



Board Agenda Item 63

DATE: June 10, 2025

TO: Board of Supervisors

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

SUBJECT: Second Amendment to the Reclamation Agreement and two new Escrow Agreements for RE Scarlet LLC, photovoltaic solar generation and energy storage project.

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute the Second Amendment to the Project Reclamation Agreement (for Scarlet I and II), the Reclamation Agreement for Scarlet III, and the Reclamation Agreement for Scarlet IV (collectively, Reclamation Agreements), including the reclamation plans, Exhibit A 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) Nos. 3789 - 3792 for a solar photovoltaic electricity generating and battery storage facility (the Project), encompassing approximately 2,070 acres, located approximately 3.5 miles west-southwest of the community of Tranquility and approximately 6.5 miles east of Interstate 5 (I-5), with easements having already been accepted during a prior phase of this Project;**
- 2. If your Board approves Recommended Action 1 above, approve and authorize the Chairman to execute a Second Amendment to the Escrow Agreement (for Scarlet I and II) and to execute two new Escrow Agreements (for Scarlet III and IV) (collectively, Escrow Agreements) with the Applicant and United Security Bank (USB), located in Fresno, as the Escrow Agent to accept and hold a combined total cash deposit of \$11,991,645.63 as the Applicant's initial security to the County for the Reclamation Agreements, and to identify the County's initially designated representatives (each, a County Representative) who are authorized on behalf of the County to initiate and approve transactions of all types for the escrow account established under the Escrow Agreements;**
- 3. Authorize the Director of Public Works and Planning (Director) to give any notice on behalf of the County, under the Escrow Agreements, including providing any revised Form of Sight Draft (Exhibit A-1 to the Escrow Agreement) (the revised Form of Sight Draft) and/or any revised Certificate as to Authorized Signatures-County of Fresno (Exhibit A-2 to the Escrow Agreements) (the revised Form of Authorized Signatures), as applicable, to the Escrow Agent with respect to any County Representative having a title change or erroneous signature, or to identify any replacement County Representative or any County Representative who has been replaced, as the case may be; and**
- 4. Authorize each County Representative who may be identified by the Director in any notice given to the Escrow Agent, and any related revised Form of Sight Draft and/or revised Form of**

Authorized Signatures, in Recommended Action 3, to execute any supplemental certificate substantially in the form of the revised Form of Authorized Signatures, and to provide any of their identifying information, including any updated or corrected information, as the case may be.

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.

On August 23, 2022, Applicant and the County entered into a "Solar Project Reclamation Agreement" (Original 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. The Board also approved an Escrow Agreement with the Applicant and United Security Bank addressing the Phase 1 reclamation security.

On July 3, 2023, Applicant submitted to the County and the Staff of Public Works and Planning (Department) approved a second addendum to the existing 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.

On August 22, 2023, the Board approved the First Amendment to the Original Agreement with the Applicant, and related Escrow Agreement and easements, to implement Project Mitigation Measures and Conditions of Approval of Unclassified Conditional Use Permit No. 3555. This First Amendment to the Original Agreement was necessary to effectuate Applicant's Plan to develop Phase 2 of the Project.

On September 19, 2024, the Planning Commission approved CUP Nos. 3789, 3790, 3791, and 3792 which amended CUP No. 3555 to allow for independent financial securities and decommissioning of the Project; and increase the physical footprint of the approved battery storage system, to allow the shared use of infrastructure with the Sonrisa Solar Facility (CUP No. 3677), and to eliminate 320 acres approved under CUP No. 3555. This reorganization of the Project into four separate projects (identified in this agenda item as Scarlet I through IV) requires restructuring the Original Agreement to reflect the four separate projects.

On March 27, 2025, the Planning Commission approved amendment to CUP Nos. 3789 and 3792 that proposed to allow modifications of the current project boundaries of CUP Nos. 3789 and 3792, to allow for optimal location of electrical infrastructure within the overall project.

The proposed Reclamation Agreements incorporate the changes to the Original Agreement, as amended, necessitated by CUPs 3789 - 3792; along with the third addendum to the reclamation plan, they would allow for each of the approved CUPs approved by the Planning Commission on September 19, 2024, and amended on March 27, 2025 to have independent financial securities. These independent financial securities allow the Project to be developed in phases and allow the use of shared facilities.

Your Board's approval of Recommended Actions, taken together, would (1) authorize the County to enter into the recommended Reclamation Agreements together with the third addendum to reclamation plan (2) approve the proposed Second Amendment to Escrow Agreement with the Applicant and the Escrow Agent and to execute two new Escrow Agreements (3) authorize the Director to give any notice on behalf of the County to the Escrow Agent as to any changes to any County Representative (4) authorize each County Representative to execute any supplemental certificate in the form of the revised Form of Authorized Signatures. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

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

FISCAL IMPACT:

No Net County Cost associated with the recommended actions.

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 Reclamation Agreements continues to require the Applicant make annual cash deposits into the escrow account for the two new Escrow Agreements 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, the funds under the recommended Escrow Agreements will be released to the Applicant.

DISCUSSION:

The totality of the Project identified in CUP Nos. 3789, 3790, 3791, and 3792 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.

Original CUP and Reclamation Agreement

The Project, as it was approved under CUP No. 3555, is similar in footprint and scope to the Project as it is proposed today, even at full buildout. CUP No. 3555 required that the Applicant prepare a reclamation plan and enter into a reclamation agreement with the County to secure Applicant's obligations under the reclamation plan and to provide for a reclamation financial security sufficient to allow the County, if it elected to do so, to complete reclamation in the event the Applicant defaulted under the reclamation agreement. Applicant was further required to provide limited access easements to the County to permit the County access to the Project site if and to the extent the County would perform any reclamation on the site.

Following the approval of CUP No. 3555, the Applicant informed the County of its intent to construct the Project in Phases, to allow the Applicant to phase the deposit of the reclamation financial security in phases. The County accommodated Applicant's request.

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 Original Agreement and associated Escrow Agreement, approved by the Board on August 23, 2022, did not cover the entire scope of the Project by their express language. When the Board approved the first amendment to the Original Agreement on August 22, 2023, the Applicant was permitted to proceed with Phase 2 of the Project, as approved under CUP No. 3555. Applicant would have required an additional phase before the total buildout of the Project would be permitted. However, by the approval of Phase 2, the Applicant had furnished the County with all of the limited access easements necessary for the full buildout of the Project, as it currently stands.

Approval of CUP Nos. 3789 through 3792

The Planning Commission's September 19, 2024, approval of the new CUPs constitutes a reorganization of the original Project into, essentially, four separate projects (still referred to herein, collectively, as the Project). The division of the Project in this manner allows the Applicant to approach reclamation of the individual components of the Project separately, and to divide the reclamation financial security into parts. These CUPs were amended by Planning Commission action on March 27, 2025, to make technical changes to the Project layout, particularly the location of a street crossing.

Key Conditions of Approval

The Planning Commission approval of CUP Nos. 3789, 3790, 3791, and 3792, includes Condition of Approval (COA) No. 5, requiring the Applicant or its successor-in-interest to adhere to all COAs, mitigation measures, and project notes imposed under CUP No. 3555. This includes COA Nos. 5, 6, and 7, which read as follows:

5. *Prior to the County of Fresno's issuance of the grading or any development permit, the Project developer must enter into a reclamation agreement with the County of Fresno on terms and conditions acceptable to the County of Fresno, which reclamation agreement will require the Project owner to (1) decommission, dismantle, and remove the project and reclaim the site to its pre-project condition in accordance with the approved Reclamation Plan, and (2) maintain a financial assurance to the County of Fresno, to secure the Project owner's obligations under the reclamation agreement, in an amount sufficient to cover the costs of performing such obligations, as [EXHIBIT 1 - Page 19] provided herein. Such financial assurance shall be in the form of cash and maintained through an escrow arrangement or other form of security acceptable at the discretion of the Board of Supervisors.*

The amount of the financial assurance under the reclamation agreement shall (1) initially cover the Project owner's cost of performing its obligations under the reclamation agreement, as stated above, based on the final County of Fresno-approved design of the Project, which cost estimate shall be provided by the Project owner to the County of Fresno, and be subject to approval by the County of Fresno, and (2) be automatically increased annually, due to increases in costs, using the Engineering News-Record construction cost index. This initial cost estimate will consider any project components, other than Improvements, that are expected to be left in place at the request of and for the benefit of the subsequent landowner as long as the improvements are directly supportive restoring the site to a viable agricultural use. (e.g., access roads, electrical lines, O&M building).

6. *The project shall substantially adhere to the provisions in the Draft Reclamation Plan as submitted to the Planning Commission and prepared for the decommissioning of the facility when operation ceases. Reasonable modifications may be made to the Plan to address changes of scope and configuration of the final Site Plan and improvements. The draft reclamation Plan shall be reviewed and approved as final by the County of Fresno, Department of Public Works and Planning prior to the issuance of any development permits.*
7. *The Reclamation Plan shall be revised to provide for an annual increase in costs at 3%, or tied to the Engineering News-Record construction cost index, or other mechanism acceptable to the Fresno County Department of Public Works and Planning.*

The Reclamation Plan

The Applicant has been building off the same reclamation plan since the Board approved the Original Agreement on August 23, 2022. This reclamation plan also included a first addendum approved with the Original Agreement on the same date. A second addendum was included along with the first amendment to the Original Agreement, which the Department approved on July 3, 2023.

Along with the proposed Reclamation Agreements, Applicant has now proposed a third addendum to the existing reclamation plan, which Department Staff approved on April 9, 2025, and is included with each of the proposed Reclamation Agreements. Collectively, the original reclamation plan and its three addenda are referred to as the "Reclamation Plan."

The Reclamation Plan details the steps to be taken by the Applicant or its successor-in-interest to decommission and dismantle the Project at the end of its useful life and return the underlying Project site to

its pre-project condition. The Reclamation Plan also contains an engineer's cost estimate for such work, as to each of the four sections of the Project, expressed cumulatively in 2025 dollars in the amount of **\$11,991,645.63**.

The collective amount of the cash deposits to be made under the Escrow Agreements will be \$11,991,645.63; and the Applicant is required under the proposed Reclamation Agreements to make annual cash deposits into the escrow accounts established under the proposed Escrow Agreements based on the Construction Cost Index reported in the Engineering News-Record.

The term of the recommended Reclamation Agreements is based on the anticipated operational period of the Project; as stated below, that is presently expected to be approximately 35 years. Any extension beyond that time would require an application for and approval of additional entitlements, conditions of which may require entry into additional agreements governing reclamation and financial security.

Scarlet IV

The proposed reclamation agreement for section IV of the Project is unique among the Reclamation Agreements. Section IV constitutes the so-called "common facilities," which amount to a "gen-tie" or transmission line, switching station, electrical substation, and supporting electrical infrastructure. These facilities, to be addressed by the proposed Scarlet IV Reclamation Agreement on file with the Clerk, are to be shared by Scarlet I - III and the "Sonrisa" project, located immediately to the north of the Project, which your Board will address under separate agenda item.

Because Scarlet IV is, under the September 19, 2024, CUPs as amended, a separate project, its potential reclamation must be addressed differently. The Applicant was informed of multiple options for addressing the reclamation of Scarlet IV, including having the Scarlet IV Reclamation Agreement be a multi-party agreement between all users of the Scarlet IV infrastructure. Applicant elected to have the Scarlet IV Reclamation Agreement executed by just a single party.

As a consequence of the Applicant's decision, the County has inserted language in the proposed Scarlet IV Reclamation Agreement and in the remainder of the proposed Reclamation Agreements, including the proposed reclamation agreement for the Sonrisa project, making it clear that County's actions under the Scarlet IV Reclamation Agreement create no third-party rights under the other Reclamation Agreements. For example, if the Applicant or successor-in-interest under the Scarlet IV Reclamation Agreement defaulted, and the County elected to reclaim the Scarlet IV project, the signatory to the Sonrisa reclamation Agreement could not sue the County for the disruption caused by the common facilities going off line. Such a shutdown of the common facilities would be a private matter between the owners of the Scarlet IV and Sonrisa projects.

The need for these protections is driven by the fact that all of the proposed Reclamation Agreements are transferrable and assignable. Therefore, in the future, the County may be dealing with multiple different parties, not the currently single Applicant.

Recommended Action 1 - Approve and execute the Reclamation Agreements

The primary purposes and benefits of the recommended Reclamation Agreements are:

1. To give the County and the Applicant an agreed-upon process for the Applicant to complete the reclamation of the Project and Project site under the Reclamation Plan.
2. For the Applicant to maintain a financial assurance to the County, in the form of cash deposits, in case of "Project Cession" (defined below) and a default of the Applicant or its successor-in-interest under the recommended Reclamation Agreements; in such case, within twelve (12) months of any Project Cession, as reasonably determined by the Director, and the County undertaking the default

remedies under the recommended Reclamation Agreement, the County may elect to draw upon such financial assurance and perform the Applicant's Reclamation obligations using the amount of funds available to the County under such financial assurance. "Project Cessation" is defined as any of the following: (i) there has not been substantial development of the Project within two (2) years following the County Planning Commission's approval of, and issuance to the Applicant, CUP Nos. 3789, 3790, 3791, 3792, and previously CUP No. 3555; (ii) the Project, or a substantial portion thereof, has not, following completion of construction of the Project, produced electricity for at least six (6) consecutive months within a twelve (12) month period, or for three hundred sixty-five (365) non-consecutive calendar days within any twenty four (24) month period, during the term of the Reclamation Agreement; (iv) the expiration or early termination of CUP Nos. 3789, 3790, 3791, 3792, and previously CUP No. 3555; or (v) thirty-five (35) years from the commencement of operation of the Project, in its entirety.

For Scarlet I and II, the Department has prepared a second amendment to the Original Agreement, which builds off of the Original Agreement. For Scarlet III and IV, the Department has prepared two new reclamation agreements, each of which supersedes the Original Agreement to the extent the Original Agreement covered that section.

The Reclamation Agreements allow the Applicant, without the County's consent, to transfer each of the Reclamation Agreements, but only in its entirety, to any entity or person that becomes the sole permittee under the applicable CUP, provided that certain conditions are met, such as the Applicant giving the County at least 30 days' prior notice of the transfer, and the transferee executes an assignment and assumption agreement in a form and substance reasonably satisfactory to the County.

In the event of default under any of the Reclamation Agreements by the Applicant or its successor-in-interest (for example, if the Applicant fails to reclaim the Project and Project site after the end of its useful life, declares bankruptcy, or abandons the Project), the County, if it elects, may undertake the default remedies under the recommended Reclamation Agreement and draw on the cash under the applicable Escrow Agreement and undertake reclamation of the portion of the Project and Project site associated with that Reclamation Agreement in substantial conformity with the Reclamation Plan. Drawing on the funds under the Escrow Agreements, however, will not obligate the County to continue or complete the Reclamation Plan beyond the amount of such funds so drawn. The County may also use a portion of such proceeds for the County's reasonable administrative and overhead costs in connection with such reclamation of the Project and Project site pursuant to the Reclamation Plan, as well as for the County's reasonable costs, if any, that the County needs to incur to obtain immediate, reasonable access to the Project and/or the Project site.

While the Reclamation Agreements each require the Applicant to provide the County with limited access easements, the Department and Applicant agree that the easements provided to the County under the Original Agreement, as amended by the first amendment, are adequate to support the project. Copies of those recorded easements are included as Exhibit C to the Scarlet III and IV Reclamation Agreements on file with the Clerk, while drafts were attached to the Original Agreement and first amendment thereto.

Recommended Action 2 - Approve and execute the Escrow Agreements with the Applicant and the Escrow Agent to accept an initial deposit of \$11,991,645.63 as security to the County for the Reclamation Agreements

If Recommended Action 1 is approved, the Applicant is required to enter into escrow agreements with the County and a qualified financial institution (*i.e.*, an Escrow Agent). The Applicant has proposed United Security Bank, N.A. to serve as their Escrow Agent, and to receive the deposit of the financial assurances and cash deposits totaling \$11,991,645.63. The Escrow Agreements provide funds that the County could, per the Reclamation Agreements, draw upon to perform reclamation of the Project and Project site in the event of a default under any of the Reclamation Agreements by Applicant or its successor-in-interest.

Recommended Actions 3 and 4 - Authorize the Director to give any notice on behalf of the County to the

Escrow Agent and authorize each County Representative who may be identified by the Director in any such notice, to execute any supplemental certificate substantially in the form of the Revised Form of Authorized Signatures:

Your Board's approval of Recommended Action 3 would permit the Director to identify County Representatives having a title change or erroneous signature, or to identify any replacement County Representative or any County Representative who has been replaced, as the case may be. Your Board's approval of Recommended Action 4 would authorize those County Representatives to execute the appropriate document to accomplish such notice by the Director. Initially, such County Representatives are:

- Director of the Department of Public Works and Planning;
- Planning and Resource Management Officer of the Department of Public Works and Planning;
- County Administrative Officer; and
- Auditor-Controller/Treasurer-Tax Collector.

ENVIRONMENTAL ANALYSIS:

The Recommended Actions are intended to implement mitigation measures and conditions of approval with CUP Nos. 3789, 3790, 3791, 3792, and previously CUP No. 3555, for which EIR No. 7230 was prepared, amended, and certified. The Recommended Actions fall within the scope of EIR No. 7230.

REFERENCE MATERIAL:

BAI #49.1, August 22, 2023
BAI #40, August 23, 2022

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Second Amendment to Solar Project Reclamation Agreement
On file with Clerk - Scarlet III Reclamation Agreement
On file with Clerk - Scarlet IV Reclamation Agreement
On file with Clerk - Second Amendment to Escrow Agreement
On file with Clerk - Scarlet III Escrow Agreement
On file with Clerk - Scarlet IV Escrow Agreement

CAO ANALYST:

Maria Valencia