

**THIRD INTERIM REPORT PREVIEW  
FOR  
IMPERIAL IRRIGATION DISTRICT  
REMEDICATION OF 1090 ISSUES**

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## **BACKGROUND**

### **A. First Interim Report: District Directors Had No Conflicts Relating to Coachella Energy Storage Partner's (CESP) Battery Storage Contract with IID**

In our first Interim Report, dated October 24, 2017, we addressed the question of 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. Our report explains the allegations were materially incorrect. We found the IID **“directors did not have financial interests in the battery storage project, and there were not three cheaper proposals.”**

The two IID directors' previous financial dealings with individuals, entities, and/or properties connected to the battery project were not, in fact, related to the battery storage project. The battery project contract did not mention the directors, any entities or individuals connected to the directors, or the transactions which formed the basis for the allegations against the directors. There was no evidence – circumstantial or otherwise – showing a connection between any financial benefit received by the directors and the battery contract. In the absence of such evidence, for a violation of Govt. Code section 1090, California law requires there be evidence of a promise by the directors to act in a certain manner relating to the battery project (i.e. voting for approval) in exchange for a financial benefit to the directors. We found no such evidence indicating a *quid pro quo* influencing IID's actions with respect to the contract. Thus, the directors did not have an improper financial interest in the CESP battery project.

We also recognized that members of the public were misled by various claims as to the considerations which led IID to choose CESP's proposal. CESP's base proposal had the lowest cost, met IID's objectives, was well-designed, and would be built in partnership with a contractor who held requisite licenses. The remaining proposals were costlier or had indeterminate costs, lacked features IID deemed necessary, and several of the proposers lacked requisite licensing themselves or through a partnered contractor. Thus, IID selected CESP's proposal as the best-fit, lowest-cost option.

Once IID entered negotiations with CESP, IID then selected options that raised the price of the project, but gave IID benefits such as a 20-year guarantee. Unfortunately, a certain media outlet cited the final price from CESP, including options, and compared that to the earlier base proposal prices of other vendors. This was an apples-to-oranges comparison that suggested the IID board awarded the battery contract to an undeserving vendor when, in fact, CESP had the most cost-effective bid *at the stage its proposal was accepted*.

#### **B. Second Interim Report: No Conflicts from IID Officials' Decision-Making Relating to Former Contractor ZGlobal**

In our second Interim Report dated November 13, 2017, we addressed allegations by Renova Solar CEO Vincent Battaglia against IID's general counsel, an IID director, and the remaining members of IID leadership, as stated in a complaint he filed with the Fair Political Practices Commission (FPPC). Our investigation revealed Mr. Battaglia's claims were meritless.

Mr. Battaglia has a colorful and under-appreciated history with IID: he has long been at the helm of an aggressive public relations campaign to pressure IID leadership into continuing, beyond the boundaries established by state law, a net metering program for IID customers to connect their solar panels to IID's grid. Mr. Battaglia's company sells solar panels and installation services to homeowners in

the Imperial and Coachella valley areas. IID later adopted a program that would continue to reward its ratepayers for contributing solar energy to IID's grid without exceeding limited subsidies mandated by the state of California. IID's net energy billing program removes participation caps and rewards ratepayers at cost for their contributed energy. Mr. Battaglia, nonetheless, continued to campaign aggressively against IID for not continuing the original net metering program, despite state-mandated limits on the program.

We analyzed Mr. Battaglia's letter to the FPPC to determine the validity of his allegations against IID. His allegation against IID's general counsel failed to consider that the complained-of financial relationship with a former IID contractor ended *before* IID's general counsel began his tenure at IID. Mr. Battaglia's allegation against an IID director similarly failed for being unsupported by the circumstances of the transaction at issue and for lack of supporting evidence indicating the existence of an improper financial interest. Therefore, IID leadership was not responsible or in any way liable for any acts or omissions relating to the alleged conflicts of interests. We found Mr. Battaglia's allegations, as described in his complaint to the FPPC, were unsupported by the circumstances of the transactions at issue and by the evidence – or lack thereof – provided by Mr. Battaglia.

In our second interim report, we also reiterated that IID did not reject cheaper bids for the battery storage contract in favor of one \$6 million more expensive.

### **C. Third Interim Report: Remedial Action Relating to ZGlobal's Contracts with IID**

The Third Interim Report will address Government Code section 1090 issues involving a former IID engineer, contractor ZGlobal. Our investigation has led IID to already take remedial action, such as the cancelling of certain contracts with

ZGlobal or any entities with a connection to ZGlobal. We will make additional remedial recommendations under Government Code section 1092 in the Third Interim Report.

While the Third Interim Report was being prepared, another allegation was made asserting that six years ago the IID board conferred an \$8.43-million benefit to a solar project developer. According to this allegation, the IID board agreed to sell 1,400 acres of farmland to a solar developer for \$5.77 million, who then sold the land to another company for \$14.2 million. The claim was that the IID board “**left millions of dollars on the table.**” In this report, we conclude the allegation that IID left millions of dollars on the table, like the earlier claim that the IID board accepted a \$6 million higher bid, is factually incorrect.

## **THE ALLEGATIONS ABOUT THE SOLAR GEN 2 TRANSACTION**

### **A. No Flipping**

Solar Gen 2 is a 150-megawatt solar farm referred to as Alhambra, Arkansas, and Senora and is located on three sites in Calipatria, in the northern Imperial Valley. It is owned by the Southern Power Company:



<b>Solar Gen 2 Solar Facility</b>	
<b>Location</b> Imperial County, California	<b>Fuel Resource</b> Photovoltaic Solar
<b>Capacity</b> 163 MW	<b>Ownership</b> Southern Power 8point3

Southern Power and 8point3 own the 163-megawatt Solar Gen 2 Solar Facility consisting of three projects: Arkansas, Alhambra and Sonora. Commercial operation began in November 2014.

On March 14, 2011, an IID land management specialist conveyed IID's offer to sell **1,581** acres of IID surplus land generally located east of Calipatria and referred to as Mayflower (500 acres), Alhambra (480 acres) and Calipatria (601 acres). IID's offer was not accepted. On April 19, 2011, the IID land management specialist wrote a second letter accepting an offer to purchase approximately **1,942** acres of IID's Western Farm Land property at \$4,000 per acre.

The formal agreements to sell the land for \$4,000 per acre were signed on June 21, 2011, as those making the allegations stipulate. On July 8, 2011, three months after IID accepted the April 19, 2011 offer to purchase the land, San Diego Gas & Electric (SDG&E) announced it had signed a 25-year power purchase agreement (PPA) with Solar Gen 2, LLC, for 150 megawatts of solar power. The land that was the subject of the SDG&E PPA was then sold on August 29, 2011-- four months after IID's April 19, 2011, acceptance.

The media account in which the new allegations were made did not include the value added to the transaction by the SDG&E PPA: "A month after IID sold the land for \$5.77 million, it was flipped to another company for \$14.2 million, newly obtained records show — meaning the public utility may have left millions of dollars on the table." The value of the land *with* the PPA was necessarily higher than the value of the land without one. However, the reporter alleged the land was "flipped." The term "flipped" typically refers to a situation in which "speculators entered the market in the expectation of 'flipping' houses to make a quick profit."<sup>1</sup> In this case, after IID accepted the offer (April 2011), the land was improved with a PPA (July 2011) before it was sold to a third party (August 2011)

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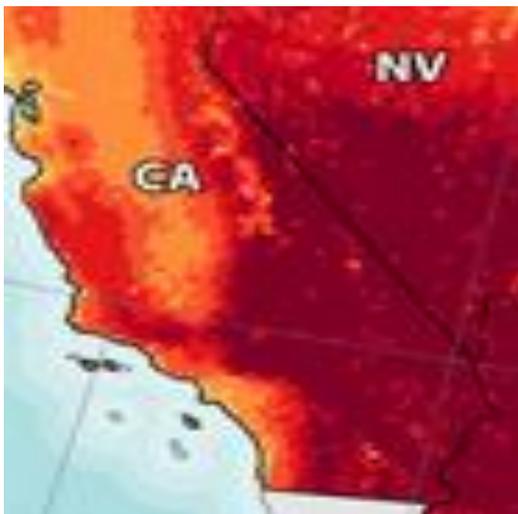
<sup>1</sup><http://www.dre.ca.gov/serp.html?q=%22flipping%22+&cx=001779225245372747843%3A11sknaw8obu&cof=FORID%3A10&ie=UTF-8&submit.x=15&submit.y=9>

Completing the April 19, 2011, sale was valuable to IID for two other reasons not considered by those making the allegations. First, and most importantly, the solar project connected to the California Independent System Operator (CAISO) through IID's transmission system.<sup>2</sup> Second, the solar project allowed IID to utilize the solar following program to supply water to Coachella Valley under the Quantification Settlement Agreement. (QSA).<sup>3</sup>

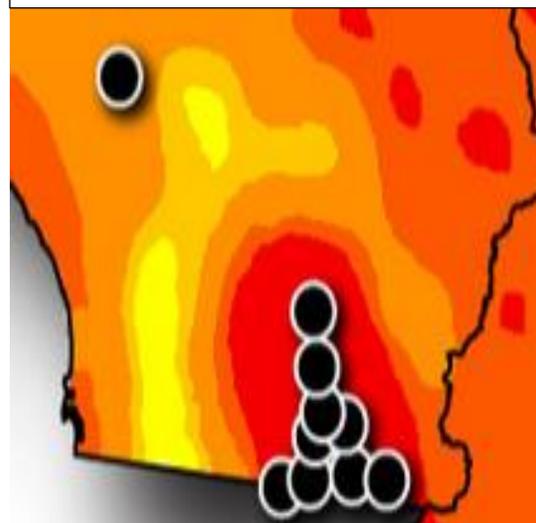
### **B. CAISO Connection**

Up to **8,480 MW** of renewable energy has been identified as available for development in Imperial County, according to California's lead energy agencies. Further, the U. s. government's primary laboratory for renewable energy, energy efficiency research and development -- the National Renewable Energy Laboratory (NREL) -- has identified Imperial County as perhaps the most favorable region in the nation for solar and geothermal energy, as shown here on two NREL energy potential maps:

**NREL Map Solar Resources Concentrated in Imperial County**



**NREL Gives Imperial County Most Favorable Geothermal Rating**



<sup>2</sup>[https://www.google.com/search?q=midway+to+bannister+power+line&rlz=1C1GCEA\\_enUS752US752&oq=midway+to+bannister+power+line&aqs=chrome..69i57.14544j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=midway+to+bannister+power+line&rlz=1C1GCEA_enUS752US752&oq=midway+to+bannister+power+line&aqs=chrome..69i57.14544j0j7&sourceid=chrome&ie=UTF-8)

<sup>3</sup> The QSA resolved, for a period of 35-75 years, issues regarding the reasonable and beneficial use of Colorado River water within Southern California.

Geothermal resources in Imperial Valley are located principally in the northern part of the Imperial County, as shown here:

**Cluster of 7 Geothermal Plants in  
North Imperial Irrigation District Territory**



While solar power resources are not limited to any one part of IID's territory, they are principally located in the southern portion of the county, near Mount Signal:



IID has two electric transmission lines (the KN/KS line) connecting the Imperial Valley geothermal and solar renewable resources through the Midway Substation to CAISO at the Mirage Substation. In South Imperial County, the IID has a 230 kilovolt (kV) electric transmission line (the S line) connecting the Imperial Valley geothermal and solar renewable resources to the CAISO at the Imperial Valley Substation. Once the renewable energy transported on IID's 230-kV lines (the KN and KS lines) reaches the Mirage Substation, it is stepped up to 500-kV and carried on CAISO's 500-kV lines to load-serving utilities. Once the renewable energy transported on IID's 230-kV lines (the S line) reaches the Imperial Valley Substation, it is stepped up to 500-kV and carried on CAISO's two 500-kV lines to load-serving utilities.

As of April 2011, California was on schedule to reach 21,000 MW of renewable energy (18,800 MW wholesale; 2,200 MW self-generation) by year-end 2014. Rather than support the development of the Imperial Valley's geothermal and other renewable energy resources, CAISO has blocked its full development because material amounts of the renewable energy would have to be transported through the IID balancing authority to CAISO transmission lines. The IID balancing area adjoins and is dominated by the CAISO balancing area<sup>4</sup>:



<sup>4</sup> [http://www.energy.ca.gov/maps/serviceareas/balancing\\_authority\\_areas.pdf](http://www.energy.ca.gov/maps/serviceareas/balancing_authority_areas.pdf)

Despite CAISO's control of the state's wholesale transmission grid for the years leading up to the April 2011 agreement, IID had striven to increase the delivery of greater amounts of renewable energy from the Imperial Valley to where it was needed in California's coastal communities. However, until the April 2011 agreement, generators in the IID service territory were unable to secure a single renewable interconnection in which renewable energy was wheeled to the CAISO transmission grid through IID's lines.

Solar Gen 2 connected to the CAISO system primarily south on IID's M line to the Imperial Valley Substation. One part of the Solar Gen project (Sonora) connected north to the CAISO system through the Midway-Bannister power line.<sup>5</sup> The Midway-Bannister transmission line was constructed to serve the needs of renewable energy generation projects at the southern end of the Salton Sea.<sup>6</sup>

Thus, the Solar Gen 2 project allowed IID to achieve an important milestone in its continuing effort to increase the deliverability of renewable energy out of Imperial County to the CAISO transmission grid.

### **C. Fallowing of Solar Gen 2 Land**

A third benefit IID achieved was IID's use of the conserved water from the 25-year fallowing of the Solar Gen 2 project land to satisfy IID's water delivery obligation to the Coachella Valley Water District. The Quantification Settlement Agreement gave the Coachella Valley Water District (CVWD) the opportunity to purchase additional water from IID. IID is required to provide water to CVWD for

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<sup>5</sup> Another recent media account implied IID spent \$9.4 million to build the Midway-Bannister for the sole reason of allowing Sonora to connect to the CAISO line. This allegation was also incorrect and will be addressed in detail in the full Third Interim Report.

<sup>6</sup>[https://www.google.com/search?q=midway+to+bannister+power+line&rlz=1C1GCEA\\_enUS752US752&oq=midway+to+bannister+power+line&aqs=chrome..69i57j14544j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=midway+to+bannister+power+line&rlz=1C1GCEA_enUS752US752&oq=midway+to+bannister+power+line&aqs=chrome..69i57j14544j0j7&sourceid=chrome&ie=UTF-8)

\$75 per acre-foot, while paying farm landowners \$285 per acre-foot—leaving IID with a per-acre-foot deficit of \$210. However, IID retained the water rights to the farmland sold for the Solar Gen 2 project. Under IID’s temporary solar fallowing program, IID can provide water from the Solar Gen 2 land to CVWD without having to pay the \$285 per acre-foot charge to generate it for 25 years (the life of the PPA). Over the same 25-year span of this agreement, the cost-avoidance—and therefore the bottom line savings to IID—could be as high as \$50 million. <sup>7</sup>

#### **D. Business Judgment Rule**

The premise of the allegations—that the IID board left several million dollars on the table in connection with the Solar Gen 2 land deal—is not correct. As detailed above, the financial details of the land sale, achievement of IID’s overarching goal of facilitating transmission connections to the CAISO grid, and the realization of water transfer savings all support the conclusion that the Solar Gen 2 transaction was a sound and prudent exercise of the IID board’s business judgment.

The business judgment rule provides "a presumption that in making a **business** decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." The Convergence of Good Faith and Oversight, 55 UCLA L. Rev. 559, 563 fn 19.

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<sup>7</sup> The savings is attributed to Solar Gen 2’s 6,785.7 acre-feet of water per year at \$285 per-acre-foot times 25 years, which equals \$47.5 million.

## **CONCLUSION**

The IID board's support of the 2011 sale of farmland to the Solar Gen 2 project was a valid exercise of the board's authority and demonstrated sound business judgment on behalf of the public. Far from leaving millions of dollars on the table, as alleged, IID has derived tremendous strategic and financial benefit from the transaction that will continue into the future.