

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



July 14, 2009

Mr. John Woolard, Chief Executive Officer
Solar Partners, LLC
1999 Harrison Street, Suite #500
Oakland, California 94612

DOCKET
07-AFC-5

DATE JUL 14 2009

RECD. JUL 15 2009

Dear Mr. Woolard:

SUBJECT: Ivanpah Solar Electric Generating Station Application for Certification (07-AFC-5) – Comments on the Second Draft Desert Tortoise Translocation/Relocation Plan (Attachment BR5-1B, Supplemental Data Response Set 2D)

Thank you for submitting the second Draft Desert Tortoise Translocation/Relocation Plan (Plan), which we received on May 27, 2009 as Attachment BR5-1B of the Supplemental Data Response, Set 2D. This document is a revision of the draft Plan submitted to the California Energy Commission (Energy Commission) on March 19, 2009 as Attachment BR6-1A. Staff from the California Energy Commission (staff), California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (USFWS), and the U.S. Bureau of Land Management (BLM) reviewed the March 19th translocation plan and submitted joint comments to you on April 28, 2009.

We appreciate your efforts to address the comments from our April 28th letter in the second draft of the Plan filed on May 27, 2009. However, staff biologists from all four agencies agree that a major deficiency remains in the revised Plan, which is the absence of any information on the suitability of the habitat at the proposed translocation/relocation sites for desert tortoise. Furthermore, no information is provided in the revised Plan that describes the density of resident desert tortoise at the proposed relocation/translocation sites. As described in the enclosed memo from CDFG, the revised Plan still lacks crucial details, but the absence of any habitat quality assessment is the most serious omission. Habitat suitability must be the primary driver in identifying the relocation/translocation areas in developing a Plan, and we cannot accept a Plan that omits this key information.

Your revised Plan includes Appendix F, *Ivanpah SEGS – Desert Tortoise Habitat Assessment for Proposed Translocation/Relocation Areas*, which describes how you propose to collect this habitat information. However, no schedule was offered in Appendix F or elsewhere in the revised Plan describing when the habitat assessment would be conducted. We are hopeful that those surveys are currently underway, but if they are not, we recommend that surveys begin without delay. The joint agencies encourage you to attempt to find adequate habitat for relocation/translocation in the area directly west of ISEGS.

The habitat assessment is necessary to make an informed decision about the suitability of the site for translocated tortoises, and to demonstrate that all reasonable measures have been implemented to minimize "take" of desert tortoise during and after relocation/translocation efforts. This demonstration will support the determination for

PROOF OF SERVICE (REVISED 7/2/09) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 7/15/09

AA

Mr. John Woolard
July 14, 2009
Page 2 of 2

ISEGS as a whole under the Incidental Take Permit and will also provide an opportunity for the parties and public to review the plans as analyzed in the FSA/DEIS. If we do not receive this information by August 12, 2009, it could compromise our ability to complete the FSA/DEIS under the current schedule. We also request that you implement the recommendations from CDFG in the enclosed document as you conduct your habitat assessment.

We want to work with you to make sure that the translocation/relocation issue does not delay permitting or construction, and welcome the opportunity to discuss the results of your habitat assessment before making any final decisions about the location of the relocation/translocation sites. Please contact me at (916) 654-4679, or email me at jkessler@energy.state.ca.us, if you would like to discuss our review of the revised Plan. You may also directly contact our staff biologist, Susan Sanders, at (530) 477-7415 and email ssanders55@comcast.net, as well as biologists from the other reviewing agencies.

Sincerely,

Original signed by

John Kessler
Project Manager

Enclosure
cc: Docket 07-AFC-5
Webworks
POS

Memorandum

To : Mr. John Kessler, Project Manager
Siting, Transmission & Environmental Protection Division
California Energy Commission

Date: July 8, 2009

From : Department of Fish and Game – Bruce Kinney, Deputy Regional Manager, Inland Deserts Region

Subject: Concerns regarding the Draft Desert Tortoise Relocation Plan for the FSA/DEIS for the Ivanpah Solar Electric Generating System (CEC Docket # 07-AFC-5)

Dear John:

This memo conveys the Department of Fish and Game (Department) concerns regarding the latest revisions from the applicant for the Draft Desert Tortoise Relocation Plan (Plan) for the Ivanpah Solar Electric Generating System (Project), Supplemental Data Response, Set 2A. As noted in previous comment letters and expressed concerns, Department and California Energy Commission (CEC) staff have again determined that based on the potential take of desert tortoise associated with relocation, the Plan remains inadequate to meet compliance requirements related to the California Endangered Species Act (CESA). It also fails to provide full disclosure pursuant to CEQA for an activity which could result in "take" of an endangered species, a substantial affect which must be addressed in the FSA/DEIS to identify adequate mitigation to reduce the impact to less than significant. Specific concerns raised by the CEC, Department, U.S. Fish and Wildlife Service (FWS), and the U.S. Bureau of Land Management (BLM) have yet to be addressed as requested to allow consideration in our analysis for the Final Staff Assessment/Draft Environmental Impact Statement (FSA/DEIS) that the "take" of desert tortoises associated with translocation/relocation has been minimized. Please understand that CESA "permitting" and compliance requirements are directly linked to an adequate Plan which reduces any further take of desert tortoise as required to minimize and fully mitigate the authorized "take" for the Project.

Although our agencies are continuing in our joint effort to review and provide the Project direction regarding the revised Plan, it is imperative for adequate surveys and evaluations to be completed on the proposed translocation/relocation sites as requested within the next 30 days if we are to evaluate and accept as final the Plan for purposes of meeting the proposed 45 day time period to release the FSA/DEIS. The FSA/DEIS and subsequent FSA/FEIS are dependent on adequate biological information for these translocation sites to support the conclusions of the agencies regarding "take" of desert tortoise for this project, both in relation to CEQA and CESA. This is a reasonable request to address and disclose project impacts deemed to have a significant effect on desert tortoise. It remains consistent with information provided to the Project in December of 2008, and is critical to producing an adequate FSA/DEIS, and thence FSA/FEIS. Further delay in completing the required surveys and analysis of the relocation sites only serves to jeopardize our ability to determine final "permit" conditions for the Project pursuant to CEQA and CESA, especially if those sites are found to be inadequate for translocation (e.g. as preliminary observations of the proposed area along I-15 seems to indicate). At minimum, additional project evaluation and

disclosure pursuant to CEQA/NEPA would be required for locating and identifying alternative relocation sites for any areas determined inadequate as to habitat quality, tortoise density, or other significant concerns we've previously identified. This would substantially delay the "Current Schedule..." as listed in the CEC's Status Report #10 filed on June 26, 2009.

Again, the major deficient issues of the Plan are the identification of translocation/relocation sites without regard to on-site habitat quality for the species and density of desert tortoise, and the lack of detail describing what exactly will occur. We cannot concur that a site proposed on a map in desert tortoise habitat actually contains suitable habitat for translocation/relocation. There must be specific biological information associated with the decision to use these locations. Unfortunately, there remains no biological detail on the translocation/relocation sites within this Plan. Thus, we cannot determine from the information provided, if the translocation sites are suitable since no habitat assessment has been completed for the locations. Preliminary site visits have suggested that the locations have a much lower quality desert tortoise habitat and thus may not be suitable. A habitat assessment of the translocation sites must be completed within the next 30 days in order to determine if the areas are suitable, especially related to habitat quality and species density, prior to completion of the FSA/DEIS in the next 45 days.

Fundamentally, the project site is good quality desert tortoise habitat that has sustained a desert tortoise population for many decades. It would be inappropriate to move tortoises into low quality habitat which has not been shown to sustain desert tortoise. It would be more appropriate to locate energy facilities in low quality desert tortoise habitat, avoiding the better habitat with a larger sustaining species population. A biologically based translocation plan could show that the translocation sites are in fact the same good quality habitat as the site and thus are not putting the tortoise into a potentially detrimental situation, or it could show that there is no place in the area with habitat as good as the site.

As stated to the Project in our previous letters, translocation/relocation of endangered species requires a very detailed plan with site specific information that establishes what will be accomplished and how "take" will be minimized as required for CEQA and CESA compliance. The Plan must meet and amalgamate those conditions and standards identified to provide "take" authorization for the project. Stating a guideline will be met without stating the specific as to how is inadequate.

Usually habitat assessments and density surveys are completed during the optimal time to observe both plant and animal species. For the desert tortoise, optimal survey time is usually either March thru May or September thru October, as this allows for the best scientific estimates of species density and foliage coverage. However, due to the need to progress with this project, the Department would be willing to accept surveys performed prior to September, if they meet the following guidelines:

- (1) A 100% coverage site survey is performed on the proposed translocation/relocation areas and potential quarantine locations. The applicant will use the Fish and Wildlife Service's *Preparing for Any Action that may Occur within the Range of the Mojave Desert Tortoise (Gopherus agassizii)* to estimate the population densities.
- (2) Vegetation within the proposed translocation/relocation areas will be compared to the highest quality of desert tortoise habitat within the proposed project location (Site 3). If the translocation/relocation sites lack the basic ecological make up of the higher quality habitat it will be assumed the site is lower in quality.

The Department requires a habitat assessment in this area, at a minimum, containing all the information within the proposed Draft Translocation Plan- Appendix F: Ivanpah SEGS- Desert Tortoise Habitat Assessment for Proposed Translocation/Relocation and the density estimates of the host/resident desert tortoise populations of the species within the translocation/relocation areas.

There are specific details on other issues of the Plan which also need to be addressed. However, these details relate to having suitable relocation areas which will allow translocation. If the relocation areas are determined not to be suitable, alternative sites will need to be examined. This could change or modify the current proposed project site or footprint and the completion of the FSA/DEIS and subsequent FSA/FEIS. Every effort is being made to ensure CESA compliance and permitting pursuant to adoption of the FSA/FEIS. The Project's cooperation to complete the relocation site surveys and evaluations as requested for the Plan are essential to meeting this joint objective.

Thanks again for all the effort to coordinate with the Department and agencies for this project, and let me know if you have any questions regarding this memo.


Bruce Kinney
Deputy Regional Manager

cc: Ms. Susan Sanders, Commission, Sacramento
Ms. Tonya Moore, CDFG, Inland Deserts Region



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

APPLICATION FOR CERTIFICATION
FOR THE *IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM*

DOCKET No. 07-AFC-5
PROOF OF SERVICE
(Revised 7/2/09)

APPLICANT

Solar Partners, LLC
John Woolard,
Chief Executive Officer
1999 Harrison Street, Suite #500
Oakland, CA 94612

Todd A. Stewart, Project Manager
Ivanpah SEGS
sdeyoung@brightsourceenergy.com
E-mail Preferred

Steve De Young, Project Manager
Ivanpah SEGS.
1999 Harrison Street, Ste. 2150
Oakland, CA 94612
tstewart@brightsourceenergy.com

APPLICANT'S CONSULTANTS

John L. Carrier, J. D.
2485 Natomas Park Dr. #600
Sacramento, CA 95833-2937
jcarrier@ch2m.com

COUNSEL FOR APPLICANT

Jeffery D. Harris
Ellison, Schneider
& Harris L.L.P.
2600 Capitol Avenue, Ste. 400
Sacramento, CA 95816-5905
jdheslawfirm.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

Tom Hurshman,
Project Manager
Bureau of Land Management
2465 South Townsend Ave.
Montrose, CO 81401
tom_hurshman@blm.gov

Sterling White, Field Manager
Bureau of Land Management
1303 South Highway 95
Needles, CA 92363
sterling.white@blm.gov

Becky Jones
California Department of
Fish & Game
36431 41st Street East
Palmdale, CA 93552
dfgpalm@adelphia.net

INTERVENORS

California Unions for Reliable Energy ("CURE")
Tanya A. Gulesserian
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Ste 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com

Western Watersheds Project
Michael J. Connor, Ph.D.
P.O. Box 2364
Reseda, CA 91337-2364
mjconnor@westernwatersheds.org

Gloria Smith, Joanne Spalding
Sidney Silliman, Sierra Club
85 Second Street, 2nd Fl.
San Francisco, CA 94105
gloria.smith@sierraclub.org
joanne.spalding@sierraclub.org
gssilliman@csupomona.edu
E-mail Preferred

INTERESTED AGENCIES CONT.

Joshua Basofin, CA Rep.
Defenders of Wildlife
1303 J Street, Ste. 270
Sacramento, CA 95814

jbasofin@defenders.org

E-mail Preferred

*Basin and Range Watch

Laura Cunningham

Kevin Emmerich

P.O. Box 70

Beatty, NV 89003

atomicloadranch@netzero.net

*Center for Biological Diversity

Lisa T. Belenky, Sr. Attorney

Ileene Anderson, Public Lands Desert Director

351 California Street, Ste. 600

San Francisco, CA 94104

E-mail Preferred

lbelenky@biologicaldiversity.org

ianderson@biologicaldiversity.org

ENERGY COMMISSION

JEFFREY D. BYRON

Commissioner and Presiding Member

jbyron@energy.state.ca.us

JAMES D. BOYD

Vice Chairman and

Associate Member

jboyd@energy.state.ca.us

Paul Kramer

Hearing Officer

pkramer@energy.state.ca.us

John Kessler

Project Manager

jkessler@energy.state.ca.us

Dick Ratliff

Staff Counsel

dratliff@energy.state.ca.us

Elena Miller

Public Adviser

publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, April Albright, declare that on July 15, 2009, I served and filed copies of the attached, Ivanpah Solar Electric Generating Station Application for Certification (07-AFC-5) - Comments on the Second Draft Desert Tortoise/Relocation Plan (Attachment BR5-1B, Supplemental Data Response Set 2D) dated July 14, 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: [\[www.energy.ca.gov/sitingcases/ivanpah\]](http://www.energy.ca.gov/sitingcases/ivanpah).

The documents have 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:

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

- by personal delivery or by depositing in the United States mail at Sacramento, California 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

Attn: Docket No. 07-AFC-5
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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

Original signed by _____
April Albright