

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE IVANPAH SOLAR
ELECTRIC
GENERATING SYSTEM

DOCKET NO. 07-AFC-5

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**PREHEARING CONFERENCE STATEMENT OF INTERVENOR CALIFORNIA
NATIVE PLANT SOCIETY**

December 29, 2009

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Pursuant to the Notice of Prehearing Conferences and Evidentiary Hearing, the California Native Plant Society (CNPS) provides this Preliminary Prehearing Conference Statement. Discussions between staff and the applicant regarding Biological Resources and Alternatives Analysis are still on-going as we write and submit this Prehearing Conference Statement. As these negotiations evolve, it is not possible for CNPS to evaluate fully the current status of key issues. Based on this, CNPS reserves the right to respond to revisions to license conditions and/or mitigation/avoidance measures once negotiations are complete.

1. The topic areas that are complete and ready to proceed to evidentiary hearing:

CNPS is prepared to proceed to hearings on the topic of Biological Resources although we emphasize, as stated above, that key issues relating to this topic are still being discussed between staff and the applicant at the time of submittal of this statement.

2. The topic areas that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefore:

The topic areas that are not complete at this time include all of the topic areas listed below in Section 3 as disputed issues. Discussion of these issues between staff and applicant were still on-going after the December 15 and December 22 workshops, and it is therefore not possible for CNPS to evaluate fully the current status of these issues.

3. The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic:

Biological Resources and Alternatives Analysis require adjudication.

Cumulative Impacts to Biological Resources

Renewable energy projects, including the proposed ISEGS project, are elements of a national climate change mitigation strategy to reduce greenhouse gas emissions. Several California state, national, and international climate change reports describing climate

change adaptation strategies underline the importance of protecting intact wild lands and associated wildlife corridors as a priority adaptation strategy measure. What's more, the FSA/DEIS fails to identify and analyze the loss of carbon sequestration that will occur under the proposed project. Desert vegetation types are able to sequester atmospheric carbon dioxide (greenhouse gas) 24 hours/day, unlike other vegetation communities which are able to sequester CO₂ only during daylight hours. ISEGS and all desert utility-scale projects to follow will decrease the carbon sequestration benefits from desert vegetation (Wohlfahrt et al. 2008).

As the FSA/DEIS admits, building the proposed ISEGS project at the proposed location "would have major impacts to the biological resources of the Ivanpah Valley, substantially affecting many sensitive plant and wildlife species and eliminating a broad expanse of relatively undisturbed Mojave Desert habitat." (FSA/DEIS p. 1-17), including, "Permanent loss of 4,073+ acres of Mojave creosote scrub and other native plant communities, including approximately 6,400 barrel cacti; permanent loss of cover, foraging, breeding habitat for wildlife; habitat fragmentation and loss of connectivity for terrestrial wildlife; disturbance/dust to nearby vegetation and wildlife; increased predation due to increased raven/predator presence; spread of non-native invasive weeds; and direct, indirect, cumulative impacts to special status plant species." (FSA/DEIS p. 6.2-72)

The habitat fragmentation, loss of connectivity for terrestrial wildlife, and introduction of predator and invasive weed species associated with the ISEGS project in the proposed location are anathema to an effective climate change adaptation strategy. Siting the proposed ISEGS project in the proposed location in Ivanpah Valley confounds our climate change adaptation strategy with a poorly executed climate change mitigation strategy. CNPS maintains that the solution to this problem is to build and operate the proposed ISEGS project in an alternative site away from intact wild lands. The way to maintain healthy, vibrant ecosystems is not to fragment them and reduce their biodiversity.

Cumulative impacts to special status plants are recognized (Executive Summary, FSA/DEIS, p. 1-15) but the FSA/DEIS has failed to adequately analyze these cumulative impacts to special status plants across the range of these taxa and ways to avoid and minimize these impacts. In addition, as noted below, the provisions for "nesting" mitigation do not ensure that the loss of the individual plants and the cumulative impacts from those losses will in fact be adequately compensated.

Rare Plants and Special Status Plant Communities

CNPS List 1B (rare in California and elsewhere) and List 2 plants (rare in California but more common elsewhere) meet the definition of "rare" under CEQA (CEQA Guidelines Section 15380). CNPS List 2 plants can represent important peripheral populations of rare plant taxa (Leppig and White, 2006) restricted to narrow growth conditions. For rare plants and special status plant communities the FSA/DEIS concludes that the ISEGS project will result in "impacts to Mojave milkweed and Rusby's desert-mallow" that "would remain significant in a CEQA context even after implementation of the special-

status plant impact avoidance and minimization measures described in Energy Commission staff's proposed conditions of certification." (FSA/DEIS p. 1-18) The CEC staff was unable to identify private lands with existing occurrences of impacted rare plants that would serve as suitable rare plant mitigation lands. Furthermore, the implementation of many of the suggested protection measures on public lands would require an additional NEPA analysis, which is deemed too lengthy a process to perform for this project. The best way to avoid CEQA-significant impacts to rare plants occurring at this site is to relocate the project to another, lower resource value site - an alternative which was not adequately considered in the FSA/DEIS.

Special-Status Plant Impact Avoidance and Minimization

The measures provided in the FSA/DEIS that address special status plants avoidance and minimization (BIO-18) are inadequate for the following reasons:

1. The mitigation requirements to address rare plant impacts do not represent mitigation when full implementation of all measures still results in significant impacts under CEQA. Creating unmitigable impacts to native flora contradicts a central climate change strategy goal of preserving biodiversity.
2. The lack of fall surveys may under-represent the full suite of rare plant taxa occurring on site - these need to be done on this site and other desert project sites. Botanical surveys should be deemed inadequate until additional surveys are conducted in late summer and fall in a year with adequate summer rainfall.
3. Discussions are still on-going between staff and the applicant regarding possible on-site avoidance and reconfiguration of project features to avoid areas that support the highest density and diversity of rare plant species. Without full information on how this will be accomplished, a full accounting of impact avoidance and minimization to rare plants on site is not complete.
4. The FSA/DEIS fails to explain how the acquisition of lands for desert tortoise habitat will represent appropriate lands for desert rare plants. As presented in the FSA/DEIS, the proposed 3:1 "nesting" approach to mitigation land acquisition could completely fail to provide any actual mitigation for the rare plants affected by the proposed project.
5. Desert tortoise habitat quality assessment surveys conducted in July/August 2009 were based in part on vegetation surveys performed at the proposed project site, and the proposed tortoise relocation/translocation sites. The methods relating to the field survey design are suspect and require further explanation as to the rationale behind the following:
 - a. What was the rationale behind the use of releves rather than transects or modified Whittaker plots for this study?
 - b. How were the sampling sites chosen (random, stratified random sampling, other)?

c. How were the number of sampling sites determined? Given the large area, the low number of sampling sites appears to be too few to make an adequate statistical comparison between study sites.

d. How can the carrying capacity of the proposed relocation/translocation sites be adequately determined when the amount of preferred food source (native annual desert plants) of desert tortoise was not accounted for?

7. The FSA/DEIS provides Verification timelines for the applicant's draft Special-Status Plant Protection and Monitoring Plan, Special Status Plant Remedial Action Plan, Seed Collection Plan, Gas Pipeline Revegetation Monitoring Plan, and map locations for Special Status plant Protection Areas, but provide no information regarding the consequences to the applicant should the applicant fail to meet the timeline deadlines. Since these avoidance and minimization measures are to be implemented following the publication of a CEC Decision, we maintain that these measures are insufficient without further information regarding consequences of missed timeline deadlines.

8. Transplantation is not a successful mitigation practice for desert vegetation - especially rare plants - since current knowledge of conditions favorable to plant survival are incomplete. The project's Closure, Revegetation and Rehabilitation Plan may not represent a credible plan based on the lack of success in transplanting desert vegetation.

Alternatives Analysis: The FSA/DEIS fails to provide any alternatives that would avoid significant impacts of the project particularly the significant impacts to rare plants occurring on site. The FSA/DEIS examines several project alternatives that fail to provide a full analysis of alternative sites.

4A. Witness and Topic Areas

CNPS will sponsor the testimony of botanist Jim André. Mr. André will present testimony on the biology of desert rare plants. His qualifications are attached to the CNPS Opening Testimony.

4B. Exhibits

<u>Doc. no.</u>	<u>Author and title</u>
1000	California Native Plant Society, 1989. Policy on Transplanting.
1001	California Native Plant Society, 1998a. CNPS Statement Opposing Transplantation as a Mitigation to Rare Plants.
1002	California Native Plant Society, 1998b. CNPS Policy on Mitigation Guidelines regarding Impacts to Rare, Threatened, and Endangered Plants.
1003	California Public Resource Code, Section 21083 (2). (p. 22)
1004	Leppig, G. and J.W. White. 2006. Conservation of peripheral plant populations in California. Madrono 53(3): 264-274.

- 1005 Pavlik, B. 2008. The California Deserts: An Ecological Rediscovery. University California Press: Berkeley, CA, pp. (171-172)
- 1006 Saunders, D., R. Hobbs, and C. Margules. 1991. Biological consequences of ecosystem fragmentation: A review. Conservation Biology 5(1):18-32.
- 1007 Thrall, P.H., J.J. Burdon, and B.R. Murray. 2000. The metapopulation paradigm: a fragmented view of conservation biology. In: Young, A.G. and G.M. Clarke (eds) Genetics, Demography, and Viability of Fragmented Populations. Cambridge University Press: Cambridge, UK, pp. 75-95.
- 1008 Wohlfahrt, G., L. Fenstermaker, and J. Arnone. 2008. Large annual net ecosystem CO₂ uptake of a Mojave Desert ecosystem. Global Change Biology 14: 1475-1487.

5. Proposals for briefing deadlines and other scheduling matters:

CNPS is prepared to go forward with evidentiary hearings scheduled for January 11 and 12 (and possibly the 13th and 14th), 2010. We request a more detailed hearing schedule in order to provide our expert witness the date on which to be present at the hearings.

Given the volume of resource issues in this case and their importance, we request sufficient time to receive and review the hearing transcripts, and prepare opening briefs in a timely but workable manner. We feel that the opening briefs following the evidentiary hearings should not be due any earlier than three weeks after the close of the evidentiary hearings.

6. For all topics, the parties shall review the Proposed Conditions of Certification listed in the Final Staff Assessment (FSA) for enforceability, comprehension, and consistency with the evidence, and submit any proposed modifications.

As noted in our Opening Testimony, and to the best of our knowledge, staff and the applicant are still working on rare plant-related avoidance and minimization measure alternatives to the conditions listed in BIO-18. These are key issues that remain unresolved. CNPS reserves the right to provide proposed modifications for conditions, and additional proposed conditions once staff and the applicant complete their work.

Dated: December 29, 2009

Respectfully submitted,



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DECLARATION OF SERVICE

I, Greg Suba, declare that on December 29, 2009, I served and filed copies of the attached Prehearing Conference Statement of Intervenor California Native Plant Society, dated December 29, 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 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:

sent electronically to all email addresses on the Proof of Service list;
 by personal delivery or by depositing in the United States mail at 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

FOR FILING WITH THE ENERGY COMMISSION:

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

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



Greg Suba

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