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VIA EMAIL AND CERTIFIED MAIL

August 20, 2010

Ray McNerney, FOIA Officer
U.S. Department of the Interior
Office of the Secretary
MS-116, SIB
1951 Constitution Ave, NW
Washington, DC 20240
osfoia@nbc.gov

Re: Freedom of Information Act Request – Sunrise Powerlink & Related Energy Projects

The purpose of this letter is to request documents under the Freedom of Information Act in an effort to determine the extent of communications by and between Secretary Ken Salazar and/or Undersecretary David Hayes and other employees at the Washington D.C. headquarters of the Department of Interior ("DOI") and others relating to San Diego Gas & Electric's ("SDG&E") Sunrise Powerlink ("powerlink") transmission line project and seven other related energy projects in San Diego and Imperial counties in southern California.

The Protect Our Communities Foundation is vitally concerned about conservation and proper management of San Diego and Imperial county's fragile arid environments including activities of the Department of Interior and other agencies relating to energy development in this region. The Protect Our Communities Foundation (POC) is dedicated to the promotion of a safe, reliable, economical, renewable, and environmentally responsible energy future for San Diego County. POC was initially focused on organizing property owners and communities into an effective and unified opposition to the Sunrise Powerlink transmission line project. Since then POC has continued this role and has coalesced into a positive and effective regional voice for smart energy – local generation and distribution of renewable and clean energy.

Consistent with the POC mission and consistent with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I respectfully request the following information on behalf of POC. For

the purposes of this FOIA request, The term “*documentation of communications or interactions*” means any letters, email messages, faxes, meeting agendas, meeting minutes or notes, phone call records or notes, calendar entries or notations or any other written documentation recording the occurrence or subject matter of any communications or interactions.

- Any documentation of communications or interactions between and amongst Secretary Ken Salazar, Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and/or any other staff of other offices or agencies of the Department of Interior related to the "Climate Change Response Council"¹ including but not limited to meeting agendas, meeting minutes or notes, calendar entries or notations or any other written documentation recording the occurrence or subject matter of meetings of the Climate Change Response Council;
- Any documentation of communications or interactions by Secretary Ken Salazar and/or Undersecretary David Hayes relating to the Sunrise Powerlink;
- Any documentation of communications or interactions by Secretary Ken Salazar and/or Undersecretary David Hayes relating to the Westwide Energy Corridor;
- Any documentation of communications or interactions by Secretary Ken Salazar and/or Undersecretary David Hayes relating to the Imperial Valley Solar Project (formerly Stirling Energy System's Solar Two Project);
- Any documentation of communications or interactions by Secretary Ken Salazar and/or Undersecretary David Hayes relating to Sempra Energy's Energia Sierra Juarez project;
- Any documentation of communications or interactions by Secretary Ken Salazar and/or Undersecretary David Hayes relating to San Diego Gas and Electric's ECO Substation project;
- Any documentation of communications or interactions by Secretary Ken Salazar and/or Undersecretary David Hayes relating to Iberdrola / Pacific Wind Development's Tule Wind project;

¹ According to Undersecretary David Hayes keynote speech at the December 2009 Western Governor's Association winter meeting, the "Climate Change Response Council" is a weekly meeting attended by top Department of Interior managers including Secretary Ken Salazar, Undersecretary David Hayes, and the directors of each of the Department's eight bureaus.

- Any documentation of communications or interactions by Secretary Ken Salazar and/or Undersecretary David Hayes relating to San Diego Gas and Electric and Invenenergy's Kumeyaay Wind II & III projects proposed on the Campo Kumeyaay Nation;
- Any documentation of communications or interactions by Secretary Ken Salazar and/or Undersecretary David Hayes relating to San Diego Gas and Electric's Manzanita Wind project;
- Any documentation of communication or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and staff or other representatives of Sempra Energy or San Diego Gas and Electric relating to any of the above listed 8 energy projects (including but not limited to SDG&E Chief Operating Officer Michael Niggli, Latham and Watkins, and/or any other staff, attorneys, consultants, lobbyists and/or any other agents of Sempra Energy and/or SDG&E);
- Any documentation of communications or interactions between and amongst Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior relating to any of the above listed 8 energy projects;
- Any documentation of communications or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and Secretary Tom Vilsack and/or any other staff of the Washington D.C. headquarters of the Department of Agriculture relating to any of the above listed 8 energy projects;
- Any documentation of communications or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and any staff of any office of the Forest Service relating to any of the above listed 8 energy projects including but not limited to Chief Tom Tidwell and/or Regional Forester Randy Moore and/or Cleveland National Forest Supervisor Will Metz;
- Any documentation of communications or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and any staff of any office of the Bureau of Land Management relating to any of the above listed 8 energy projects including but not

limited to Director Bob Abbey and/or Acting State Director Jim Abbott and/or Project Manager Jim Stobaugh and/or District Manager Teresa Rami and/or former Field Office Manager Vicki Wood and/or former Acting Field Office Manager Tom Zale and/or former Acting Field Office Manager Daniel Steward;

- Any documentation of communications or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and any staff of any office of the Fish and Wildlife Service relating to any of the above listed 8 energy projects including but not limited to former Director Sam Hamilton and/or Regional Director Ren Lohofener and/or Field Supervisor Jim Bartel;
- Any documentation of communications or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and any staff of any office of the Army Corps of Engineers relating to any of the above listed 8 energy projects;
- Any documentation of communications or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and any staff of any office of the Department of Energy relating to any of the above listed 8 energy projects;
- Any documentation of communication or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and Senator Dianne Feinstein and/or any staff of Senator Dianne Feinstein relating to any of the above listed 8 energy projects;
- Any documentation of communication or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and any staff or other representative of the California Public Utilities Commission relating to any of the above listed 8 energy projects;
- Any documentation of communication or interactions between Secretary Ken Salazar and/or Undersecretary David Hayes and/or any other staff of the Washington D.C. headquarters of the Department of Interior and any staff or other representative of the California Energy Commission relating to any of the above listed 8 energy projects;

REQUEST FOR FEE WAIVER

We request that you waive all fees in connection with this matter. As shown below, The Protect Our Communities Foundation meets the two-pronged test under FOIA for a fee waiver, 5 U.S.C. § 552(a)(4)(A)(iii), as implemented by the Department of Interior's fee waiver regulations. In particular, POC has demonstrated that the disclosure of this information will significantly contribute to public understanding of the operations or activities of the government.

In considering whether POC meets the fee-waiver criteria, it is imperative that the Department of Interior remember that FOIA carries a presumption of disclosure and that the fee-waiver amendments of 1986 were designed specifically to allow non-profit, public interest groups such as POC access to government documents without the payment of fees. As stated by one Senator, “[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . .” 132 Cong. Rec. S. 14298 (statement of Sen. Leahy). In interpreting this amendment, the Ninth Circuit has stated that the amended statute “is to be liberally construed in favor of waivers for noncommercial requesters.” McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy). The Ninth Circuit has also explicitly pointed out that the amendment's main purpose was “to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA.” Id. Thus, both Congress and the courts are clear in their interpretation that the main legislative purpose of the amendments is to facilitate access to agency records by “watchdog” organizations, such as The Protect Our Communities Foundation, which use FOIA to monitor and challenge government activities. As the District of Columbia Circuit Court has stated, this waiver provision was added to FOIA “*in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,*” in clear reference to requests from journalists, scholars, and, most importantly for our purposes, non-profit public interest groups. Better Gov't Ass'n v. Department of State, 780 F.2d 86, 93-94 (D.C. Cir. 1986), quoting Ettlinger v. FBI, 596 F. Supp. 867, 876 (D. Mass. 1984) (emphasis added).

I. The subject of the requested records concerns “the operations or activities of the government”

The subject matter of this request relates to the extent and content of communications by senior DOI managers, other DOI employees, and others relating to the Sunrise Powerlink and seven other energy projects. DOI involvement in permitting the powerlink and the seven other energy projects is a clear and identifiable activity of the federal government, in this case an executive branch agency the U.S. Department of Interior. See Judicial Watch, 326 F.3d at 1313

(“[R]easonable specificity’ is ‘all that FOIA requires’ with regard to this factor.”) (internal quotations omitted).

II. The disclosure is “likely to contribute” to an understanding of government operations or activities (the informative value of the information to be disclosed)

The information requested will help provide POC with insight into the extent to which senior DOI manager have and/or will continue to influence decisions on the powerlink and seven other energy projects by other DOI staff, DOI agencies, and other agencies such as the Department of Agriculture and Forest Service. These documents are not currently in the public domain. Their release is not only “likely to contribute,” but is in fact certain to contribute to better public understanding of DOI and other agencies' decision making for these projects. The information requested will likely contribute to an understanding of the extent to which senior DOI managers have and/or will continue to influence other DOI staff, other DOI agencies, and other agency decisions on the powerlink and seven other energy projects. The public is always well served when it knows how government activities, particularly matters touching on legal and ethical questions, have been conducted. See Judicial Watch, 326 F.3d at 1314 (“[T]he American people have as much interest in knowing that key [agency] decisions are free from the taint of conflict of interest as they have in discovering that they are not.”).

III. The disclosure of the requested information will contribute to “public understanding”

In McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d at 1286, the court made clear that “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations....” In this instance, all the requested documents potentially provide new information on the extent to which senior DOI manager have and/or will continue to influence decisions on the powerlink and seven other energy projects by other DOI staff, DOI agencies, and other agencies. Moreover, the information will provide important oversight of DOI activities that is otherwise unavailable to the public, namely typical yet obscure upper management communications likely to occur around energy projects perceived by some to be important to federal renewable energy goals. See Western Watersheds Project v. Brown, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) (“WWP asserted in its initial request that the information requested was either not readily available or never provided to the public, facts never contradicted by the BLM. Therefore, the Court finds that WWP adequately demonstrated that the information would contribute significantly to public understanding.”); see also Community Legal Services v. HUD, 405 F.Supp.2d 553 (D. Pa. 2005) (“Thus, as in Forest Guardians, the CLS request would likely

shed light on information that is new to the interested public.”); see also Institute for Wildlife Protection v. U.S. Fish and Wildlife Service, 290 F.Supp.2d 1226, 1230 (D. Or. 2003), (finding that the FOIA request was informative of government operations because “there is substantial public interest in agency activities relating to endangered species.”)

IV. The disclosure is likely to contribute significantly to public understanding of government operations or activities

Public oversight and enhanced understanding of the extent to which senior DOI managers have and/or will continue to influence decisions on the powerlink and seven other energy projects by other DOI staff, DOI agencies, and other agencies is absolutely necessary. POC’s track record of active participation in oversight of governmental agency activities and their consistent contribution to the public’s understanding of agency activities is well established. In determining whether the disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject. Carney v U.S. Dept. of Justice, 19 F.3d 807 (2nd Cir. 1994)(emphasis added).

The documents requested in this FOIA request will be used to determine the extent to which senior DOI managers have and/or will continue to influence decisions on the powerlink and seven other energy projects by other DOI staff, DOI agencies, and other agencies. Concurrent with any action which POC may take after obtaining the requested documents, POC will utilize its informational publications to publicize any information deemed of interest to its members, decision makers, and the public. This is certain to result in a significant increase in public understanding of government agency activity, and in particular of DOI activities. POC’s informational publications supply information not only to POC’s membership, but also to the memberships of many other local and regional conservation organizations. Our informational publications continue to contribute information to public media outlets, as well. For example, information such as that presently requested is often disseminated through email updates and POC’s web site (www.pocfdn.org). The Protect Our Communities Foundation routinely distributes email updates to its lists. Representatives of POC routinely speak with the news media and make public presentations on issues concerning the powerlink, the seven other energy projects, and other regional energy issues. Information concerning the requested materials will likely be disseminated through all of these means. See Forest Guardians v. DOI, 416 F.3d 1173, 1180 (10th Cir. 2005) (“Among other things, Forest Guardians publishes an online newsletter, which is e-mailed to more than 2,500 people and stated that it intends to establish an interactive grazing web site with the information obtained from the BLM. By demonstrating that the records are meaningfully informative to the general public and how it will disseminate such information,

Forest Guardians has shown that the requested information is likely to contribute to the public's understanding of the BLM's operations and activities.”).

V. Obtaining the information is of no commercial interest to POC

Access to government documents and similar materials through FOIA requests is essential to POC’s role of educating its members, other contacts, and the general public. POC has no commercial interest nor will POC realize any commercial benefit from the release of the requested information.

I hope that this letter has demonstrated to your satisfaction that POC qualifies for a full fee-waiver, and that you will immediately begin to search, copy, and deliver the requested material. Please send all materials to the contact below:

David Hogan
P.O. Box 141
Mount Laguna CA 91948

Thank you very much for your consideration. Please call me at 760 809-9244 if you have any further questions about this request.

Sincerely,

A handwritten signature in black ink that reads "David Hogan". The signature is written in a cursive style with a long horizontal flourish at the end.

David Hogan