

INTERIM REPORT NO. 2
FOR
IMPERIAL IRRIGATION DISTRICT
REGARDING VINCENT BATTAGLIA ALLEGATIONS

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Michael J. Aguirre, Esq.

maguirre@amslawyers.com

Maria C. Severson, Esq.

mseverson@amslawyers.com

AGUIRRE & SEVERSON, LLP

501 West Broadway, Suite 1050

San Diego, CA 92101

Telephone: (619) 876-5364

Facsimile: (619) 876-5368

Attorneys for Imperial Irrigation District

INTERIM REPORT NO. 1

In the October 24, 2017 Interim Report No. 1,¹ we addressed the question, raised by members of the public, about whether two Imperial Irrigation District (IID) directors had financial interests in a battery storage project approved by the IID board on April 14, 2015. The parties making the claim alleged IID rejected three cheaper offers before awarding the battery contract to Coachella Energy Storage Partners, LLC (CESP), which was partially owned by former IID Director Mike Abatti. In Interim Report No. 1, we found the allegations to be materially incorrect. We found the IID **“directors did not have financial interests in the battery storage project, and there were not three cheaper proposals.”**

REACTION TO INTERIM REPORT NO. 1

Three days after we released Interim Report No. 1, on October 27, 2017, Mr. Vincent J. Battaglia, chief executive officer and owner of Renova Energy Inc., a Palm Desert-based solar company, sent the following letter:

“We read the Interim Report No. 1 of your self-proclaimed ‘independent investigation’ and listened to the testimony you presented Tuesday to the Imperial Irrigation District (“IID”) Board of Directors, and we are appalled at your complete lack of professionalism.

¹ The Desert Sun found an error in Interim Report No. 1 which was corrected as follows: *“It was mistakenly written that IMS pulled out of the joint venture. IMS held a Class A license and continued to be part of a joint venture until its completion. Eric Dollente (the owner of IMS) is a member of Coachella Energy Storage Partners, LLC, beginning in 2013 through 2017. It is the author’s understanding that IMS remained a joint venturer and a member of CESP during this project. The IID’s contractual relationship was with CESP. IID had no direct contract with any of the sub-contractors working on the project. If a sub-contractor were to be replaced, that would be a decision made by CESP.”*

Attached is a copy of our letter to the Fair Political Practices Commission dated September 14, 2017 where we meticulously spell out alleged violations of the Political Reform Act ("PRA"). Yes, it is true that we stated 'See, also, Government Code Section 1090 for other prohibitions.' but the complaint itself was clearly in conjunction with alleged PRA violations, not Government Code Section 1090.

Your exculpatory report, and more particularly your fawning comments to the IID Board, never mentioned the PRA, or any of the alleged violations of the PRA, but concentrated solely on a superficial analysis of Government Code Section 1090 as it applies to two Directors. Your incessant editorializing and your faux-amazement² that 'anyone' would dare to allege a conflict of interest against these two wonderful members of the Board was pure sophistry.

There is no possibility that any objective observer (for example the FPPC, FBI or the Imperial County District Attorney) would conclude that your performance was an objective analysis of the facts and circumstances surrounding the contract in question. In fact, for the \$2000 or \$3000 you might receive for your efforts, you completely sold out to the IID and are now complaisant in their decades long campaign of denial, delay, and obfuscation.

You began your remarks by suggesting that you, or members of your team, were somehow recently affiliated with the Federal Bureau of Investigation and/or the Internal Revenue Service. Your attempt to garner credibility for your work product by invoking the names of these two highly respected governmental agencies is simply beyond the pale. In short, Mr. Aguirre, you should be ashamed of yourself.

I have asked our attorneys to review your alleged 'independent investigation' and your over-the-top obsequious comments at the IID meeting to determine whether any rules of professional conduct have been violated and whether a complaint to the California State Bar is warranted.³

² "Faux" is French for artificial.

³ This statement is unclear as to whether Mr. Battaglia told his attorney (presumed to be Dana Reed) that he was including this sentence in the letter. We note that

You, sir, have done a grave disservice to the rate payers of the Imperial Irrigation District.”

Mr. Battaglia represented he sent copies of his letter to three persons: California Fair Political Practices Commission’s Chief of Enforcement Galena West; Special Agent in Charge of the San Diego Office of the Federal Bureau of Investigation, Eric S. Birnbaum and Imperial County District Attorney Gilbert G. Otero. The letter implied that Interim Report No. 1 was written in response to Mr. Battaglia’s September 14, 2017, letter to the FPPC. It was not; we were not aware of the letter at the time Interim Report No. 1 was issued.

There was another reaction to Interim Report No. 1 that needs to be clarified regarding reporting on the battery contract IID awarded on April 14, 2015. We found in Interim Report No. 1 the allegation that the IID board rejected three cheaper offers for the battery contract before awarding it to a company partially owned by a former IID director was incorrect. The allegation was that the IID board knowingly agreed to pay an extra \$6 million for the battery contract. That was incorrect. We make this point to resolve any confusion remaining on the issue.⁴

The reaction has also included renewed demands for a criminal investigation. However, a criminal violation of Govt. Code Section 1090 must be knowing and willful. *People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 233.

IID has other civil remedies for correcting any Govt. Code Section 1090 violation. Government Code Section 1092 provides:

Professional Responsibility Rule 5-100 prohibits threatening criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

⁴ <https://gilrebellar.podbean.com/e/episode-150-sammy-roth/> at minute 20.

1092. (a) Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless the contract is made in the official capacity of the officer, or by a board or body of which he or she is a member.

(b) An action under this section shall be commenced within four years after the plaintiff has discovered, or in the exercise of reasonable care should have discovered, a violation described in subdivision (a).

Courts have consistently found that no recovery should be had for goods and services provided to the public agency pursuant to a contract that violates Section 1090. (See *County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533 [requiring contractor to disgorge profits that ultimately flowed from public official's violation of Section 1090].) Further, the "agency is entitled to recover any consideration which it has paid, without restoring the benefits received under the contract." *Thomson v. Call* (1985) 38 Cal.3d 633, 646.

BACKGROUND: MR. BATTAGLIA'S NET METERING DISPUTE

Mr. Battaglia has a long-running dispute with the IID over the district's net metering program. Under California law (Public Utilities Code Section 2827), IID was mandated to implement a net energy metering (NEM) program by January 1, 2010, to compensate rooftop solar customers for excess energy generated until rooftop solar reached 5 percent of the utility's peak demand.⁵ The program obligated IID to make NEM available to eligible customer-generators on a first-come, first-served basis. IID determined its NEM obligation to be 50.2 MW based

⁵ <http://www.iid.com/energy/save-energy-and-money/solar-customer-owned-generation/net-metering>

upon a peak of 1,004 MW in 2010, and reached that level ahead of schedule in early 2016.

When IID's NEM program was fully subscribed in early 2016, Mr. Battaglia responded with an aggressive campaign to "pressure [IID] to revise their position and open up Net Metering."⁶ He demanded IID reinstate its net metering program for all comers.⁷ Mr. Battaglia then unleashed a video and press barrage against IID based on material false information. For example, he claimed IID had decided to end its net metering program; however, the net metering program ended after it reached the limit set in state law.

Mr. Battaglia wielded press coverage in support of his side of the net energy metering story to great effect. He carried his anti-IID campaign into the Desert Sun's April 22, 2016, event: The Nation: 'Start looking holistically' at climate, held at Rancho Mirage's Sunnylands Center and Gardens. There, Mr. Battaglia called out to a Desert Sun reporter to write down the anti-IID message:

***"Sammy, please write this down, if you will --**
The Imperial Irrigation District, it's a stone's throw from here, folks.
Do you know **they can't go solar anymore?** Do you realize that they
unilaterally, the board decided –
Um, so the board decided to, unilaterally and without ratepayer input,
decided to cancel net metering. If anyone who has solar, you know
what net metering is.
You create those beautiful, clean solar electrons, you put 'em on the
grid, so when your solar system shuts down at night or on those really
hot days, you draw back those credits. Well, guess what, you can't do
that anymore in the IID. They've rolled it back unilaterally, without
any discussion, any forewarning.
And tonight, I demand that they bring net metering back. They
reinstate net metering. Sammy, that's NEM, net metering."*

⁶ https://www.youtube.com/watch?v=2YFi2hKNR_s

⁷ <https://www.youtube.com/watch?v=bXMN-0AOgLY>

On May 11, 2016, under the headline, “**IID puts brakes on solar,**” a Desert Sun article read: “Solar installers and homeowners who want to go solar are furious with the Imperial Irrigation District, saying the utility has made it impossible for the vast majority of homes and businesses to afford solar panels.” The Desert Sun included a Renova Energy customer in its May 10, 2016, reporting on the issue: "I've already paid for the system. I've got my investment just sitting there, doing nothing," said Paul Nelson, who had Renova Solar install 28 panels on the roof of his Indio home in March. "I figured my return on my investment would be the reduction in my monthly bills. Well, guess what? I'm still getting monthly bills."⁸

In July 2016, the IID board adopted a post-net metering successor program known as “net billing.” The replacement plan was presented to the Energy Consumers Advisory Committee on July 11, 2016, and during two public rate hearings held on July 12 and July 13, 2016.⁹ The net billing program brings prices into alignment with IID’s real cost of providing power for all customers, including those who choose to install rooftop solar systems on their homes.

The net energy billing program allows IID to both balance the interests of all its customers and continue to deliver on the obligation to provide the greatest value at the lowest cost. The new plan eliminates a cap on participation levels, maintaining rooftop solar as an option for any customer who wishes to adopt it. IID currently pays its rooftop solar customers 6.98 cents per kWh.¹⁰

⁸ <http://www.desertsun.com/story/tech/science/energy/2016/05/10/imperial-irrigation-district-slams-brakes-solar/84198932/>

⁹

http://imperialid.granicus.com/MediaPlayer.php?view_id=3&clip_id=172&meta_id=16793
http://imperialid.granicus.com/MediaPlayer.php?view_id=3&clip_id=172&meta_id=16793

¹⁰ Id.

IID serves several impoverished communities. The net metering program resulted in an annual cross-customer class subsidization estimated at \$4.1 million. The successor program is estimated to reduce that annual subsidy by 40 percent.¹¹

Renova Energy's website paints a positive picture for solar project customers: "[g]eneral guidelines say a payback of 6-8 years if you purchase and at least 25% savings on your average bill if you lease."¹² Renova Energy goes on to advise its customers that, "If you choose to purchase a solar system, after it pays for itself and assuming your usage stays the same, you can enjoy free electricity for 30 years or more, as SunPower panels have an expected life of 40 years."¹³ Renova also tells its customers: "If you purchase a system, you will be able to take 30% of the cost of the system as a tax credit, and can spread this credit up to five years if necessary. If you lease, the leaseholder will take the tax credit, but it will be reflected in lower payments for you."¹⁴

Renova Energy appears to have leased, rather than sold, most of its solar project installations. Between 2010 and 2017, Renova Energy installed solar systems on approximately 164 buildings in the IID service area. The high was 65 in 2016 and the low was two in 2010. IID paid over \$1.7 million in incentives for Renova Energy's solar projects.

Riverside County Asked by Mr. Battaglia to Exceed Its Jurisdiction

In March 2017, Mr. Battaglia attempted to persuade Riverside County to exceed its jurisdiction with an ordinance to make IID adopt a net metering program spearheaded by Mr. Battaglia. The Desert Sun reported:

¹¹

http://imperialid.granicus.com/MediaPlayer.php?view_id=3&clip_id=172&meta_id=16793

¹² <https://www.renovasolar.com/solarfinancing.php>

¹³ Id.

¹⁴ Id.

*“Under a motion approved unanimously by the board on Tuesday, county staff will draft an ordinance that would require the Imperial Irrigation District to offer net metering again in unincorporated parts of the eastern Coachella Valley.”*¹⁵

The Desert Sun attributed Mr. Battaglia with the Riverside County ordinance: *“Vincent Battaglia, founder and CEO of Palm Desert-based Renova Solar, brought the net metering issue to the Riverside County supervisors and helped county staff draft the motion approved Tuesday. He said he worked with [a former Supervisor] originally, then finished developing the proposal with [Supervisor] Ashley. ‘This is really the ratepayers saying (to the Imperial Irrigation District), Enough’s enough. We’re not playing by your rules. You’re playing by our rules,’ Mr. Battaglia said.”*¹⁶

Mr. Battaglia’s plan failed when county officials realized jurisdiction over net metering rests with the State Legislature.

Next Round: Mr. Battaglia Makes Accusations Against IID

It was in the context of his frustration over IID reaching its NEM program limits that Mr. Battaglia made his September 14, 2017 allegations of wrongdoing against the IID Board of Directors, its general manager and its general counsel.

In his letter, Mr. Battaglia made allegations against the IID board, general manager and general counsel with the California Fair Political Practices Commission (CFPC) as follows:

“This correspondence concerns activities of employees and agents of the Imperial Irrigation District as documented in exhaustive investigative reports recently published by The Desert Sun, a sister publication of USA Today. Enclosed is a copy of those investigative reports published at various times in the last few weeks.

¹⁵ <http://www.desertsun.com/story/tech/science/energy/2017/03/07/county-could-force-imperial-irrigation-district-bring-back-popular-solar-program/98833372/>

¹⁶ Id.

The Imperial Irrigation District (hereinafter "IID") is a 'Local Government Agency' as that term is defined in Government Code § 82041.

Complainant Electric Ratepayers Alliance is a California nonprofit mutual benefit corporation with activities in both Imperial County and Riverside County, California.

Kevin E. Kelly is, and at all relevant times was, the general manager of IID and a 'Designated Employee' as that term is defined in Government Code § 82019.

Frank Oswald is IID's General Counsel, a "Designated Employee" of IID and has a financial interest in office space leased to Z Global and/or Ziad Alaywan.

Ziad Alaywan is the founder and Chief Executive Officer of Z Global, a Sacramento area based energy consulting firm and whom, because of his inextricable ties to General Manager Kelly, General Counsel Oswald and to IID and Its Board of Directors, is also a "Designated Employee" of IID pursuant to Government Code § 82019. Mr. Alaywan is also a "Source of Income" to General Counsel Oswald as defined in Government Code §87103(c). It also appears that Mr. Alaywan is a "Source of Income" to IID Board Member Bruce Kuhn who was hired to perform services on a ranch owned by Mr. Alaywan.

Bruce Kuhn, James C. Hanks, Norma Sierra Galindo, Matt Dessert and Mike Abatti were all members of IID's Board of Directors when one or more of the alleged violations, detailed in The Desert Sun's articles, occurred.

As reported, IID has paid Ziad Alaywan, or companies closely affiliated with Mr. Alaywan, under the most questionable of circumstances, more than \$50,000,000 over the past four years for goods or services.”¹⁷

¹⁷ The letter quotes the following Fair Political Practices Act provisions: Government Code Section 87100 provides: No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Government Code Section 87103(c)

“The Electric Ratepayers Alliance respectfully requests that you investigate the claims made in the attached articles and take whatever action you deem appropriate.”

In his letter of September 14, 2017, Mr. Battaglia identified himself as the head of his *nonprofit*—the Electric Ratepayers Alliance—not as the CEO of his *for-profit* solar company, Renova Energy.¹⁸ Notably, both companies—Renova and Electric Ratepayers Alliance—certify on official records filed with the Secretary of State that their entities operate out of the exact same address (71-181 Mediterranean, Palm Desert), with Mr. Battaglia as their CEO.¹⁹ The Electric Ratepayers Alliance run by Mr. Battaglia out of the Renova office address was first registered as a new nonprofit one month after the IID vote on the net billing program.

While he was not identified in the October 27, 2017 letter to IID, Mr. Battaglia’s legal counsel is political attorney Dana W. Reed of Reed and Davidson,

provides: A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family or on any of the following:

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. See, also, Government Code Section 1090 for other prohibitions. Government Code Section 91005(b) provides: Any designated employee who realizes an economic benefit as a result of a violation of Section 87100 or of a disqualification provision of a conflict of interest code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.

¹⁸ <https://businesssearch.sos.ca.gov/CBS/Detail>

¹⁹ Id.

located at 515 S. Figueroa, Suite 1110, Los Angeles.²⁰ Mr. Reed is listed as both secretary and agent for service of process of the Electric Ratepayers Alliance in filings with the Secretary of State.²¹ Mr. Reed attended IID’s October 24, 2017, board meeting when Interim Report 1 was issued.

Attorney Reed has practiced law since 1975; he is an elected member of the Indian Wells City Council and served as its mayor in 2016. He is a longtime member of the American Association of Political Consultants.²² Both Mr. Battaglia and Mr. Reed are shown here:



Mr. Battaglia’s Allegations of FPPC Violations

Mr. Battaglia alleges that IID’s general counsel “has a financial interest in office space leased to a [former IID contractor].” This allegation is false. Our investigation has found that IID’s general counsel does not have any interest in the

²⁰ <http://politicallaw.com/people/dana-w-reed/>

²¹ <https://businesssearch.sos.ca.gov/Document/RetrievePDF>

²² <http://politicallaw.com/people/dana-w-reed/>

office space alleged in the letter. Mr. Battaglia supported his September 14 allegations with articles from the Desert Sun. However, the paper reported that the lease was *before* Mr. Oswald became IID's general counsel. In other words, Mr. Battaglia's source contradicts his claim that IID's general counsel has a prohibited financial interest.

Next, Mr. Battaglia alleges that a former IID contractor is a "source of income" for an IID board member because the director was hired to perform services on a ranch owned by the former IID contractor. However, we found in Interim Report No. 1 that the director was hired and paid to do the work as part of his established business. Moreover, the director reported the income from his business on his Form 700.

Mr. Battaglia next complains that the named IID board members were on the board when one or more of the alleged violations occurred, as "detailed in The Desert Sun's articles." Yet, the Desert Sun did not allege any Fair Political Practices Act violation. In fact, the only mention of the Fair Political Practices Act in the Desert Sun articles was a reference to a conflict complaint filed with the Fair Political Practices Commission. The paper reported: "The commission rejected the complaint because it didn't contain enough information, a [FPPC] spokesperson said." The Desert Sun articles did raise the question of whether two directors violated Government Code Section 1090. We resolved those issues in Interim Report No. 1 when we determined no such violations occurred.

CONCLUSION

Based upon the foregoing analysis, we conclude that Mr. Battaglia's letter raises no cognizable violations of the Fair Political Practices Act by any member of the IID Board of Directors, the general manager, nor the general counsel. As for the general manager, the Battaglia September 14, 2017, letter is devoid of any

allegation or credible evidence of such a violation. It appears to simply allege that the general manager is just that -- the general manager.

We will address any Government Code Section 1090 issues and remediation options under Government Code Section 1092 in our next interim report.