine whether to accept any gifts of tangible personal property in light of the following considerations: does the property further the organization's mission? Is the property marketable? Are there any unacceptable restrictions imposed on the property? Are there any carrying costs for the property for which the organization may be responsible? Is the title/provenance of the property clear?
- *Life Insurance.* MBCA will accept gifts of life insurance where MBCA is named as both beneficiary and irrevocable owner of the insurance policy. The donor must agree to pay, before due, any future premium payments owing on the policy.
- *Real Estate.* All gifts of real estate are subject to review by the Board of Directors. Prior to acceptance of any gift of real estate other than a personal residence, MBCA shall require an initial environmental review by a qualified environmental firm. In the event that the initial review reveals a potential problem, the organization may retain a qualified environmental firm to conduct an environmental audit. Criteria for acceptance of gifts of real estate include: Is the property useful for the organization's purposes? Is the property readily marketable? Are there covenants, conditions, restrictions, reservations, easements, encumbrances or other limitations associated with the property? Are there carrying costs (including insurance, property taxes, mortgages, notes, or the like) or maintenance expenses associated with the property? Does the environmental review or audit reflect that the property is damaged or otherwise requires remediation?

When considering whether to solicit or accept gifts, MBCA will consider the following factors:

- *Values*—whether the acceptance of the gift compromises any of the core values of MBCA
- *Compatibility*—Whether there is compatibility between the intent of the donor and the organization's use of the gift
- *Public Relationships*—whether acceptance of the gift damages the reputation of MBCA
- *Primary Benefit*—whether the primary benefit is to MBCA, versus the donor
- *Consistency*—is acceptance of the gift consistent with prior practice?
- *Form of Gift*—Is the gift offered in a form that MBCA can use without incurring substantial expense or difficulty?
- *Effect on Future Giving*—Will the gift encourage or discourage future gifts?

All decisions to solicit and/or accept potentially controversial gifts will be made by the Board of Directors. The primary consideration will be the impact of the gift on the organization.



**Reserves Policy**  
**August 14, 2016**

The Morongo Basin Conservation Association (MBCA) will maintain adequate emergency reserve funds to ensure the financial means to continue to provide essential services, programs, and operations during a business downturn or to handle unexpected MBCA expenses, or to allow for expansion of services, which are required to continue satisfactory MBCA operations.

The specific objectives of the emergency reserve are as follows:

1. To sustain basic operations due to an unanticipated reduction in income or excessive required expenditure.

- To continue operation of services and programs which are currently reliant on grant funding to host.
- To provide funds to pay for MBCA programs, purchases, projects, and publications that are already in-progress.
- To provide previously budgeted scholarships to partners, which are essential for programs, or projects.

2. To cover unbudgeted and extraordinary expenditures that are the result of unanticipated challenges, emergencies, or problems.

**Amount:**

The amount of money maintained in the Association's emergency reserve account will be not greater than three times (3Xs) the annually adopted fiscal year budget. The Board of Directors determines the amount of money maintained as reserve and operating cash accounts on an annual basis at the time the annual budget is adopted.



### **Scholarship Policy**

August 14, 2014

The organization's mission is built around education and outreach. In fulfilling that mission, the board developed objectives of working with youth and supporting environmental education outside of the organization. A scholarship offered to secondary school students who would be moving on to higher education in a university or college is an action item to meet that objective.

The MBCA scholarship amount shall be determined by the Scholarship Committee, and shall not exceed \$1,000.00 per year. Applicants shall be vetted through collaboration with teachers. Student Scholarship requirements will be publicized with an application form provided.

Criteria for underwriting merit scholarships:

- Graduation from a Morongo Basin high school
- A minimum high school 3.0 GPA
- Verified admission to a post-secondary institution with an intent to pursue an environmental and/or life sciences curriculum
- Letters of recommendations from 2 teachers affirming eligibility/credentials
- Personal letter of recommendation outside of family members
- Documentation of volunteer work/internship with an environmental non-profit



## FISCAL YEAR 2016

ADOPTED

<b>TOTAL REVENUE</b>	<b>\$14,154</b>
<b>OPERATING REVENUE</b>	<b>\$5,466</b>
<i>OPERATING EXPENSE</i>	\$2,085
<i>ANNUAL MEETING EXPENSE</i>	\$2,303
<i>NET Operating Revenue Projection</i>	\$1,078
<b>PROGRAM REVENUE DWL-S</b>	<b>\$8,188</b>
<i>DWL-S TOUR EXPENSE</i>	\$4,965
<i>DWL-S FALL LECTURE EXPENSE</i>	\$2,850
<i>NET Revenue Projection</i>	\$373
<b>GRANT REVENUE</b>	<b>\$500</b>
<i>RUTH DENNISON HS SCHOLARSHIP FUND</i>	\$500
<i>YVHS ECOLOGY CLASS DONATION</i>	\$300
<i>ELA / SOLAR &amp; WATER CONFERENCES</i>	\$1,150
<i>CONFERENCE</i>	
<i>NET Revenue Projection</i>	-\$1,450
<b>TOTAL GENERAL FUND NET POSITION</b>	<b>-\$372</b>
<b>TOTAL GRANT FUND NET POSITION</b>	<b>\$373</b>

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## EXPENSE DETAILS

**2,303**

**FISCAL YEAR 2016  
ADOPTED**

GL Account	LINE ITEM DESCRIPTION	Description			Actual 2015	Budget 2016 (Actual 08/14/2016)
<b>PROGRAM EXPENSES DESERT WISE LANDSCAPE TOUR</b>						
DWL-S TOUR	April					
	DWL-S INSURANCE	Insurance specific to DWL-S program	\$ -	\$ -	\$ 400	\$ 400
	ESSAY CONTEST AWARDS	gift certificates for essay contest	\$ -		\$ 325	\$ 275
	PRINTING/PUBLISHING/SUPPLIES	Development of programs, flyers, welcome poster, nametags, etc (David Miller), Publication of programs, flyers, welcome poster, business cards, etc., supplies for event			\$ 2,277	\$ 2,440
	ADVERTISING	publication expense with radio (Z107.7fm), Hi Desert Star, MBBasinwide mag/realstate mag (\$600), Copper Mtn Broadcasting			\$ 1,068	\$ 1,500
	HOST/DOCENT RECEPTION		\$ -		\$ 100	\$ 350
	PAYPAL FEES	Move to general expense for all programs	\$ -			-
	MISC EXPENSES	2016 additional directional signs.			\$ 2,508	
	TOTAL					\$ 4,965
<b>DWL-S LECTURE SEPTEMBER</b>						
	HONARARIUMS	Honarariums granted to speakers			\$ 800	\$ 600
	ROOM RENTAL	YVCC, others are more costly			\$ 200	\$ 200
	CATERING	light refreshments				\$ 300
	ADVERTISING	publication expense with radio (Z107.7fm), Hi Desert Star, MBBasinwide mag/realstate mag (\$600), Copper Mtn Broadcasting			\$ 1,400	\$ 1,400
	PRINTING/PUBLISHING	Staples supplies, Miller Publishing			\$ 350	\$ 350
	PAYPAL FEES	Move to general expense for all programs			\$ 50	-
	TOTAL					\$ 2,850
<b>GENERAL GRANTS</b>						
	EXPENSES					
	YVHS ECOLOGY CLUB	annual grant to YVHS	\$ 300	\$ 300	\$ 300	\$ 300



FISCAL YEAR 2016  
ADOPTED

REVENUE DETAILS

GL ACCOUNT	DESCRIPTION	ADDITIONAL INFORMATION	2012 Actual Revenue	2013 Actual Revenue	2014 Actual Revenue	2015 Actual Revenue	Preliminary Budget 2016	2017 Commitments (awarded)
	UNSPECIFIED CONTRIBUTED SUPPORT	Dues, Unspecified contributions/Donations						
	CONSERVATION PRIORITIES MAP MAINTENANCE	Green info fees to maintain mapping tool	\$ -	0		\$1,080	\$ 5,165	
	SPECIFIC CONTRIBUTION "B"	This could be for other specific programs. Like the CCA conference or one not supported or logically connected to DWL-S, or the Tank Art project				\$300	\$ 300	
	INTEREST INCOME					\$100	\$ -	
	DESERT-WISE LIVING SERIES - grants from water agencies directed towards water and (energy?) conservation. Agencies include BDVWA, HDWD, JBWD, MWA, 29 PALMS, SCE, cities, etc. may also be specific donors.	SERIES DEFINED AS: DWL-S Tour and ONE workshop???? What is it defined as??					\$ 1	
	RUTH DENNISON HIGH SCHOOL SCHOLARSHIP - PAID FROM RESERVE FUNDS,	FUNDED FOR 5-YR. APPROVED BY BOD IN 2015. TO BEGIN IN 2016 AT \$500 PER YR FOR 5 YRS. FUNDED BY RD CASH.	\$ -			\$8,095	\$ 8,188	\$4,500
			\$ -	0			\$ 500	
		TOTAL	\$ -	\$ -	\$ -	\$ 9,575	\$ 14,154	

2017 PLEDGED REVENUE

DWL-S  
AWAC/MWA  
SCE  
BDVWA

3000  
1000  
500

Fiscal Year 2016  
ADOPTED

Account	Description	JAN 16	FEB 16	MAR 16	APR 16	MAY 16	JUN 16	JULY 16	AUG 16	SEP 16	OCT 16	NOV 16	DEC 16	TOTAL
	UNSPECIFIED CONTRIBUTED SUPPORT	\$300	\$365	\$5	3,055	\$1,115	\$25				\$15	\$90	\$175	\$5,165
	SPECIFIC CONTRIBUTION "Conservation Priorities Map" MDLT Contribution	-				300								\$300
	SPECIFIC CONTRIBUTION "XX"													\$0
	INTEREST INCOME	1												\$1
	BOARD AUTHORIZED PROGRAMS													\$500
	RUTH DENNISON SCHOLARSHIP	500												
	DESERT-WISE LIVING SERIES													
	SPECIFIED DONATIONS / GRANTS				7,788	400								\$8,188
	<b>TOTAL REVENUE</b>													<b>\$14,154</b>

\$3000 AWAC/MWA until June 10, 2017  
SCE grant in 2017 \$1000  
BDVWA \$500



## **Rooftop Solar is the Better Alternative to DRECP**

Basin & Range Watch, Solar Done Right, Desert Protective Council

Even with new conservation areas, the Desert Renewable Energy Conservation Plan will result in more energy sprawl and a smaller California Desert. This development plan is full of too many trade-offs. Distributed renewable energy generation and storage in the built environment are the future of renewable energy technology and can meet our needs without sacrificing more desert ecosystems.



## Better Alternatives: Solar Done Right

There are better and more progressive alternatives to this fragmentation of the California Desert.

- The DRECP is primarily focused on rapidly expanding large-scale energy development in fragile desert ecosystems, rather than on the urgent need to transition the state's electrical systems to clean power in the fastest and least harmful way, and to permanently conserve our intact, carbon-sequestering desert wildlands.
- In contrast, focus on the point-of-use solar alternative, developed by the California Public Utilities Commission and investor-owned utilities and known as the **California Energy Efficiency Strategic Plan** would avoid the industrial development of vast tracts of public lands and construction of hundreds of miles of associated and expensive transmission lines. (see [http://www.energy.ca.gov/ab758/documents/CAEnergyEfficiencyStrategicPlan\\_Jan2011.pdf](http://www.energy.ca.gov/ab758/documents/CAEnergyEfficiencyStrategicPlan_Jan2011.pdf))
- US Department of Energy says "The number of U.S. households with rooftop solar is rapidly growing. The amount of grid-connected solar is expected to double in just two years. With this large number of PV homes in the U.S.

and a continuing robust market for additional PV installations, an ever-increasing number of PV homes will likely be sold or refinanced.”

[\(http://energy.gov/eere/sunshot/articles/all-about-solar-and-real-estate-0\)](http://energy.gov/eere/sunshot/articles/all-about-solar-and-real-estate-0)

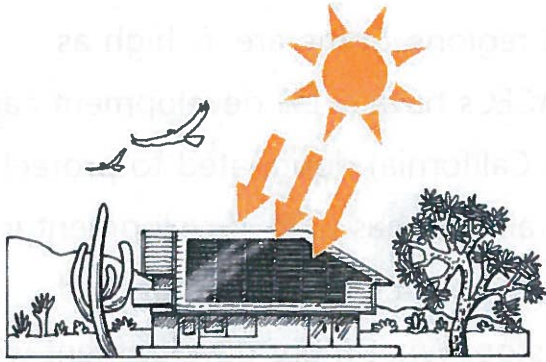
- US Department of Energy’s National Renewable Energy Laboratory (NREL) released a report in March 2016 *Rooftop Solar Photovoltaic Technical Potential in the United States: A Detailed Assessment*, which says **1,118 GW** of capacity and 1,432 TWh of annual energy generation was possible, equivalent to 39% of current US electricity sales. This is almost double the previous analysis undertaken and reported in 2008. The significant difference was said to be attributed to increases in PV module power density, improved estimation of building suitability, higher estimates of the total number of buildings, and improvements in PV performance simulation tools that previously tended to underestimated production.
- NREL reports that **California has the greatest potential to offset electricity use—its rooftop PV could generate 74% of the electricity sold by its utilities** in 2013 . California small and large rooftops have the potential to generate

**131.8 GW** of solar

(<http://www.nrel.gov/docs/fy16osti/65298.pdf>).

- **Los Angeles** alone has the rooftop potential for **9,000 MW of solar** (ibid. page 19). We'd have to build almost 24 more Ivanpah solar power tower projects to match that.
- Over **39,000 MW of solar PV** can be utilized on **parking lot structures alone**.
- **Policy failures** often limit the rapid build-out of Distributed Generation in built areas, as witnessed by the ongoing controversies in CA and NV concerning rooftop solar net energy metering.
- A **rooftop solar plus storage and energy efficiency with smartgrid modernization alternative** would eliminate the need for any Take permits or other modifications that would otherwise compromise the Endangered Species Act. This would greatly reduce environmental impacts and significant effects.
- A **Distributed Energy Resource** alternative leaves these species, their habitats, and their ecological linkages intact

and would be the alternative that best meets long-term conservation of the California desert. **A true conservation plan.**



## **Huge Land Use of the California Desert Under DRECP Can Be Avoided**

1. **Development Focus Areas** include 388,000 acres of BLM lands, with many new areas.

2. **Variance Process Land** would allow development on another 40,000 acres of desert lands.

3. **Unallocated Lands** includes a huge amount: 802,000 acres. These are BLM-administered lands that do not have an existing or proposed land allocation or designation in the DRECP, but would also be a potential energy sprawl zone if developers seek such areas.

4. **Conservation areas** are not as conserved as we would like: BLM explained at public meetings that both Areas of Critical Environmental Concern (ACECs) and National Conservation Lands (NCLs) in the DRECP have disturbance caps that differ in the various alternatives and between regions. Some are as high as 12%, others below 1%. Present ACECs have a 1% development cap. The Yuha ACEC (Imperial County California) designated to protect the rare Flat-tailed horned lizard already has 0.9% development in it. The incremental chipping away of our beautiful Mojave and Colorado Desert wildlands must stop. What more development will be proposed in the future to reduce our desert wildlands even more?



**Unique Desert Landscapes Under Threat**

A sample of some of the desert landscapes we have personally visited that are opened for development for utility-scale energy:

- **Soda Mountain and valley:** the Soda Mountain alluvial fans on the border of the popular Mojave National Preserve would not be protected from pending solar developments. Solar projects could inhibit desert bighorn sheep movement corridors here.
- **Trona Pinnacles:** the Searles Lake area famous for the Trona Pinnacles has been added as a renewable energy development zone. This area is famous for Hollywood movie sets from Westerns to Science Fiction, so we are amazed it has been slated for large-scale energy development. The small town of Trona and Searles Dry Lake are currently a remote area with mineral salt mining but the surrounding desert is largely untouched and in a primitive setting. Archaeology around Searles Lake is phenomenal, since it was an Ice Age center of early human habitation in North America. We are concerned that the late addition of this desert as a Development Focus Area without the ability of the public to comment on a more extensive environmental review will enable the destruction of valuable natural and cultural resources. Will the view from the unique Trona Pinnacles be ever altered with industrial utility-



scale solar projects and accompanying transmission lines and substations?

- The **area south of the Rand Mountains and north of Boron along highway 395** is designated as a Development Focus Area. This is not disturbed desert, but a prime example of intact western Mojave Desert. We have seen this area filled with wildflowers such as Mojave aster, Desert Dandelion, and pincushion during rainy springs. Desert tortoise, kit fox, and rare Mojave ground squirrel make this place home. The area is a Mojave ground squirrel population area and so it is surprising a DFA was designated here.
- **Koehn Dry Lake** was also designated as a Development Focus Area, yet it is a hard-surface playa with muddy ooze just underneath the dry crust; vehicles driving onto the lakebed have sunk in and become stuck. Solar projects cannot be built on such a playa. There are many flaws in the Final DRECP.

## **Science Recommendations Not Followed**

Basin & Range Watch recommend that agencies follow the Final Report of the Independent Science Advisors to the Desert

Renewable Energy Conservation Plan. The Final DRECP, however, fails to do this and streamlines the permitting process instead of taking the time to do baseline biological surveys, set up control study sites, and design statistically valid long-term monitoring protocols.

The independent Science Advisors recommend, for example, says: "As with the Mohave ground squirrel, and as justified in Section 4.4.2, the advisors do **not** recommend translocation of desert tortoise as effective mitigation or conservation action, in part because translocated tortoises suffer high mortality rates." (Section 5.2, <http://www.energy.ca.gov/2010publications/DRECP-1000-2010-008/DRECP-1000-2010-008-F.PDF>)

Yet tortoise translocation has been carried out on every major solar project where the species is present, and translocation will undoubtedly continue as the main method to "clear" desert ecosystems of this Federally Threatened species to make way for industrial energy development.

The Independent Science Advisors recommended mitigating the confusing polarized glare of photovoltaic projects to decrease avian mortality, try to site solar projects on disturbed/degraded land, and to avoid playas. We see very little of these recommendations being followed in the final DRECP.

Rooftop solar is truly the smart from the start!





# MBCA

## morongo basin conservation association

P.O. Box 24 Joshua Tree, California 92252

[www.mbconservation.org](http://www.mbconservation.org)

September 3, 2016

Jennifer Whyte, Project Manager  
BLM South Coast Field Office  
Palm Springs, CA 92262

Sent by email to [jwhyte@blm.gov](mailto:jwhyte@blm.gov)

Reference: Palen Solar PV Project

Dear Jennifer Whyte:

This letter responds to the preparation of a Supplemental DEIS for the proposed Palen PV Solar Project. This will be the second supplemental EIS for a 6 square mile solar project on this site. This project is within the Chuckwalla sand transport corridor. PWA studied this sand transport corridor for two earlier projects: the Colorado River Substation (2010, revised 2011) and the Palen Solar Power Project (2010). These two assessments focus on sand transport as it relates to biological resources particularly the habitat for the Mojave Fringe-toed Lizard. The author particularly noted that these assessments did not study dust transport.

Air quality monitoring and regulations in the Mojave Desert Air Basin (MDAB) are provided by the Mojave Desert Air Quality Management District (MDAQMD). This project is in the eastern portion of the MDAB, in Riverside County. The entire air basin is currently designated as nonattainment for both the State 24-hour and the annual average PM10 standards, with only the western portion of the Mojave Desert AQMD designated as nonattainment for the State annual average PM2.5 standard.

Fact:

**There are no monitoring stations east of Twentynine Palms to monitor fugitive dust or any other emission in the east Mojave Desert.** The exception is Blythe, which measures for Ozone

Times have changed. We have officially entered the Age of Utility Scale Solar Projects. When vegetation is removed from desert soils the root systems stabilizing sand and dust are gone resulting in the release of fugitive dust: PM10-2.5. This is true even for the smaller commercial scale solar facilities of 100 or so acres on stabilized sandsheets as in Lucerne Valley and Joshua Tree in San Bernardino County. Utility scale Solar projects, square miles in extent, are dust bowls in the making when wind speed exceeds 15 mph. The MDAQMD Rule 403 Fugitive Dust (Readopted 1977), Rule 403.2 Fugitive Dust Control for the

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Mojave Desert Planning Area (1996), and Dust Control Guidance Plan (2001) are being applied in a cookie cutter fashion for solar projects at all scales.

Current fugitive dust mitigation controls are unreliable because they lack supporting project data and are contrary to the experience of residents living downwind of projects. In 2014 First Solar required two variances from BLM for an additional 150 acre feet of water to satisfy dust control mitigation during construction of the Desert Sunlight project in Desert Center. This six square mile project was constructed on a desert pavement surface, a major producer of fugitive dust when the stabilizing rocks are removed. There were no nearby monitoring stations for fugitive dust analysis prior to the application process. After the fact, and because of the proximity to Joshua Tree National Park, First Solar was required to install monitoring stations at the cardinal points of the project

FACT:

**There are no PM 10-2.5 monitors located in the South Coast AQMD portion of the Mojave Desert Air Basin.** The South Coast district stations in Palm Springs and Indio are in the Colorado/Sonoran Desert and for many reasons including wind direction, speed, and soil substrate are unreliable surrogates for the missing monitoring stations along the Mojave Desert east trending Chuckwalla sand transport corridor.

FACT:

**In the eastern Mojave Desert there are no baseline data on which to correctly evaluate fugitive dust emissions for proposed solar projects** or correctly estimate the required quantities of water for effective mitigation through the construction phase and life of the project.

Evaluate Change over Time. Sand transport corridors are complex and to adequately understand fugitive dust emissions over time there must be on site measurements using EPA certified Met One Automatic Weather Monitoring System including E-Bam for particulate PM10-2.5. On site weather stations should be a requirement with the application. (Think of the vital information gathered by Wind Measurement (MET) Towers for wind projects.) The PSA studies provided background on seasonal change in sand movement as well as the changes with El Nino and La Nina years. How do these long term climatic variations correlate with dust transport? We need to know this in order to adaptively manage this resource into the future.

**BLM should require Particulate Matter monitoring be completed as part of the analysis and determination of the "Affected Environment and Environmental Consequences" sections of the EIS for all future solar projects within the DRECP Development Focus Areas (DFA). The Palen PV Project is within a DRECP DFA.**

FACT:

Palen Solar Energy Generating System (PAEGS) Draft SEIS, July 2013, Pages 4.16-7 & 8  
*There are approximately 18 solar projects proposed or under construction along the I-10 corridor, predominately between Desert Center and Blythe. Based on the currently available data for these various projects (information obtained from Plans of Development and other project documents), and assuming*

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*all projects move forward, these projects could be constructed in the same general timeframe as the PSEGS, or have the potential to overlap for at least a portion of the construction period.*  
From following paragraph we learn that time period is 34 months.

Fugitive dust is a problem for the health of the construction workers, the I-10 travelers, and residents of the Blythe region and those living and working east of the Colorado River. Fugitive dust also affects wildlife and agricultural production. The health and safety, wildlife, and economic impacts must be addressed. Don't forget cumulative impacts from Salton Sea PM10-2.5 and worse that may be forthcoming.

FACT:

From the BLM Press Release 11/10/15

**Interior Department, State of California Announce Innovative Strategy for Renewable Energy and Conservation on Public Lands in California Desert**

*The DRECP planning effort was also called out as an early "sign of progress" in Interior's strategy for advancing landscape-scale mitigation policies and practices. That strategy, released in April 2014, describes the key principles and actions necessary to shift from project-by-project management to consistent landscape-scale, **science-based management** of the lands and resources for which the Department is responsible. (My bold)*

To carry out science-based adaptive management it is critical to have accurate and reliable data. Currently the air quality monitoring data, based on data gathered in Palm Springs and Indio is neither accurate nor reliable.

We repeat: BLM should require Particulate Matter monitoring be completed as part of the analysis and determination of the "Affected Environment and Environmental Consequences" sections of the EIS for all future projects within the DRECP Development Focus Areas (DFA).

The Palen PV Project is within a DRECP DFA.

Thank you for your attention to these remarks.

Sincerely,



Pat Flanagan, MBCA Board Member

Board Members

Sarah Kennington

Steve Bardwell

Marina West

Laraine Turk

Ruth Rieman

Claudia Sall

David Fick

Seth Shteir

Meg Foley

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Cc.  
David Smith, Superintendent Joshua Tree National Park  
San Bernardino County Board of Supervisors  
Mojave Desert AQMD

Enclosed for the Board of Supervisors is a copy of the final report of the Morongo Basin Conservation Association (MBCA) regarding the proposed development of the Morongo Valley Solar Energy Center. The report was prepared by the MBCA in cooperation with the San Bernardino County Air Quality Management District (AQMD) and the California Department of Water Resources (DWR). The report provides a detailed description of the project, including the location, size, and potential impacts of the development. It also includes a list of recommendations for the Board of Supervisors regarding the proposed development.

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The Morongo Basin Conservation Association is a 501(c)3, community-based, California Nonprofit Corporation, incorporated in 1969. MBCA advocates for a healthy desert environment that nurtures our rural character, cultural wealth, and economic well-being.



# Joshua Tree plea: Say no to solar farm

By Leah Sanson  
Hi-Desert Star

JOSHUA TREE — “We will be a sacrifice zone,” Rebecca Unger said, warning of Joshua Tree’s future with solar farms. Joshua Tree community members gathered at the Bob Burke Community Government Center Tuesday to telecommunicate with San Bernardino County Board of Supervisors, asking the board to reject a new solar farm proposal.

Residents convened to share their opinions on the Joshua Tree Solar Farm, which may be developed on the grounds of the old Roy Williams Airport.

The room at the community government center was filled with citizens. So filled, in fact, that people were directed to an overflow room. All were looking for their voices to be heard on the solar farm.

County planning staff recommended that the board of supervisors uphold the planning commission’s earlier decision to approve the project.

“It will have a very low profile,” Terri Rahhal, planning director, told the board. “Video simulation does not seem to show the mountain view being ob-



LEAH SANSON Hi-Desert Star

Joseph Fairbanks addresses the Board of Supervisors Tuesday in Joshua Tree.



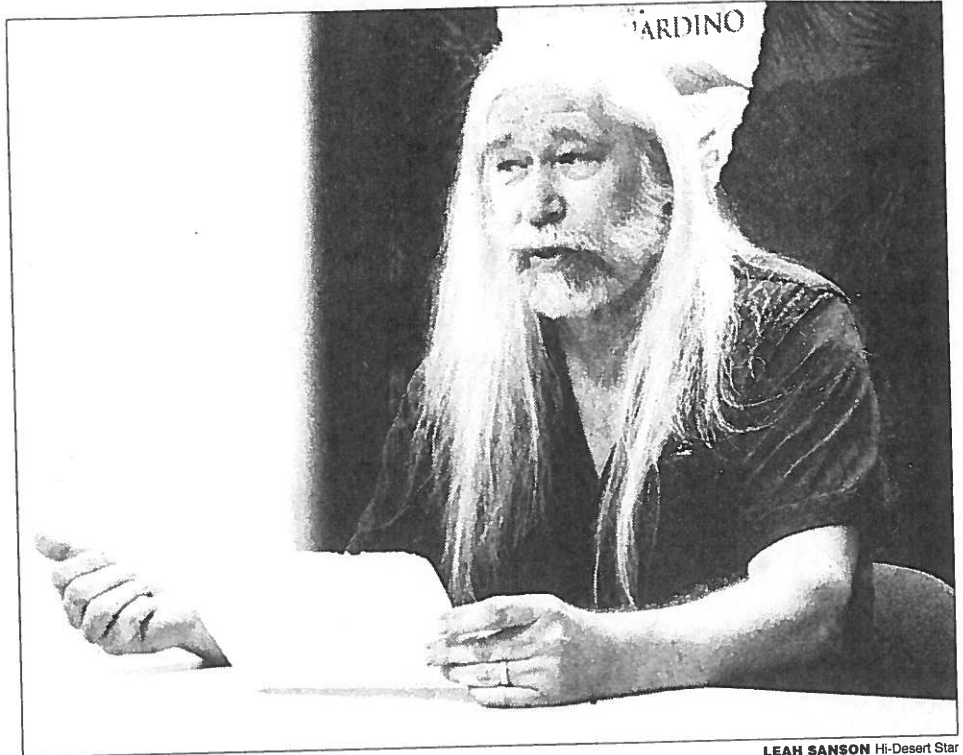
LEAH SANSON Hi-Desert Star

Claudia Sall speaks of protecting Joshua Tree residents’ quality of life.

structed at all.”

Rahhal also said an analyst searched the sur-

See **Solar farm** A2



LEAH SANSON Hi-Desert Star

David Fick speaks against the Joshua Tree Solar Farm project in comments to the San Bernardino County Board of Supervisors Tuesday.

## Solar farm From A1

rounding area and could not find a public trail or campground where the solar farm could be seen.

The project will have no "significant impact to the visual quality of the area," he stated.

Joshua Tree residents disagreed. One community member said she went to the Joshua Tree National Park entrance on her lunch break and took photos looking out into town that showed that the solar farm would be seen from the entrance.

"If this building had glass walls, I would be able to see the solar project from right here," Joshua Tree community member Joseph Fairbanks stated.

A representative for Joshua Tree Solar Farm LLC, the NextEra corporate affiliate proposing the project, stood by the design. "It blends very naturally with the landscape," Jess Melin said.

"It is not the only feature going to be disturbing the landscape," Melin added.



LEAH SANSON Hi-Desert Star

Residents of the Morongo Basin prepare to voice their opinions to the San Bernardino County Board of Supervisors via telecommunication.

The appellants who challenged the planning commission's approval contended they were not sent certain documents and Christina Caro even said she was not informed of the hearing date until a couple of weeks ago.

Richard Lutringer said the Joshua Tree area is one of the most recognized tourist destinations in San Bernardino County and argued the solar farm will have a detrimental affect on the landscape and the

feel of the surrounding community.

One presenter also was annoyed that at points during the meeting, only two supervisors were present to hear what Joshua Tree residents had to say, and were conversing amongst themselves as well.

The meeting ran longer than expected and the board of supervisors will meet at 1 p.m. Tuesday to hear closing remarks and make a decision on the appeal.

ADAMS BROADWELL JOSEPH & CARDOZO

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
LAURA E. HORTON  
MARC D. JOSEPH  
RACHAEL E. KOSS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062  
ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

August 10, 2016

CARO

**Via EMAIL and HAND DELIVERY**

Victoria Fuller, President and  
Honorable Members of the Joshua Basin  
Water District Board of Directors  
Curt Sauer, General Manager  
Joshua Basin Water District  
61750 Chollita Road  
Joshua Tree CA 92252  
Fax (760) 366-9528  
Email: [SGreer@jbwd.com](mailto:SGreer@jbwd.com);  
[csauer@jbwd.com](mailto:csauer@jbwd.com)

Mr. John Oquendo, Senior Planner  
San Bernardino County Land Use  
Services Department  
Planning Division  
385 N. Arrowhead Avenue, 1st Floor  
San Bernardino, CA 92415  
Email: [JohnOquendo@lus.sbcounty.gov](mailto:JohnOquendo@lus.sbcounty.gov)

**Re: Agenda Item No 8: Update On Nextera Solar Project, Proposed Will  
Serve Letter And Water Supply Agreement for Joshua Tree Solar  
Farm Project (County of San Bernardino Project No:  
P201400482/CUP; SCH No. 2016011021)**

Dear President Fuller, Honorable Members of the Joshua Basin Water District Board  
of Directors, Mr. Sauer, Mr. Oquendo:

We are writing on behalf of Coalition for Responsible Solar ("Coalition")  
regarding Joshua Basin Water District ("JBWD" or "District") Agenda Item No 8:  
Update On Nextera Solar Project, Proposed Will Serve Letter And Water Supply  
Agreement for the Joshua Tree Solar Farm Project (Project No: P201400482/CUP;  
SCH No. 2016011021) ("Project"), proposed by Joshua Tree Solar Farm, LLC<sup>1</sup>  
("Applicant" or "NextEra"). The Project is a proposed 20 megawatt ("MW")  
photovoltaic ("PV") solar energy generating facility to be located on approximately 115  
acres at the former Hi Desert (Roy Williams) Airport in unincorporated San  
Bernardino County ("County") within the community of Joshua Tree, in the County's  
3rd Supervisorial District.

<sup>1</sup> Joshua Tree Solar Farm, LLC is a division of NextEra Energy, Inc.

5:41 PM  
Rec'd. by  
BoD  
to take  
action prior to  
BoS decision.



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The Board's proposed execution of the Will Serve Commitment ("Commitment Letter"), and proposed consideration of the Water Supply Agreement ("WSA") for the Project are premature and in violation of State law.<sup>2</sup>

First, the Project has not received final approval from the County. There are three administrative appeals pending at the County which are scheduled for hearing by the Board of Supervisors on August 16, 2016. Thus, the County's review of the MND and CUP application for the Project are not yet final, and NextEra holds no entitlements to develop the Project or enter into the WSA at this time.

Second, both the proposed Commitment Letter and WSA are discretionary approvals that will authorize activities related to the Project which have the potential to cause significant impacts on the environment. Thus, both the Commitment Letter and WSA are components of the Project which must be analyzed under the California Environmental Quality Act ("CEQA"),<sup>3</sup> yet neither the County or JBWD have performed this analysis. The MND failed to disclose the proposed WSA or analyze its terms; failed to discuss whether JBWD would require new or expanded water entitlements to serve the Project; failed to disclose the need to construct new interconnection facilities for JBWD to serve the Project; failed to disclose existing overdraft conditions in the Copper Mountain Valley subbasins which may be exacerbated by the Project's proposed water use; and failed to disclose the potentially significant impacts on local groundwater supply from NextEra's alternative proposal to drill its own groundwater well to supply the Project.<sup>4</sup> These omissions in the County's CEQA analysis must be corrected, and a thorough analysis performed by the

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<sup>2</sup> The Coalition also notes that JBWD failed to provide the Coalition with notice of its July 20, 2016 Board meeting regarding the Project, and failed to provide timely notice to the Coalition of this Board meeting. The Coalition filed a notice request letter with JBWD on April 29, 2016. Pursuant to the notice request, JBWD was required to provide the Coalition with prior written notice of any and all proceedings related to the Project, pursuant to Public Resources Code ("PRC") Sections 21092.2, 21080.4, 21083.9, 21092, 21108 and 21152, Government Code Section 65092, and Water Code Sections 1340 et seq., which require local agencies to mail such notices to any person who has filed a written request for them with the clerk or head of the agency's governing body.

<sup>3</sup> Activities that involve government participation or financing that are subject to CEQA include those that are supported in whole or in part through contracts (PRC § 21065(b)), and include issuance by a public agency of a lease, permit, license, certificate or other entitlement for development or use. PRC § 21065(c); *NRDC v. Arcata National Corp.* (1976) 59 Cal. App. 3d 959.

<sup>4</sup> See CEQA Appendix G, Secs. IX (b), XVII (d); *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 286 (CEQA analysis of water supply impacts inadequate where CEQA document failed to discuss the known contingencies to provision of reliable water supply to project).

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County or JBWD, *before* JBWD can take any action to approve a component of the Project.<sup>5</sup>

Third, the Commitment Letter constitutes a “definite course of action” that will commit JBWD to entering into the WSA for the Project before the Project’s CEQA review is complete. An agency may not commit itself to a definite course of action on a project before evaluating its environmental effects, even where the agreement is contingent or subject to future CEQA compliance.<sup>6</sup> This includes entering into a discretionary contract, such as the WSA, and “agreement that irrevocably vests development rights” or other project entitlement on any person, such as the Commitment Letter, and generally any action concerning the proposed project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures.<sup>7</sup> Both the Commitment Letter and WSA would have precisely this preclusive effect on future alternative water supply arrangements for the Project.

Fourth, JBWD lacks substantial evidence to support its conclusion that it has adequate water supply available from its existing recharge entitlements from the Mojave Water Agency (“MWA”) to supply the Project. It is therefore premature for JBWD to enter into a water supply contract for the Project because no evidence has been presented by JBWD or the County to demonstrate that the proposed purchase of recharge water from MWA or any other wholesale water provider to supply water to the Project is feasible, as required by CEQA, or has been approved, as required by the terms of the WSA. Furthermore, evidence obtained by the Coalition demonstrates that JBWD does not have adequate water in its existing allotments from MWA for the Project

For the reasons discussed herein, the Coalition urges the Board to deny the proposed Commitment Letter and WSA, or, in the alternative, to continue the August 10, 2016 hearing to a later date

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<sup>5</sup> Public agencies may not “approve” a project before completing the CEQA process. 14 CCR § 15352.

<sup>6</sup> *Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116, 135, 139; *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186.

<sup>7</sup> *Id.*

## I. BACKGROUND

NextEra has applied to the County for a Conditional Use Permit ("CUP") for the Project. NextEra originally requested a will serve letter for the Project from JBWD. On October 23, 2015, JBWD issued a conditional will serve letter for the Project based on NextEra's representation to JBWD that the Project would require just 49 acre-feet of water over a 20-year period.<sup>8</sup>

The County subsequently prepared and released Mitigated Negative Declaration ("MND") for the Project in February 2016 pursuant to CEQA. The MND disclosed a significantly higher water use than what NextEra had originally told JBWD. The MND explained that the Project would require up to 120 acre-feet of water over a 30 to 40-year period, including approximately 34 acre feet of water during the six month Project construction period alone<sup>9</sup> - almost three times the amount of water that NextEra had originally told JBWD would be required for the life of the Project.

JBWD subsequently withdrew its conditional will-serve letter in February 2016, and advised NextEra that any subsequent will-serve letter would be contingent upon NextEra entering into a WSA to fund JBWD's purchase of recharge water for the Project.

On May 18, 2016, the Board considered a proposed revised will serve letter and WSA for the Project. Prior to the May 18 hearing, the Coalition submitted extensive comments identifying numerous factual and legal deficiencies in the WSA's proposed terms, and advising JBWD that it could not legally enter into a WSA for the Project until the Project received final approval from the County, and unless the WSA was fully analyzed in the Project's CEQA document. Neither of those conditions has occurred yet.

On July 20, 2016, JBWD presented a revised WSA and proposed Commitment Letter to the Board for approval. In order to skirt the WSA's threshold requirements that NextEra have both title to the Project property and final Project entitlements from the County in order to enter into the WSA in the first instance, the Commitment Letter proposes to allow the parties to execute the WSA several months from now, after NextEra received the necessary entitlements for the Project. Contemplating that its proposed actions may subject JBWD to legal liability, JBWD also requested that the

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<sup>8</sup> See JBWD Agenda Packet Board of Directors Meeting 03 02 16 , pp. 3-4.

<sup>9</sup> MND, p. 58.

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Applicant enter into an indemnity agreement which would offset JBWD's defense costs in a subsequent lawsuit over the Commitment Letter or WSA.

At the July 20, 2016 meeting, the Board tabled these items for future consideration pending final approval of the Project. The Board now proposes to execute the Commitment Letter at the instant August 10, 2016 meeting.

## **II. THE BOARD MAY ISSUE ANY APPROVALS RELATED TO THE PROJECT BECAUSE THE COUNTY APPROVALS ARE NOT FINAL**

Public agencies may not "approve" a project before completing the CEQA process. This includes entering into a discretionary contract or "agreement that irrevocably vests development rights" or other project entitlement on any person, and may not undertake actions concerning the proposed project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures.<sup>10</sup>

Similarly, because a project is defined as the "whole of an action," a public agency may not segment or "piecemeal" a project into several pieces if the effect is to avoid full disclosure of environmental impact.<sup>11</sup> Even where individual projects are undertaken in phases or multiple parts, where the total undertaking comprises a project with significant environmental effect, the lead agency must fully analyze each project in a single environmental document.<sup>12</sup>

The proposed WSA is a discretionary approval that will authorize activities related to the Project which have the potential to cause significant impacts on the environment. The WSA is therefore part of the "project" within the meaning of CEQA, and JBWD is a responsible agency.<sup>13</sup><sup>14</sup> JBWD's proposed execution of the

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<sup>10</sup> CEQA Guidelines § 15352; *Save Tara*, 45 Cal. 4th at 135; 14 CCR § 15004(b)(2).

<sup>11</sup> See *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal. App. 4th 1214, 1231 (because opening of home improvement center was conditioned on completion of road realignment, two acts were part of single project for purposes of CEQA).

<sup>12</sup> 14 CCR § 15165.

<sup>13</sup> PRC §§ 21065, 21069; 14 CCR § 15381.

<sup>14</sup> The issuance by local public agencies of contracts, permits and regulations constitute a project within the meaning of CEQA. Thus, the WSA is also independently a "project" subject to CEQA. PRC § 21065(b), (c); *Miller v. City of Hermosa Beach*, 13 Cal. App. 4th 1118 (1993) (issuance of the hotel building permit was discretionary and brought the project within the ambit of CEQA); *Simi Valley Recreation & Park Dist. v. LAFCO* (1975) 51 Cal. App. 3d 648, 664 (agency's "minimal link" with private

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Commitment Letter and approval of the terms of the WSA prior to Project approval are precisely the type of premature, segmented approval of the Project that CEQA prohibits. JBWD's revision of its original "will-serve" letter to propose deferred execution of the WSA via the Commitment Letter is an improper attempt to mask JBWD's attempt to circumvent the legal requirement to conduct CEQA review of the WSA as part of the overall Project.

The MND and proposed CUP were considered by the County Planning Commission on April 21, 2016. The Commission voted to approve the Project. Three administrative appeals were filed with the County in the 10-day period following the Planning Commission hearing, including the Coalition's. The appeals are currently pending before the County with a continued hearing date of August 16, 2016. The County has therefore not issued any final approvals for the Project. As a result, NextEra does not own any entitlements to the Project or the Project property, and is not competent to enter into a WSA at this time.

JBWD may not approve either the Commitment Letter or the WSA prior to Project approval. Any attempt to do so would circumvent the clear requirements of CEQA, which mandate that the agency issuing a discretionary project approval fully analyze and mitigate all potentially significant impacts of the project before issuing any approvals for that project.<sup>15</sup>

### **III. THE COMMITMENT LETTER AND WSA CONSTITUTE A "DEFINITE COURSE OF ACTION" THAT REQUIRES CEQA REVIEW PRIOR TO EXECUTION**

JBWD may not execute the Commitment Letter or WSA prior to approval of the Project because it would impermissibly obligate JBWD to the definite course of action of supplying water for the Project prior to completion of CEQA review. The Commitment Letter and WSA would also impermissibly limit the choice of alternatives and mitigation measures available to address the Project's potentially significant water supply impacts.

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activity, either by direct proprietary permitting, regulating, or funding the private activity, constitutes "project" subject to CEQA)

<sup>15</sup> Indeed, if the County fails to include an analysis of the WSA in its own CEQA document, and if JBWD seeks to subsequently approve the WSA, JBWD must prepare its own CEQA document for the Project to analyze the impacts of the agreement. 14 CCR §§ 15096(e)(4), (f); *City of Redding v. Shasta County Local Agency Formation Com.* (1989) 209 Cal.App.3d 1169, 1180 ("*Redding v. Shasta*").

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An agency may not commit itself to a definite course of action on a project before evaluating its environmental effects.<sup>16</sup> The duty to perform CEQA review applies at the first instance that a public agency proposes to “approve” a project.<sup>17</sup> For private projects (i.e., projects carried out by entities other than public agencies but requiring discretionary approval from one or more agencies), the lead agency must encourage project proponents to incorporate environmental considerations into project planning as early as feasible.<sup>18</sup> Approval is deemed to occur “upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract.”<sup>19</sup> The California Supreme Court in *Save Tara* reasoned that “postponing environmental analysis can permit ‘bureaucratic and financial momentum’ to build irresistibly behind a proposed project, ‘thus providing a strong incentive to ignore environmental concerns.’”<sup>20</sup> CEQA requires early environmental review for precisely this reason.

In *Save Tara*, the City of West Hollywood entered into a draft development agreement to convey a historic residential property to a developer, provided the developer satisfied environmental requirements, as reasonably determined by the city manager.<sup>21</sup> The agreement provided a loan to the developer, and required the developer to construct 35 housing units, to relocate existing tenants, and to “take all actions necessary to comply with CEQA.”<sup>22</sup> The *Save Tara* agreement included a “CEQA compliance clause” which provided that “the agreement imposes no duty on City to approve any documents prepared pursuant to CEQA.”<sup>23</sup> The City Council in *Save Tara* approved the development agreement without CEQA review, in reliance on the future CEQA compliance provision with the condition that “all applicable requirements of CEQA...have been satisfied, as reasonably determined by the City Manager: and that the “developer shall have obtained all Entitlements.”<sup>24</sup>

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<sup>16</sup> *Save Tara*, 45 Cal.4th at 139.

<sup>17</sup> PRC § 21080(a); 14 CCR § 15352(a); *Save Tara*, 45 Cal.4th 116; *RiverWatch*, 170 Cal. App. 4th 1186.

<sup>18</sup> 14 CCR § 15004(b)(3).

<sup>19</sup> 14 CCR § 15352(b).

<sup>20</sup> *Save Tara*, 45 Cal. 4th at 134-135, citing *Laurel Heights I*, 47 Cal.3d 376, 395 (1988).

<sup>21</sup> *Save Tara*, 45 Cal. 4th 116.

<sup>22</sup> *Id.* at 124.

<sup>23</sup> *Id.* at 126.

<sup>24</sup> *Id.* at 124.

The *Save Tara* Court articulated a two-part test to determine whether the approval of this “conditional” conveyance and development agreement amounted to project approval. The Court stated:

[C]ourts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project.<sup>25</sup>

The Court examined the language of the agreement’s CEQA-Compliance provision, as well as the circumstances surrounding the approval of the development agreement. The Court found that the language of the agreement, coupled with the city’s public announcements that it was determined to proceed with the development, its preparations to relocate the existing tenants from the property, a large at-risk financial contribution to the project, and its willingness to commit itself to going forward if the city manager found CEQA requirements were satisfied, demonstrated that the city had impermissibly “committed itself to a definite course of action regarding the project before fully evaluating its environmental effects.”<sup>26</sup> The *Save Tara* court held that the preliminary development agreement did, in fact, constitute a project approval that triggered the need for CEQA review prior to its approval, and voided the City’s approvals.

Similarly, here, Section 6 of the WSA contains a clause which requires that “JT Solar shall, at JT Solar’s sole cost and expense, be responsible for compliance with the California Environmental Quality Act (“CEQA”) and all other applicable state and federal environmental laws and all federal and state requirements.”<sup>27</sup> Both JBWD’s public Board meetings and the proposed Commitment Letter represents a clear intent by JBWD to go forward with approving a WSA for the Project provided that the County approves the Project. The terms of the Commitment Letter and WSA would obligate JBWD to a substantial commitment of water resources to the Project if executed. The Commitment Letter and WSA are therefore precisely like the

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<sup>25</sup> *Id.* at 139.

<sup>26</sup> *Id.* at 142.

<sup>27</sup> Proposed WSA, Par. 6.

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development agreement in *Save Tara*, and the WSA proposed “CEQA compliance” provision does not relieve JBWD of the obligation to perform CEQA review.

The Court of Appeal’s subsequent decision in *Riverwatch*, which implemented the *Save Tara* holding in regard to a water supply agreement, is almost factually identical to this one. In *Riverwatch*, the County of San Diego’s Department of Environmental Health was the lead agency under CEQA for the proposed Gregory Canyon Landfill (“Landfill”). After a trial court upheld a CEQA challenge to the Landfill Project because the FEIR had not included an adequate analysis of water supplies, the Landfill entered into an agreement in February 2006 with the Olivenhain Municipal Water District (“OMWD”) to provide the Landfill with 244,000 gallons of recycled water per day requiring 89 daily truck trips for 60 years (“Agreement”). *Riverwatch* challenged the Agreement because OMWD did not comply with CEQA before entering into the Agreement.

The Court held that the Agreement constituted part of the Landfill project for purposes of CEQA because obtaining and trucking recycled water and building a road to do so is part of the Landfill Project which, under CEQA, is “the whole of the action” to be approved; that the Agreement specifically committed OMWD to provide the recycled water and contained specific details regarding the water to be supplied, and construction and trucking activities to implement; and that the Agreement made the Landfill solely responsible for CEQA compliance and did not condition OMWD’s performance under the Agreement on its subsequent exercise of authority and discretion as a responsible agency under CEQA to review the revised DEIR, to place additional conditions or mitigation measures on the delivery of water, or alternatives to the Agreement based on environmental analysis. The Court found that the Agreement was improperly approved by the OMWD Board without considering the environmental effects of the project under CEQA, and set it aside.

If the JBWD Board were to execute the Commitment Letter or WSA prior to Project approval, JBWD would make precisely the same legal error committed by the OMWD Board in *Riverwatch*. The County’s has not approved the MND or CUP. Therefore, CEQA review of the Project has not yet been completed. The Commitment Letter would obligate JBWD to immediately execute the WSA upon NextEra’s receipt of property and Project entitlements, thereby allocating a significant portion of its scarce recharge water supply resources to the Project. Thus, the Commitment Letter has the same binding effect as the WSA. The WSA would then expressly obligate JBWD to provide a 40-year water supply for the Project, while limiting the Applicant’s



ability to obtain water in any other manner, and making the Applicant responsible for its own CEQA compliance. This is precisely the type of “irrevocable commitment of resources” which constitutes a “definite course of action” by JBWD that is prohibited prior to the completion of CEQA review for the Project as a whole.<sup>28</sup>

#### **IV. THERE IS SUBSTANTIAL EVIDENCE THAT THE WSA MAY REQUIRE JBWD TO OBTAIN ADDITIONAL ENTITLEMENTS TO MEET PROJECT NEEDS**

The July 20, 2016 Board Staff Report states that JBWD has sufficient water supply remaining in its existing annual entitlements from MWA to purchase recharge water for the entire life of the Project. The Staff Report states that JBWD has only used 500 acre-feet of its allotted 684 acre-feet of MWA water for 2016, and that JBWD therefore has sufficient recharge water remaining this year, and in the following 3 years, to purchase the water needed to supply the entire life of the Project.<sup>29</sup> This conclusion is not supported by any evidence that has been presented to the public by JBWD or the County, and is contradicted by water records obtained from MWA by the Coalition.

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<sup>28</sup> JBWD may seek to rely on the recent case of *Delaware Tetra Technologies, Inc. v. County of San Bernardino* (2016) 247 Cal.App.4th 352 (“*Delaware Tetra*”) to argue that the Commitment Letter and WSA are permissible pre-approval agreements. However, the facts of *Delaware Tetra* are completely different from the facts of this case, and the *Delaware Tetra* explained that its ruling was based on the specific facts of the case, and that agreements that contain facts like those in *Riverwatch* would be presumptively improper. *Id.* At 360.

*Delaware Tetra* involved execution of a Memorandum of Understanding for a groundwater extraction project prior to the completion of CEQA review for the project. However, the Memorandum in *Delaware Tetra* established a process for completing the ultimate groundwater plan at issue, and provided that after the Plan was completed and approved, the County retained full discretion to consider the final EIR and then to approve the Project, disapprove it, or require additional mitigation measures or alternatives. The Memorandum further made clear that it was subject to modification, depending on mitigation measures necessitated by CEQA or the County’s Groundwater Ordinance.

By contrast, the WSA proposed by JBWD contains fixed terms that would obligate JBWD to commit a specific water supply to the Project over a 40-year period, and would expressly prohibit the use of an alternative groundwater well by NextEra, which the County has disclosed as a feasible alternative to obtaining water from JBWD. Thus, unlike the Memorandum in *Delaware Tetra*, which provided substantial flexibility in the lead agency’s subsequent consideration of Project alternatives and mitigation measures, the WSA would bind the Applicant to a single course of conduct to obtain the water supply necessary for the Project. Thus, the WSA would cut off the County’s ability to consider a groundwater well, or any other form of water supply, for the Project, and would prohibit the County from modifying the Project with subsequently approved alternatives or mitigation measures.

<sup>29</sup> See July 20 JBWD Staff Report, p. 9.

MWA records disclose that JBWD has consistently used its maximum water purchase allotments from MWA over the past 2 years, that the 500 acre-foot use for 2016 reflects purchases for just 6 of the 12 months (i.e. not the whole year), and that JBWD has projected steadily increasing annual water demands from MWA over the next 4 years which may limit the availability of water for the Project.

2014 was the first year that JBWD purchased recharge water from MWA. The purchases began in October 2014. During the remaining 3 months of that year, JBWD purchased 312 acre-feet of water from MWA (almost half of its annual entitlement).<sup>30</sup> In 2015, JBWD purchased its entire 683 acre-feet allotment from MWA. From January through June of 2016, JBWD has already purchased 500 acre-feet of its total 683 acre-feet allotment for 2016.<sup>31</sup> JBWD thus has 6 months of water supply needs remaining in 2016 that must be satisfied from its remaining 184 acre-feet. JBWD must supply water to its existing customers before it can allocate any additional recharge water for the Project. JBWD's statement that it has 184 acre-feet of MWA water remaining in 2016 to supply the Project is therefore incorrect.

The amount of water requested by JBWD from MWA has also steadily increased each year since deliveries began, and is projected to increase to 1170 acre-feet per year 2020, not including the additional water required to serve the Project.<sup>32</sup> The July 20 JBWD Staff Report explains that JBWD is only guaranteed 684 acre-feet per year from MWA, and that it may only be entitled to additional water if it is available. JBWD has not produced evidence to demonstrate that MWA will feasibly be able to guarantee that JBWD will receive all existing requested water deliveries through 2020, let alone the additional water required to serve the Project for the next 40 years.

Existing evidence demonstrates that there is insufficient water available under JBWD's existing entitlements to serve the Project, and infers that additional or expanded entitlements will be required. This is a potentially significant impact of the Project that neither JBWD nor the County have disclosed to the public, or analyzed in any CEQA document. This analysis must be performed before any water supply agreements may be executed for the Project.

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<sup>30</sup> See Exhibit A, MWD Documents, "State Water Project Deliveries" report.

<sup>31</sup> *Id.*

<sup>32</sup> See Exhibit A at REQUESTED WATER DELIVERY SCHEDULES FOR 2014 to 2020.

## V. CONCLUSION

JBWD's water supply negotiations with NextEra have improperly taken place outside of the CEQA process for the Project, and without the environmental analysis and disclosure required by CEQA. As discussed above, the Commitment Letter and WSA represent premature commitments to the Project that cannot be considered for approval by JBWD until the Project's CEQA review is completed, and until the Project received final approvals from the County.

Furthermore, the WSA fails to incorporate any contingencies to ensure that the Project would mitigate its potentially significant water supply impacts, and improperly seeks to limit potential alternatives and mitigation measures that could otherwise be required by the County to address these potentially significant impacts. In addition, there is substantial evidence supporting a fair argument that JBWD does not have sufficient water available from its existing entitlements from MWA to serve the Project without jeopardizing the water needs of its existing customers. Accordingly, JBWD may not execute the Commitment Letter or WSA at this time or as currently proposed.

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that *any aspect of a project*, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.<sup>33</sup> The Coalition urges the Board to deny the proposed Commitment Letter and WSA, and to direct the County to prepare a legally adequate EIR for the Project, or prepare one itself. Only by complying with all applicable State and Federal laws will the County, JBWD, and the public be able to ensure that the Project's significant environmental impacts are mitigated to less than significant levels.

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<sup>33</sup> CEQA Guidelines § 15063(b)(1).

August 10, 2016  
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Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Christina M. Caro', is written over a faint, circular, dotted-line watermark or seal.

Christina M. Caro

Attachments

CMC:ric

3145-042rc

# EXHIBIT A

State Water Project Deliveries	Actuals As of	December 2014											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Facility	ACTUAL MONTHLY DELIVERIES												
	2014												
Total Deliveries for MWD													
Total Deliveries for Solano Water Transfer													
Total Deliveries for MWA Board Storage													
Total Deliveries for Purchased Water													
Total Deliveries for Watermaster													
Total Water Delivered to Date													
JBWCD										237	75	0	312

State Water Project Deliveries	December 2015												Total Water Delivered to Date
	Actuals As of												
	ACTUAL MONTHLY DELIVERIES 2015												
Facility	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
JBWD	0	0	0	0	0	0	0	0	176	405	102	0	683
Total Deliveries for MWD													
Solano Water Transfer													
Total Deliveries for MWA Board Storage													
Total Deliveries for Purchased Water													683
Total Deliveries for Watermaster													683

State Water Project Deliveries	June 2016												Total Water Delivered to Date
	Actuals As of	2016											
Facility	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
JBWD	0	0	259	207	35	0							501
	Total Deliveries for Watermaster Total Deliveries for Purchased Water Total Deliveries for MWA Board Storage Solano Water Transfer Total Deliveries for MWD												



# MOJAVE WATER AGENCY

## REQUESTED WATER DELIVERY SCHEDULES FOR 2014 TO 2018 (IN ACRE-FEET)

YEAR	Delivery Location	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2014	Recharge Site							100	80	80	80	80	80	500
														0
	TOTAL	0	0	0	0	0	0	100	80	80	80	80	80	500
2015	Recharge Site	42	42	42	42	42	42	42	42	42	42	42	42	504
														0
	TOTAL	42	42	42	42	42	42	42	42	42	42	42	42	504
2016	Recharge Site	50	50	50	50	50	50	50	50	50	50	50	50	600
														0
	TOTAL	50	50	50	50	50	50	50	50	50	50	50	50	600
2017	Recharge Site	60	60	60	60	60	60	60	60	60	60	60	60	720
														0
	TOTAL	60	60	60	60	60	60	60	60	60	60	60	60	720
2018	Recharge Site	70	70	70	70	70	70	70	70	70	70	70	70	840
														0
	TOTAL	70	70	70	70	70	70	70	70	70	70	70	70	840

Agency Name: Joshua Basin Water District  
 Representative: Susan Greer  
 Title: Acting General Manager  
 Phone: 760 366-2042 x 225

Date: 8/7/13

# MOJAVE WATER AGENCY

## REQUESTED WATER DELIVERY SCHEDULES FOR 2015 TO 2019 (IN ACRE-FEET)

YEAR	Delivery Location	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2015					180						300	204		684
														0
														0
	TOTAL	0	0	0	180	0	0	0	0	0	300	204	0	684
2016					180						210	210		600
														0
														0
	TOTAL	0	0	0	180	0	0	0	0	0	210	210	0	600
2017					200						260	260		720
														0
														0
	TOTAL	0	0	0	200	0	0	0	0	0	260	260	0	720
2018											300	240		840
														0
														0
	TOTAL	0	0	0	0	0	0	0	0	300	300	240	0	840
2019											300	240		840
														0
														0
	TOTAL	0	0	0	0	0	0	0	0	300	300	240	0	840

Agency Name: Joshua Basin Water District

Representative: Curt Sauer

Title: General Manager

Phone: 760 366 2113

Date: July 29, 2014

# MOJAVE WATER AGENCY

## REQUESTED WATER DELIVERY SCHEDULES FOR 2016 TO 2020 (IN ACRE-FEET)

YEAR	Delivery Location	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2016	JBWD										342	342		684
														0
														0
	TOTAL	0	0	0	0	0	0	0	0	0	342	342	0	684
2017	JBWD									333	333	334		1000
														0
														0
	TOTAL	0	0	0	0	0	0	0	0	333	333	334	0	1000
2018	JBWD									350	350	350		1050
														0
														0
	TOTAL	0	0	0	0	0	0	0	0	350	350	350	0	1050
2019	JBWD									390	390	390		1170
														0
														0
	TOTAL	0	0	0	0	0	0	0	0	390	390	390	0	1170
2020	JBWD									390	390	390		1170
														0
														0
	TOTAL	0	0	0	0	0	0	0	0	390	390	390	0	1170

Agency Name: Joshua Basin Water District  
 Representative: Curt Sauer  
 Title: General Manager  
 Phone: 760 366 2113

Date: September 1, 2016