



Los Angeles
Department of
Water & Power

RESOLUTION NO. _____

BOARD LETTER APPROVAL

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DATE: May 28, 2015

SUBJECT: Beacon Solar Project (BSP) Public Hearing and Adoption of Resolution of Necessity Authorizing Commencement of Eminent Domain Proceedings to Acquire 33 Interests in Mineral Rights at the BSP Site in the Vicinity of the Community of Cantil in Kern County, California

SUMMARY

The public hearing and adoption of the attached proposed Resolution of Necessity will authorize the LADWP to acquire by eminent domain the Mineral Rights in the unincorporated community of Cantil in Kern County, California. BSP is the construction of 250-megawatts (MWs) of solar panels on approximately 2,300 acres of land owned by LADWP. Although LADWP is the landowner, lenders for the developers have recently imposed a new requirement for clearance of the Mineral Rights from the site.

LADWP presented offers to the owners beginning in November 2014, and its acquisition agents have been attempting to negotiate voluntary purchases of the Mineral Rights interests. The LADWP has not been able to finalize negotiated purchases or contact all 33 owners of the Mineral Rights interests. LADWP recommends proceeding with acquisition through eminent domain (the power to acquire private property rights for public purposes) because the Mineral Rights must be acquired to ensure that the BSP generating facilities are not disturbed or damaged by any mining or extracting activities. The Mineral Rights must be acquired prior to financing and construction of BSP. If the Board of Water and Power Commissioners (Board) adopts the proposed Resolution, LADWP will continue to attempt to negotiate voluntary purchases to the extent those purchases can be achieved.

The attached Resolution of Necessity documents the findings that are required to authorize the initiation of eminent domain proceedings.

Los Angeles City Council (City Council) approval is required by Charter Section 675(d) (1).

RECOMMENDATION

It is recommended that the Board:

1. Hold a public hearing on the proposed Resolution of Necessity.
2. Consider and find the Final Environmental Impact Report (EIR) for the BSP certified by the Kern County Board of Supervisors on September 27, 2012, along with the adopted mitigation measures which provides adequate environmental review of the BSP pursuant to the California Environmental Quality Act (CEQA).
3. Adopt the Resolution of Necessity making findings and authorizing the commencement of eminent domain actions to acquire the real property Mineral Rights interests for the BSP.
4. Request that the City Council approve the Resolution of Necessity and authorize the exercise of eminent domain to acquire the real property Mineral Rights interests.

ALTERNATIVES CONSIDERED

As required by law, LADWP made written offers to the owners of the Mineral Rights interests in amounts not less than the appraised fair market values. LADWP retained acquisition agents and has been successful in reaching voluntary agreements with 8 of the 33 owners of the parcels Beacon Solar Site near Cantil in Kern County, California. These eight agreements are in escrow, but are not yet final. To date, LADWP has not been able to reach agreements with the other 25 owners listed in the Summary Table of Mineral Rights. LADWP and its agents will continue to negotiate voluntary purchases of the Mineral Rights interests, but if we are unable to finalize the agreements in escrow and reach agreements with the other owners, LADWP should initiate the eminent domain process to acquire the Mineral Rights to complete the BSP as approved, on budget and on schedule.

FINANCIAL INFORMATION

The LADWP purchased the underlying fee interest in the entitled Beacon Solar site from NextEra Energy in December 2012 for \$32 million.

BACKGROUND

BSP is essential for meeting LADWP's Renewable Portfolio Standard (RPS) goal of achieving a renewable energy mandate of 33 percent by the year 2020. Through the use of photovoltaic technology, BSP will generate clean, renewable energy. The energy will be delivered to the Los Angeles basin through the Inyo-Rinaldi 230-kilovolt (kV) transmission line. If the BSP is not developed or able to operate at capacity, the City of Los Angeles will have to look elsewhere to meet its RPS mandates.

The 250-MW project would be located on approximately 2,300 acres of LADWP-owned land near the community of Cantil in unincorporated Kern County, California. LADWP is constructing the infrastructure of the solar facility which includes the Beacon Substation, the 230-kV transmission lines that connects the Beacon Substation to the Barren Ridge Switching Station, access roads, and the 34.5-kV collector system. Construction of infrastructure has already commenced and is expected to be completed by October 2015.

In July 2014, LADWP entered into five Power Purchase Agreements with two solar developers – Hecate Energy and SunEdison – to procure, engineer, construct, operate, and maintain 250-MW of solar for a term of 25 years. Start of construction is expected to begin in Quarter 3 of 2015 and is expected to be completed by the end of 2016. If the Mineral Rights interests are not acquired, the output from the solar facilities could be diminished if they must be relocated or removed for mineral extraction.

Eminent Domain Process

The City of Los Angeles, acting by and through its Department of Water and Power, may acquire property by eminent domain for public use and electric supply purposes, both within and outside of its jurisdictional boundaries, in accordance with California Government Code Section 37350.5, Code of Civil Procedure Sections 1240.010 and 1240.125; Public Utilities Code Sections 10001 through 10004, inclusive; and Los Angeles City Charter Section 675.

As required by Government Code Section 7267.2, written offers, based upon the approved appraisals, were presented to the owners of the Mineral Rights interests as determined through searches of public records. While LADWP, through its acquisition consultants, has continued to negotiate with the owners to reach voluntary purchases, to date, LADWP has not been able to finalize negotiated agreements with all of the owners of the Mineral Rights identified in the Summary Table (see pages 7, 8, and 9). This is due to difficulty in finding current addresses or locating the heirs of deceased owners. Thus, the exercise of eminent domain would be necessary to acquire the rights needed for the BSP in a timely manner to meet LADWP's RPS mandates.

In accordance with California Eminent Domain Law, LADWP mailed notices of this hearing to the owners of the Mineral Rights interests informing them of their right to appear and to be heard on the following issues:

1. Whether the public interest and necessity require the BSP.
2. Whether the BSP is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. Whether the subject parcel(s) is/are necessary for the BSP.
4. Whether either the offer(s) required by Section 7267.2 of the Government Code has/have been made to the owner or owners of record, or the offer(s) has/have not been made because the owner(s) cannot be located with reasonable diligence.
5. Whether the requisite environmental review of the BSP has been completed consistent with CEQA.

After the Board has held the public hearing, it must consider the Final EIR certified by the Kern County Board of Supervisors on September 27, 2012, and decide whether to adopt the proposed Resolution of Necessity to acquire the Mineral Rights interests by eminent domain. In order to adopt the Resolution of Necessity, the Board must consider the testimony and evidence (including the information set forth in this Board letter), and by a vote of two-thirds of its governing body, find and determine that the factors listed in items 1 through 5 above exist. Adoption of the Resolution of Necessity by the Board and approval by City Council will authorize LADWP's legal counsel to pursue legal action to acquire the Mineral Rights interests by eminent domain including seeking prejudgment possession of the Mineral Rights interests through a court order.

1. The Public Interest and Necessity Require the BSP

The BSP will be located in Kern County, and will consist of a 250-MW project that will be located on approximately 2,300 acres of LADWP-owned land in the community of Cantil, in unincorporated Kern County, California. LADWP is constructing the infrastructure of the solar facility which includes the Beacon Substation, the 230-kV transmission lines that connects the Beacon Substation to the Barren Ridge Switching Station, access roads, and the 34.5-kV collector system. The BSP will then be constructed on the Beacon Solar site to generate renewable energy.

LADWP's purpose and need for the BSP along with the objectives are to:

- Generate renewable energy to meet LADWP's future electrical energy demands and meet the City of Los Angeles' RPS goals.
- Allow interconnection and expansion of LADWP's renewable energy in the Tehachapi Mountains and Mojave Desert areas.
- Reduce the environmental impacts associated with greenhouse gas emissions and create a more sustainable environment.
- Increase LADWP's system reliability and flexibility in the utilization of renewable energy sources.
- Enable the production and delivery of new renewable energy sources.

2. The BSP is Planned or Located in the Manner That Will be Most Compatible With the Greatest Public Good and the Least Private Injury

BSP is situated on the Beacon Solar property, which LADWP acquired in December 2012, from a solar developer. Comprised of approximately 2,500 acres, Beacon Solar site is located 14 miles north of Mojave, California along Highway 14. Included in the purchase were entitlements such as the Conditional Use Permit (CUP); geological, agricultural, and biological studies; hydrology reports; and preliminary engineering designs. The property is permitted with Kern County for using photovoltaic technology under CUP No. 11, Map No. 152. Development of the property under the terms of the CUP obligates the Property Owner-Operator (now LADWP) to comply with the project Mitigation Measures under CEQA defines "project" as the whole of the action rather than each

separate governmental approval. Acquiring by eminent domain those mineral rights beneath the project site in order to ensure uninterrupted operation of the solar facilities is a part of the BSP and, therefore, covered under the project approval. Kern County also certified an EIR, and adopted Mitigation Measures for BSP. As such, the Beacon Solar site has been reviewed and approved as an appropriate site for the location of the BSP.

The site was vacant when purchased in 2012 and has been used in the past for agricultural purposes but there have not been any mineral extraction or mining ever conducted on the property.

3. The Properties Described in the Resolution are Necessary for the BSP

The acquisition of the Mineral Rights are an essential part of the BSP and are necessary to secure the surface for construction of the solar facilities and necessary to provide continuous, uninterrupted legal access as well as ensure safe and reliable operation of the solar generating station. Purchase of these property interests also ensures the control and preservation of the rights necessary for future maintenance and continuous operation of our facilities without interference by any outside parties attempting to extract minerals from the Beacon Solar site.

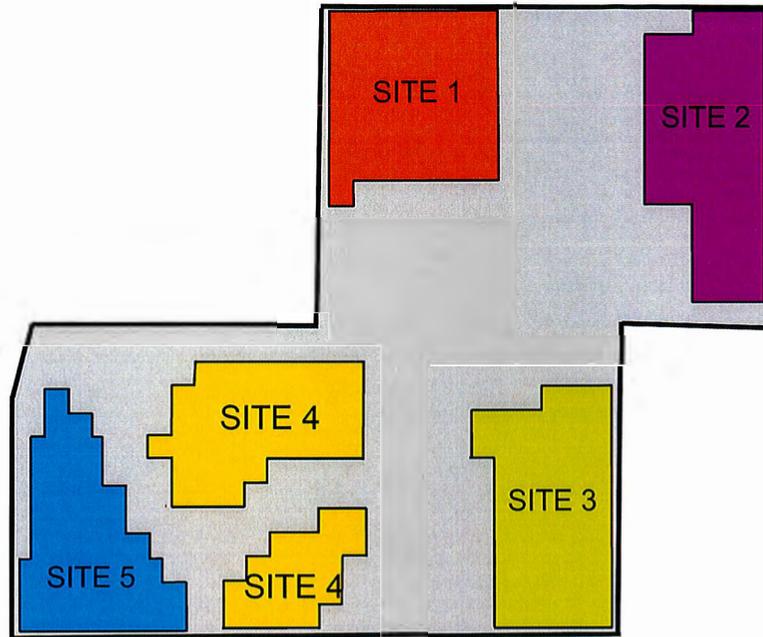
The BSP will be divided into five solar sites as shown in **Figure 1** with each site varying in acres and MW sizes. The MW size for each site is as follows:

- Site 1 = 56 MW
- Site 2 = 48 MW
- Site 3 = 56 MW
- Site 4 = 50 MW
- Site 5 = 40 MW

The Beacon Solar project is comprised of Site 1, 2, 3, 4, and 5. Within each site, the solar developer will design, engineer, procure, construct, and maintain solar photovoltaic panels. Each site will generate and deliver renewable power by interconnecting to LADWP's 34.5-kV collection system.

The Mineral Rights Interests are located within the areas identified as Sites 1, 2, and 3 in the site plan below. If the Mineral Rights interests are not acquired, exploitation of the Mineral Rights by private owners could disrupt the production and distribution of renewable solar energy from BSP.

Figure 1



4. The Offers Required by Section 7267.2 of the Government Code Were Made to the Owners of Record, or the Offers Have not Been Made to Certain Owners Because the Owners Could not be Located With Reasonable Diligence

The LADWP has taken the following required actions for each of the Mineral Rights interests:

- Obtained appraisals from California Licensed General Real Estate Appraisers to determine the Fair Market Value of the property interests.
- Reviewed and approved the appraisals to establish the just compensation (purchase) offer amount.
- Determined, with the assistance of professional consultants, the owners of the property interests and their interests therein by examining title reports, reviewing public records, and searching County Assessor's Records when needed.
- Sent written offers via certified mail, accompanied by an appraisal summary statement, to the owners of record of the property interests for the full amount of just compensation, which was not less than the approved appraised value.

The Mineral Interests (associated with each assessor's parcel number), record owners (as indicated by title reports obtained from First American Title Company and research conducted by White Wolf Land Service), appraised value, amount offered for the property rights, and date the offers were mailed are listed in the Summary Table on the following pages.

Parcel No.	APN	Owner	Approx. Size (Acres) and Percentage Interest	Appraised Amount	Offer Amount Including Administrative Incentive	Date of Offer
11 & 14-2	469-022-09	Nancy Ellen Hassard	653.88 Acres 25.0%	Nominal	\$17,847	11/25/14
12-1	469-050-01,02,05,06,09,17,&18469-060-01,02,12,13,16 & 17	The Heirs and Devisees of the Estate of Adele Houssells Black (a.k.a Adele Black)	331 Acres 33.33%	Nominal	\$12,549	11/25/14
12-2	469-050-01,02,05,06,09,17 & 18 469-060-01,02,12,13,16 & 17	The Heirs and Devisees of the Estate of John Kelly H. Pigg (a.k.a John Kelly Pigg)	331 Acres 33.33%	Nominal	\$12,549	11/25/14
12-3	469-050-01,02,05,06,09,17&18 469-060-01,02,12,13,16 & 17	The Heirs and Devisees of the Estate of Roy Houssells (a.k.a Claude IlroyHoussells)	331 Acres 16.66%	Nominal	\$7,025	11/25/14
12-4	469-050-01,02,05,06,09,17&18 469-060-01,02,12,13, 16 & 17	The Heirs and Devisees of the Estate of KellHoussells	331 Acres 16.66%	Nominal	\$7,025	11/25/14
13A & 13B	469-022-01,02 & 03	David Falk	5 Acres 100%	Nominal	\$2,000	2/13/15
20-2	469-022-01,02 & 03	Jo Ann Mendiburu and Chester C. Lucas	86.67Acres 10.71%	Nominal	\$2,429	11/25/14
20-3	469-022-01,02 & 03	The Heirs of the Estate of Sharon Banks (a.k.a Sharon Mendiburu) c/o Tim Banks	86.67 Acres 8.93%	Nominal	\$2274	11/25/14
20-4	469-022-01,02 & 03	Jo Ann Mendiburu	86.67 Acres 8.93%	Nominal	\$2274	11/25/14
20-5	469-022-01,02 & 03	Julie Bessonart c/o Dennis Bessonart	86.67 Acres 6.25% ^s	Nominal	\$2,042	11/25/14
20-6	469-022-01,02 & 03	Michael Mendiburu	86.67 Acres 6.25%	Nominal	\$2,042	11/25/14

Parcel No.	APN	Owner	Approx. Size (Acres) and Percentage Interest	Appraised Amount	Offer Amount Including Administrative Incentive	Date of Offer
20-7	469-022-01,02 & 03	The Heirs and Devisees of the Estate of Louis Curutchet	86.67 Acres 3.57%	Nominal	\$1,810	11/25/14
20-8	469-022-01,02 & 03	William C. Kuhs, in Trust for George H Mendiburu	86.67 Acres 3.27%	Nominal	\$1,784	11/25/14
20-9	469-022-01,02 & 03	George Mendiburu	86.67 Acres 2.08%	Nominal	\$1,681	11/25/14
21-2	469-021-01	Robert and Margarita Maria Anthoine	85.86 Acres 25.0%	Nominal	\$3,647	11/25/14
21-3	469-021-01	Marcia Rudnick	85.86 Acres 2.27%	Nominal	\$1,696	11/25/14
21-4	469-021-01	Milton and Gloria Diane Rudnick	85.86 Acres /2.27%	Nominal	\$1,696	11/25/14
21-5	469-021-01	Phillip Rudnick	85.86 Acres /2.27%	Nominal	\$1,696	11/25/14
21-6	469-021-01	Robert Rudnick	85.86 Acres 2.27%	Nominal	\$1,696	11/25/14
21-7	469-021-01	Ethan Howard	85.86 Acres 2.27%	Nominal	\$1,696	11/25/14
21-8	469-021-01	Carole Wueste	85.86 Acres 2.27%	Nominal	\$1,696	11/25/14
21-9	469-021-01	Miriam Stull	85.86 Acres 2.27%	Nominal	\$1,696	11/25/14
21-10	469-021-01	Mia Falk	85.86 Acres 2.27%	Nominal	\$1,696	11/25/14
21-11	469-021-01	Jeffrey L. Styr	85.86 Acres 1.81%	Nominal	\$1,657	11/25/14
21-12	469-021-01	Meredith Wright	85.86 Acres 1.13%	Nominal	\$1,598	11/25/14
21-13	469-021-01	Oscar Rudnick	85.86 Acres 1.13%	Nominal	\$1,598	11/25/14
21-14	469-021-01	Carter Allen Rudnick	85.86 Acres 0.56%	Nominal	\$1,549	11/25/14
21-15	469-021-01	Natalie Ann Rudnick	85.86 Acres 0.56%	Nominal	\$1,549	11/25/14
21-16	469-021-01	Paul J. Styr	85.86 Acres 0.45%	Nominal	\$1,540	11/25/14

Parcel No.	APN	Owner	Approx. Size (Acres) and Percentage Interest	Appraised Amount	Offer Amount Including Administrative Incentive	Date of Offer
21-17	469-021-01	Ian Brook	85.86 Acres 0.37%	Nominal	\$1,533	11/25/14
21-18	469-021-01	Gavin Brook	85.86 Acres 0.37%	Nominal	\$1,533	11/25/14
21-19	469-021-01	Devin Brook	85.86 Acres 0.37%	Nominal	\$1,533	11/25/14
22,23,25-27	469-021-03,04,06, 07, 08 & 09	The Heirs and Devisees of the Estate of Corinth Seely	86 Acres 50.0%	Nominal	\$5,793	1/29/15

LADWP's acquisition consultants have attempted to, and will continue to engage in negotiations with the owners to acquire the Mineral Rights interests by voluntary purchase.

However, because the Mineral Rights interests have not yet been acquired by LADWP, the information in the Summary Table is provided to assist the Board in supporting the findings that must be made to authorize acquisition of the Mineral Rights interests by eminent domain:

The City Administrative Officer (CAO) Report is attached.

ENVIRONMENTAL DETERMINATION

As the BSP was originally proposed as a private development it required a CUP. The Lead Agency under CEQA was Kern County. Kern County prepared an EIR for the project in accordance with the requirements of CEQA. On September 27, 2012, the Kern County Planning Commission certified the Final EIR and approved the CUP to allow construction and operation of the project. That decision was appealed to the Kern County Board of Supervisors, which denied the appeal and upheld the approval on October 30, 2012.

In accordance with CEQA, LADWP is a Responsible Agency for this project and, as such, is required to adopt the Mitigation Measure Monitoring Program, Findings of Fact, and Statement of Overriding Considerations. On May 20, 2014, the LADWP Board took these actions for the BSP and fulfilled its requirements as a Responsible Agency under CEQA.

CITY ATTORNEY

The Office of the City Attorney reviewed and approved the Resolution as to form and legality.

ATTACHMENTS

- Resolution (including Legal Descriptions and Plat Maps of the Properties)
- Draft Ordinance
- Map of BSP
- CAO Report