



Board Agenda Item 49.1

DATE: August 22, 2023

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: First Amendment to the Reclamation Agreement with RE Scarlet LLC, and related Escrow Agreement and easements, to implement Project Mitigation Measures and Conditions of Approval of Unclassified Conditional Use Permit No. 3555 which permit the development, operation, and reclamation of a solar energy collection and storage facility.

RECOMMENDED ACTION(S):

- 1. Approve and authorize Chairman to execute approve and execute the First Amendment to Reclamation Agreement and together with the Second Addendum to Reclamation Plan, Exhibit A-1 thereto, with RE Scarlet, LLC, the project applicant (Applicant), to implement project mitigation measures and specific conditions of approval placed on Unclassified Conditional Use Permit (CUP) No. 3555 for a solar photovoltaic electricity generating and energy storage facility, encompassing approximately 2,070 acres, as part of the second phase of a multiphase solar energy project which is located in the unincorporated area of Fresno County, approximately 3.5 miles west-southwest of the community of Tranquility, 6.5 miles east of Interstate 5 (I-5); and**
- 2. Approve and authorize execution by Chairman of the First Amendment to Escrow Agreement with the Applicant and United Security Bank, as the Escrow Agent to accept a cash deposit of \$9,004,541.74 as the Applicant's security to the County for the First Amendment to Reclamation Agreement; and**
- 3. Authorize Director of Public Works and Planning, following your Board's approval of Recommended Action 1, to accept a grant of limited access easement to the County from the Applicant, Exhibit C-3 of the First Amendment to the Reclamation Agreement thereto.**

On September 9th, 2021, the Planning Commission approved CUP No. 3555 for the Project and certified Environmental Impact Report (EIR) No. 7230 for a 400-megawatt (MW) solar photovoltaic generating and 400-MW / 1,600-megawatt hour (MWh) energy storage facility on 4,089 acres. As a condition of those approvals, the Planning Commission required the Applicant's compliance with a reclamation plan, subject to approval of the Director. This item pertains to location in District 1.

On August 23, 2022, the Parties entered into a Solar Project Reclamation Agreement setting forth the Reclamation Plan and requiring a reclamation security for Phase 1 of the approved uses identified in the approved CUP No. 3555, which Phase 1 consists of an approximately 200-MW solar photovoltaic generation facility, 40-MW / 160-MWh energy storage system, substation, and transmission lines. Your Board also approved an Escrow Agreement with the Applicant and United Security Bank addressing the Phase 1 reclamation security.

On July 3, 2023, the applicant submitted to the County and the Director of Public Works approved the Second Addendum to the Reclamation Plan identifying Phase 2 of the remainder of the approved uses identified in the approved CUP No. 3555, which Phase 2 is described as consisting of an approximately 200-MW solar photovoltaic generation facility and 150-MW / 600-MWh energy storage system, Exhibit A-1 thereto.

Your Board's approval of Recommended Actions, taken together, would (1) authorize the County to enter into the recommended First Amendment to Reclamation Agreement together with the Second Addendum to Reclamation Plan (2) approve the proposed First Amendment to Escrow Agreement with the Applicant and the Escrow Agent, and (3) authorize the Director to accept a grant of limited access easement to the County from the Applicant for purposes of any reclamation by the County including its contractors, officers, agents, employees, and representatives, if and to the extent the County elects to do so.

ALTERNATIVE ACTION(S):

Your Board may reject the recommended actions and provide staff with further direction.

FISCAL IMPACT:

No fiscal impact to the County is anticipated.

The Applicant has a reimbursement agreement and funds on deposit with the County to pay for all staff costs associated with processing the Project.

The recommended Amendment to Reclamation Agreement continues to require the Applicant make annual cash deposits into the escrow account for the Escrow Agreement based on the Construction Cost Index reported in the Engineering News-Record. At the end of the 35-year Project life, if the Project is decommissioned, dismantled, and removed by the Applicant, and the Project site is returned to pre-Project condition as determined by the Department of Public Works and Planning, the funds under the recommended Escrow Agreement will be released to the Applicant.

DISCUSSION:

The totality of the project identified in CUP No. 3555 would, when fully built out, consist of a 400-MW solar photovoltaic generation facility with a 400-MW / 1,600 MWh energy storage facility on approximately 4,089 acres. The facilities constructed or to be constructed as Phase 1 of the solar energy project only consisted of a portion of the total project, and as such Phase 1 Reclamation Agreement and Escrow Agreement, approved by your Board on August 23, 2022, did not cover the entire scope of the project by their express language.

The proposed amendments on file with the Clerk reflect the increased cost of reclamation resulting from the construction of Phase 2 of the project. These amendments are intended protect the County in the event the Applicant fails to uphold its obligations to reclaim Phase 1 and/or Phase 2.

The proposed easement, attached to the First Amendment to Reclamation Agreement as Exhibit C-3, would allow the County, and its contractors, officers, agents, employees, and representatives access to the portion of the property not covered by the existing easements, in the event the Applicant defaults under the Reclamation Agreement, as amended, and the County elects to perform reclamation.

If and to the extent the County elects to perform reclamation of the project in the event of an Applicant default, the County will be able to finance such reclamation by drawing on the cash security held in escrow under the Escrow Agreement, as may be amended, with the Applicant and United Security Bank.

The Applicant still contemplates a third and final phase of the project. However, Staff understands that the Applicant may seek a modification to their existing CUP No. 3555 which could result in this third phase being incorporated into a different project. If the Applicant elects to construct the third and final phase prior to (or in lieu of) the approval of a modification to the CUP, Staff will return to Your Board with further amendments to the Reclamation Agreement and Escrow Agreements as needed.

ENVIRONMENTAL ANALYSIS:

The Recommended Actions are intended to implement mitigation measures and conditions of approval with CUP No. 3555, for which EIR No. 7230 was prepared and certified. The Recommended Actions fall within the scope of EIR No. 7230.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - First Amendment to Solar Project Reclamation Agreement
On file with Clerk - First Amendment to Escrow Agreement

CAO ANALYST:

Salvador Espino