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ENERGY FACILITY SITE
EVALUATION COUNCIL

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

KITTITAS COUNTY, a subdivision of)
the State of Washington,)
)
Petitioner,)
v.)
THE HONORABLE JAY INSLEE,)
Washington State Governor, ENERGY)
FACILITY SITE EVALUATION)
COUNCIL, TUUSSO ENERGY, LLC,)
COUNSEL FOR THE ENVIRONMENT,)
SAVE OUR FARMS,)
)
Respondents.)

NO.

**PETITION FOR JUDICIAL REVIEW
PURSUANT TO RCW 80.50.140**

Kittitas County, by and through its attorneys, petitions the Court for review of the Governor's approval of the TUUSSO Solar project, (Columbia Solar Project) and execution of the Site Certification Agreements dated October 17, 2018, as well as the Energy Facility Site Evaluation Council's recommendation therefore, as follows:

1. The name and mailing address of the Petitioner is as follows:

KITTITAS COUNTY
c/o Kittitas County Board of County Commissioners
Room 108, Kittitas County Courthouse
2005 W. 5th Avenue
Ellensburg, Washington 98926

2. The name and mailing address of the Petitioner's attorney is:

Gregory L. Zempel	Prosecuting Attorney
and	
Neil A. Caulkins	Deputy Prosecuting Attorney
Attorneys for Kittitas County	
Kittitas County Courthouse, Rm. 213	
205 W. 5 th Avenue	
Ellensburg, Washington 98926	

3. The name and mailing address of the agency whose action is at issue is:

The Honorable Jay Inslee,
Washington State Governor
416 Sid Snyder Avenue SW
PO Box 40002
Olympia, WA 98504-0002

Energy Facility Site Evaluation Council
1300 S. Evergreen Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

4. Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action:

Approval of the Columbia Solar Project based upon EFSEC's Report To The Governor
On Application 2017-01 and execution of the Site Certification Agreement(s) dated

1 October 17, 2018. A copy of the letter approving the project and the Report To The
2 Governor are attached hereto as Exhibits "A" and "B." The Site Certification
3 Agreements manifest the conditions and terms of approval based upon the Report To
4 The Governor, and can be found at:

5 http://www.efsec.wa.gov/Tuusso_Solar/RecGov.html.

- 6
7 5. Identification of persons who were parties in any adjudicative proceedings that led to
8 the agency action:

9 TUUSSO Energy, LLC
10 Timothy McMahan
11 Stoel Rives, LLP
12 760 SW Ninth Ave., Suite 3000
13 Portland, OR 97205

14 Counsel for the Environment
15 1125 Washington St. SE
16 PO BOX 40100
17 Olympia, WA 98504-0100

18 Office of the Attorney General
19 1125 Washington St. SE
20 PO Box 40100
21 Olympia, WA 98504-0100

22 Save Our Farms
23 James Carmody
24 Meyer Fluegge & Tenney PS
25 230 S 2nd St Ste 101
Yakima, WA 98901-2865

6. Facts to demonstrate that the Petitioners are entitled to obtain a judicial review:

Adequate Water Supply Determination

1 Kittitas County Code section 13.35.020 provides, in pertinent part, that "An adequate
2 water supply determination is required of all persons who are:... making applications for land uses
3 that require water, including but not limited to ...conditional uses." WAC 296-800-23005, 23020,
4 and 23025 require the provision of water and facilities if an employer will have employees.
5 Neither the MDNS nor the site certification agreements in this matter make provision for potable
6 water, and thus violate state law and county code.

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8 The Governor's and EFSEC's action prejudices Kittitas County and Kittitas County's
9 interests were among those which were required to be considered in making this decision. A
10 judgment in favor of Kittitas County would eliminate or redress that prejudice.

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13 7. The Petitioner's reasons for believing that relief should be granted:

14 Kittitas County asserts that the following errors in the proceedings support the granting
15 of the relief requested by Petitioners in this matter.

16 Kittitas County Code requires that a solar farm have a conditional use permit. KCC
17 17.15.060.1. KCC 17.60A.020(14) states that an adequate water supply determination may be
18 required for a conditional use permit. KCC 13.35.020 states that an adequate water supply
19 determination is required for conditional use permits that require water. WAC 296-800-23005
20 requires that if an employer has employees, the employer must provide its employees with potable
21 water (see also WAC 296-800-23020 and 296-800-23025). The TUUSSO projects will have some
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1 number of employees. Hence, the TUUSSO projects, under Kittitas County code and state law,
2 would need a conditional use permit, and because it will involve employees, will also require an
3 adequate water supply determination. An adequate water supply determination "shall require
4 either: 1) a letter from a water purveyor stating that the purveyor has adequate water rights and
5 will provide the necessary water for the new use; 2) an adequate water right for the proposed new
6 use; or 3) a certificate of water budget neutrality from the Department of Ecology or other
7 adequate interest in water rights from a water bank. No new use to which this chapter is applicable
8 shall be approved without one of these required submissions." KCC 13.35.027(2). The projects do
9 not have adequate water supply determinations, and so are inconsistent with county code and state
10 law.

11 A project will have a significant adverse environmental impact if it is in "conflict with
12 local, state, or federal laws or requirements for the protection of the environment." WAC 197-11-
13 330(3)(e)(iii). Quality and quantity of groundwater for public water supplies are elements of the
14 "environment" for SEPA purposes, and these are specifically required to be protected by the
15 Growth Management Act which is a series of laws passed to protect the environment. Quality and
16 quantity of groundwater for public water supplies in fact is protected by both state and local laws
17 that ultimately require an adequate water supply determination for a project such as the ones
18 proposed here. The project, however, does not have an adequate water supply determination and
19 so is in conflict with both state and local laws that protect the environment. Being in conflict with
20 both state and local laws that protect the environment, under WAC 197-11-330(3)(e)(iii), the
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1 project therefor creates a significant adverse environmental impact that is not mitigated. This
2 requires an EIS. Issuance of an MDNS under WAC 197-11-350 was inappropriate.

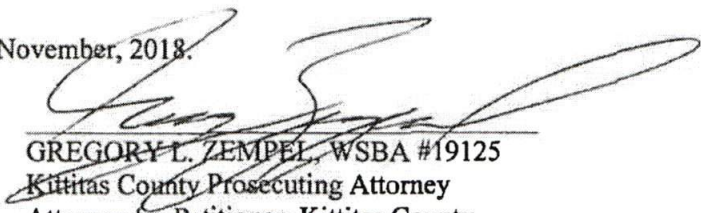
3 For the reasons set forth above, the Governor and EFSEC have erroneously interpreted
4 or applied the law.

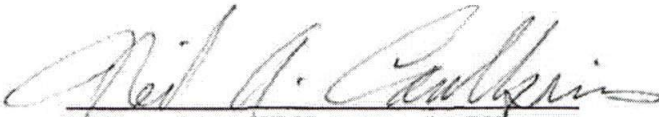
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6 8. Requested relief:

7 a. Petitioners ask the Court to set aside the Governor's decision to site the Kittitas
8 Valley Wind Power Project as well as voiding the Site Certification Agreements
9 because the decision is not supported by substantial evidence, is an erroneous
10 application of the law to the facts, is clearly erroneous, and contrary to the law of
11 this state.

12 b. Take such other action as permitted and/or required by law.
13

14 DATED this ____ day of November, 2018.

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16 
17 GREGORY L. ZEMPEL, WSBA #19125
Kittitas County Prosecuting Attorney
Attorney for Petitioner, Kittitas County

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19 
20 NEIL A. CAULKINS, WSBA #31759
21 Kittitas County Deputy Prosecuting Attorney
Attorney for Petitioner, Kittitas County
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