



California Office

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April 10, 2009

To: Commissioner Jeffrey Byron, Presiding Member
Commissioner James D. Boyd, Associate Member

From: Defenders of Wildlife – Joshua Basofin, California Representative
1303 J Street, Suite 270
Sacramento, CA 95814

DOCKET

07-AFC-5

DATE APR 10 2009

RECD. APR 13 2009

Subject: Defenders of Wildlife's Status Report No. 1 – Comment on Revised Committee Schedule

Dear Mr. Byron and Mr. Boyd:

This letter responds to your March 20, 2009 request for comment on a revised committee schedule. The Commission invited specific comment on: 1) the merit of issuing a Commission Decision prior to the completion of the BLM's permitting process as the current schedule suggests; and 2) whether a longer period between the publication of the FSA/DEIS and the commencement of the evidentiary hearings is appropriate in order to allow for the complete exchange of direct and rebuttal evidence, and testimony between the parties before the hearings commence and, if so, proposed timetables for the exchanges.

First, the Commission should not adopt a decision in this proceeding until after completion of the BLM's permitting process. BLM is drafting an EIS in order to analyze the site-specific impacts to the environment from the proposed right of way through BLM land and amendment to the California Desert Conservation Area Plan needed to authorize the project. In November, 2007, BLM issued a Notice of Intent to Prepare a Joint Environmental Impact Statement and Final Staff Assessment with the CEC. *See* Federal Register/Vol. 72, No. 214/Tuesday, November 6, 2007/Notices. A joint EIS/FSA is necessary in this instance because the CEC and BLM are grappling with the same types of environmental impacts in the siting proceeding and the right of way/CDCA process.

As the schedule currently stands, CEC staff will file the FSA/DEIS *before* BLM publishes the FEIS or makes a permitting decision. This is counter-intuitive. If the CEC does not await completion of BLM's permitting process, it will not receive the benefit of BLM's expertise in assessing environmental impacts on federal lands. Indeed, section 1723.5 of the CEC's regulations requires that there be "a reasonable likelihood that the construction and operation of the proposed facilities will comply with the federal, state, regional, and local laws, standards, ordinances, and land use plans which are applicable to the proposals." 20 CCR § 1723.5. The hearing officer cannot determine whether the proposed facility will comply with federal law until BLM has issued its decision regarding the right of way and CDCA issue.

Additionally, BLM must initiate an Endangered Species Act section 7 consultation with U.S. Fish and Wildlife Service ("USFWS") for take of the threatened desert tortoise. BLM is currently drafting a biological assessment for submittal to the USFWS and initiation of formal consultation. The CEC absolutely must have the benefit of that consultation's resolution before making a decision regarding the ISEGS siting. As the Preliminary Staff Assessment states (PSA, 1-9), approximately 4,065 acres of occupied desert tortoise habitat would be permanently lost and a minimum of 25 desert tortoises would need to be moved to a location yet to be determined. The CEC must allow USFWS to determine whether the project will have adverse affects on the desert tortoise before moving forward with evidentiary hearings.

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Secondly, it is appropriate to allow a longer time between the publication of the FSA/DEIS and the commencement of the evidentiary hearings for information exchange between parties. This will ensure the hearing is not unreasonably long and there are no surprises.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Basofin". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Joshua Basofin
California Representative



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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APPLICATION FOR CERTIFICATION
FOR THE *IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM*

DOCKET No. 07-AFC-5

PROOF OF SERVICE
(Revised 2/10/08)

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DECLARATION OF SERVICE

I, Joshua Basofin, declare that on April 10, 2009, I served and filed copies of the Attached Status Report No. 1 – Comment on Revised Committee Schedule, dated April 10, 2009. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[www.energy.ca.gov/sitingcases/ivanpah]**. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission’s Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

X sent electronically to all email addresses on the Proof of Service list;

X by personal delivery or by depositing in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked “email preferred.”

AND

X sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

 depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-5

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I declare under penalty of perjury that the foregoing is true and correct.


