

Contractors spent 3,978 hours on City of Industry's solar farm idea, but the city hasn't committed to the project



The working cattle ranch, with a reservoir, called Tres Hermanos is located east of Diamond Bar on Grand Avenue. (Photo by Leo Jarzomb/San Gabriel Valley Tribune/SCNG file)

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Despite nearly 4,000 hours of contracted work and more than **\$14 million** spent, officials in the City of Industry say they have yet to commit to the massive solar farm they propose for a former ranch property on the edges of Los Angeles, Orange and San Bernardino counties.

But leaders in **neighboring cities** say the city is violating the law after progressing as far as it has into the project without doing the proper environmental reviews.

The amount of work performed raises questions about when a project becomes official.

Over the last year, biologists and scientists contracted by the city have spent the equivalent of 62 full-time work weeks trying to understand, among other challenges, how a small burrowing owl could affect the placement of solar arrays and how those panels might affect their neighbors, according to dozens of invoices obtained by the Southern California News Group through records requests.

In May alone, employees of Helix Environmental spent 807 hours on the project.

None of the results have been released publicly.

HELIX Environmental Planning		Invoice	
San Gabriel Water and Power, LLC 2917 Canon Street San Diego, CA 92108	2017 Project No: WHC-04		
Project: WHC-04 Professional Services Through February 2017 Professional Services	Tres Hermanos Project		
This approximates one fourth to one third of the contracted work. Final draft should be prepared by the end of March. Coordinating biology studies to engineering layouts and studying impacts. Studying visual impacts to neighbors and corresponding open space. Studying how the discovery of the Burrowing Owl affects solar panel layout.		300,000.00	
Total			\$300,000.00

An invoice from Helix Environmental Planning from February 2017 shows some of the studies that were conducted.

At the same time, attorneys racked up 1,300 billable hours at an average of \$837 per hour. Engineers went through three different stages of what they called the “Tres Hermanos” project, according to invoices. They spent 879 hours assessing engineering concerns, such as the soil and slopes where solar panels may be built.

Thousands of pages of documents reference a solar project — agreements set the power generated at a minimum of **450 megawatts** — the 900 acres needed for such a project and even spell out how much power Industry’s utility will buy. Some documents reference work on an environmental impact report in February.

ACTIVITY	QTY	RATE	AMOUNT
Consulting Monthly Consulting Fees - 2/1/17 - 2/28/17 FEB 2017	1	110,000.00	110,000.00

Total environmental process including negotiating all sub-contractor agreements,
Manage hiring of vendors
Managing of all biological and construction scheduling and costs
EIR completion

An invoice from Ambient Communities, a San Diego developer, references work on an EIR.

Officials in Diamond Bar and Chino Hills — the cities where the land, called Tres Hermanos Ranch, is actually located — have argued the solar farm idea is past the point where Industry should have conducted formal environmental and local planning reviews. Both cities **in recent lawsuits** accused Industry of trying to conceal its plans to avoid triggering compliance with the California Environmental Quality Act.

But none of the work or documents make the project “official” under state law, according to Industry’s attorney.

The city could still back out at any time, even if that means losing every cent invested, he said. **San Gabriel Valley Water and Power LLC**, which is leasing the land

for \$1 a year to **develop a solar farm**, only has to repay the money if **a project moves forward**.

“There are no commitments by the city to support, or approve anything, full stop,” said Tony Bouza, the special counsel hired to represent Industry’s public utility. “They get to ask, and the city gets to make a decision.”

Because there is no binding commitment from the city, Industry doesn’t have to begin environmental reviews or share their plans with the cities where the land is based, officials have argued. Bouza characterized the work done by San Gabriel Valley Water and Power thus far as exploratory.

Industry will follow all applicable laws when it’s necessary, he added.

“I’m not going to define the exact point at which the line gets crossed, but they haven’t reached it yet,” Bouza said.

Industry initially approved the lease agreements for a solar farm during closed session meetings — where the agenda listed the discussions as “potential litigation” — more than a year before any of the lawsuits were filed. The City Council later publicly ratified the agreements in October.

Industry has faced CEQA lawsuits in the past, and officials have said they expected litigation.

Conservationists and the city of Brea **sued Industry in 2001** over the purchase of the Firestone Boy Scout Reservation adjacent to ranch. They argued the city had not performed the necessary environmental reviews for **a series of reservoirs** Industry was investigating at the time. A judge and a state appellate court sided with Industry, ruling the city was not far enough along to trigger CEQA.

Legal experts say the battle over the potential solar farm is a classic example of the complexities of CEQA cases. The state law mandates that projects have environmental reviews at the earliest possible point, but it leaves flexibility for cities to investigate their options before having to prepare the costly studies.

The number of hours or the amount of money spent doesn’t necessarily mean anything, experts said.

“There is no bright-line rule. It will simply be up to the courts to look at all the facts carefully to see which way they cut toward a project or not,” said Daniel Selmi, a professor of law at Loyola Law School.

Selmi is unaffiliated with the project. He reviewed Industry’s lease agreement, as well as Diamond Bar and Chino Hills’ lawsuits, at the request of this publication.

The issue is determining whether a city has committed to the project, and that's not always easy, Selmi said.

In 2008, the California Supreme Court ruled that West Hollywood should have prepared an environmental impact report prior to approving a 35-unit housing project for low-income seniors because it had taken actions — such as relocating the current residents and submitting applications to HUD — that showed the city had already put enough financial and political power behind the idea that there would be incentives to ignore environmental concerns.

Diamond Bar and Chino Hills cited the West Hollywood case in their lawsuits.

Selmi could not comment on the merits of the claims against Industry without knowing all of the facts. Still, the allegations, if true, raise serious questions, he said.

Pasadena attorney Mitch Tsai, who specializes in CEQA issues, also agrees it isn't easy to determine when a project triggers the state law and the need for environmental reviews. These types of cases can boil down to the language in a contract, or whether the project would make alternatives impossible.

“You can do a lot of stuff, but it may not mean you trigger CEQA quite yet,” Tsai said.