

Memorandum

Date: March 4, 2009
Telephone: (916) 654-4679

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

From: California Energy Commission – John Kessler, Project Manager
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| DOCKET | |
| 07-AFC-5 | |
| DATE | <u>Mar 04 2009</u> |
| RECD. | <u>Mar 04 2009</u> |

Subject: **STATUS REPORT #7**
IVANPAH SOLAR ELECTRIC GENERATING SYSTEM (07-AFC-5)

The Ivanpah Solar Electric Generating System (ISEGS) Project continues to progress through its review by Bureau of Land Management (BLM), Energy Commission staff, and responsible agencies, including California Department of Fish and Game and U.S. Fish and Wildlife Service. The ability for ISEGS to remain on schedule has been hampered by the additional time needed by the applicant to prepare a number of studies and plans (focusing on drainage and biological issues) necessary to define the physical layout of the project with respect to grading and drainage features, and to support preparation of the Final Staff Assessment/Draft Environmental Impact Statement (FSA/DEIS). The Preliminary Staff Assessment (PSA) published by the Energy Commission on December 9, 2008 identified these additional information and agency coordination needs based on discussions during the January 9, 2009 PSA Workshop. The BLM and Energy Commission staff provided the applicant with a list and draft schedule for the needed deliverables on January 15, 2009.

The BLM and Energy Commission staff continue to coordinate the activities and information needs of our own and other responsible agencies in support of the right-of-way and licensing processes. The applicant is making a significant effort to prepare its grading/drainage plans and its biological assessment and permit applications. Another significant coordination effort is occurring concurrently among BLM, staff, CDFG and USFWS to establish options to mitigate effects to Desert Tortoise. The options are necessary in recognition that the availability of compensation lands are certainly limited within BLM's managed properties, and that other enhancements to existing habitat may be needed to achieve an appropriate level of mitigation to meet federal and state endangered species act requirements.

PROOF OF SERVICE (REVISED 2/10/09) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 3/4/09

MS

A discussion of the status of the most significant of these ongoing activities and our best estimate of the overall project schedule follows. Please refer to the Executive Summary of the PSA and the appropriate technical sections for a more detailed discussion of the issues which need to be resolved, and the information required to complete the FSA/DEIS.

Status of Outstanding Information by Technical Area

The primary driver of the schedule is time required by the applicant to prepare plans related to biological, and soil and water resources, as summarized below.

BIOLOGY

- 1) Mitigation Proposal – Staff of BLM, FWS, CDFG and Energy Commission are holding bi-weekly teleconferences to discuss the impact analysis and mitigation options needed to address the loss of habitat for desert tortoise, loss of rare plants and other sensitive species, and impacts to state waters and potentially waters of the US. This information is needed to complete the FSA/DEIS. In addition, we understand the applicant is holding periodic meetings with CDFG headquarters office to discuss these same issues.
- 2) Closure, Revegetation and Rehabilitation Plan – The applicant filed its draft plan on January 28, 2009, and the plan is currently under review by staff for BLM and the Energy Commission. The applicant still needs to address the funding mechanism for the closure aspects of the plan. BLM and Energy Commission staff will be providing comments to the applicant, and expecting revisions to the plan to allow completion of the FSA/DEIS.
- 3) Desert Tortoise Translocation Plan - The applicant is working to complete the translocation plan in accordance with recently-developed guidelines by USFWS, and in coordination with USFWS, CDFG, BLM, and staff. The plan provides essential information for the Biological Assessment, the Incidental Take Permit, and the FSA/DEIS. Desert tortoise survey plans for the translocation receiving area and Interstate15 fenceline alignment would need to be included.
- 4) Biological Assessment (BA) – The BA needs to be revised to address BLM’s comments and to include the Translocation Plan. Staff understands this information, which is needed to complete the FSA/DEIS, is still under development by the applicant. Once filed by the applicant, the BA would be finalized by BLM and submitted to USFWS

close to the time the FSA/DEIS is circulated for public review and comment.

- 5) Incidental Take Permit - Staff understands that the applicant has compiled much of the information needed for submittal of this permit application to the Energy Commission and CDFG, and will also incorporate the Desert Tortoise Translocation Plan into this application. This information is needed to complete the FSA/DEIS.
- 6) Streambed Alteration Agreement Application - Staff understands the applicant has developed much of the information needed for submittal of this application to CDFG and the Energy Commission, but that its completion and filing is subject to completion of ISEGS site grading and drainage plans as discussed more fully below.

SOILS AND WATER RESOURCES

Several Soil and Water Resource issues were identified in the PSA, and plans/studies currently under development by the applicant are intended to address those issues and support preparation of the FSA/DEIS.

- 1) Hydrology Studies - The applicant is actively working with BLM and staff to perform hydrologic analyses that determine infiltration and runoff patterns of the project site and from the upland watershed draining through the project site.
- 2) Grading and Drainage Plans – Based on the hydrology studies, the applicant will develop grading and drainage plans to adequately describe those aspects of the project and to demonstrate how storm water will be routed through the site in conformance with applicable design criteria and to avoid flood-related impacts to the site and areas downstream. Although the applicant has not been able to provide a date for completing these draft plans, they are working diligently on them in close coordination with BLM and staff. Staff estimates that these plans may require until April or later to complete.
- 3) Drainage, Erosion and Sediment Control Plan and the Storm Water Pollution Prevention Plan – When the applicant completes its grading and drainage plans, they will be updating their Drainage, Erosion and Sediment Control Plan and the Storm Water Pollution Prevention Plan to demonstrate they have identified and propose implementation of adequate Best Management Practices (BMPs). These plans for implementing, monitoring and maintaining BMPs during both construction and operations will support staff in completing the analysis of potential impacts from wind and water erosion and for considering

potential for degradation of water quality. This information is needed to complete the FSA/DEIS.

- 4) Army Corps of Engineers (ACOE) Jurisdictional Determination and Permit – The ACOE is still considering whether there are waters of the U.S. that would be affected by the proposed project. Although the most recent signal from the ACOE is that the project will not affect waters of the U.S. and thus would not require a permit, the applicant, BLM and staff are awaiting a final determination. This information is needed to complete the FSA/DEIS, and influences whether the Lahontan Regional Water Quality Control Board (Lahontan RWQCB) would need to issue a Clean Water Act Section 401 Water Quality Certification
- 5) Groundwater Study - Staff and BLM are working with the applicant to evaluate the potential for migration of brackish groundwater westward towards the existing and proposed wells due to existing and proposed pumping by ISEGS.
- 6) Lahontan RWQCB Permits – Staff and BLM understand that conditions associated with a number of permits are required from the Lahontan RWQCB so that they may be integrated with the Energy Commission's Final Decision. These are related to the treatment and discharge of sanitary wastewater for landscape irrigation, the dredge and fill within onsite ephemeral streams that are considered waters of the state, and management of storm water during construction and operations. Staff is encouraging the applicant to coordinate its plans with the Lahontan RWQCB as soon as possible so that these permit requirements can be integrated with the Energy Commission's Conditions of Certification.

HEALTH AND SAFETY

Staff understands that the applicant is working to complete the draft Health and Safety Plan for both the construction and operational phases of the project in order to support BLM's analysis that is necessary for the DEIS.

Next Steps

Staff is working jointly with BLM, the federal lead agency for compliance with the National Environmental Protection Act (NEPA) to produce a joint state and federal analysis. This analysis will initially take the form of a FSA/DEIS. That document will then be circulated for a 90-day public comment period, following which the Final Environmental Impact Statement (FEIS) and an Addendum to the FSA will be prepared.

Schedule

Staff and BLM have still not received much of the information it identified as necessary in our memo to the applicant dated January 15, 2009. BLM and Energy Commission staff are conducting weekly coordination

teleconferences as well as focused meetings in various technical areas. Once the required information is obtained, a minimum of 48 calendar days will be required to publish the joint FSA/DEIS, as indicated in the Committee's current schedule for this case. However, prior to publication of a DEIS, BLM is required to obtain the review and approval of a Notice of Availability at their Headquarters level before it can be published in the Federal Register. Approvals for NOA's can take one or two months depending on the issues associated with the analysis. The DEIS must be substantially complete before the NOA review can be initiated. The NOA must be completed before the DEIS can be noticed in the Federal Register and released for public review and comment.

The following updated schedule reflects the current state of the information staff has thus far received. It reflects a one-month delay beyond that estimated previously. This is because the applicant will not be able to file its plans that are prerequisite to preparing the FSA/DEIS by March 15, 2009. For the purpose of the schedule, staff has assumed that the needed information will be filed no later than April 15, 2009, which may be optimistic. The estimated times for applicant's filing should become more definite by the next status report.

Comparison of the Revised Committee Schedule and Staff's Proposed Updated Schedule

| Event | Revised Committee Schedule (as of 10/29/09) | Staff's Proposed Schedule Update |
|---|---|---|
| Parties file Status Reports | December 5, 2008 & every 6 weeks thereafter | December 5, 2008 |
| Staff publishes Preliminary Staff Assessment | December 5, 2009 | December 9, 2009 |
| Staff conducts PSA workshops | Early January 2009 | January 9, 2009 |
| Applicant completes Ivanpah 1 90% grading plans and other complete project plans prerequisite to preparing the FSA/DEIS | Not included | April 15, 2009 (tentative date) |
| Local, State and federal Agency final comments and determinations, including air district's final DOC filed | December 30, 2008 | May 1, 2009 |
| BLM and Staff substantially complete FSA/DEIS | | June 1, 2009 |
| BLM obtains Headquarters approval of Notice of Availability of DEIS (45 – 60 days following substantial completion of DEIS) | | July 15, 2009 |

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|---|----------------------------------|-------------------|
| BLM files Notice of Availability (NOA) of DEIS | March 3, 2009 | July 15, 2009 |
| Staff and BLM file FSA/DEIS, and BLM issues Biological Assessment (starts 135-day clock for receiving Biological Opinion) | March 3, 2009 | July 15, 2009 |
| Prehearing Conference (15 days following filing of FSA/DEIS) | March 18, 2009 | July 30, 2009 |
| Evidentiary Hearings (15 -20 days following Prehearing Conference) | April 2, 2009 | August 13, 2009 |
| Applicant completes Ivanpah 2 and 3 90% grading plans | | August 13, 2009 |
| BLM's 90-Day DEIS comment period ends | June 1, 2009 | October 15, 2009 |
| Presiding Member's Proposed Decision (PMPD) issued for 30-day comment period (8 weeks after Evidentiary Hearings) | May 28, 2009 | October 15, 2009 |
| PMPD Comment Hearing (Approx. 25 days after PMPD issued) | June 29, 2009 | November 10, 2009 |
| BLM and Staff substantially complete the FEIS and Recommended Changes to PMPD | | November 16, 2009 |
| Revised PMPD issued for 15-day review period (35 days after PMPD issued) | July 9, 2009 | November 20, 2009 |
| Federal Biological Opinion issued | June 17, 2009 or soon thereafter | December 1, 2009 |
| Energy Commission Decision adoption hearing (as FEIS approaches publication) | August – September 2009 | December 18, 2009 |
| BLM obtains Headquarters approval of Notice of Availability of FEIS (45 – 60 days following substantial completion of DEIS) | | January 15, 2010 |
| BLM issues NOA of FEIS | October 2, 2009 | January 15, 2010 |
| Staff and BLM file FEIS and Recommended Changes to the PMPD | October 2, 2009 | January 15, 2010 |
| Judicial review period for Energy Commission Decision ends (30 days after Commission adoption hearing) | September – October 2009 | January 18, 2010 |
| FEIS protest period ends (30 days after NOA and FEIS is published) | November 3, 2009 | February 15, 2010 |
| BLM issues Record of Decision, Right of Way grant and Plan Amendment (assumes no protests to | November 3, 2009 | February 15, 2010 |

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| BLM LUP Amendment and Governor completes consistency review) | | |
| Governor's consistency review period ends (60 days after FEIS is published - assuming Governor completes his review in 30 days) | December 2, 2009 | March 15, 2010 |
| BLM's resolution of any protests of its LUP Amendment proposed Decision(+ 120 days following BLM's FEIS) | | June 15, 2010 |

cc: Docket (07-AFC-5)
Proof of Service List



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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APPLICATION FOR CERTIFICATION
FOR THE *IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM*

DOCKET No. 07-AFC-5

PROOF OF SERVICE
(Revised 2/10/09)

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DECLARATION OF SERVICE

I, Maria Santourdjian, declare that on March 4, 2009, I served and filed copies of the attached Status Report #7 for Ivanpah Solar Electric Generating System (07-AFC-5). 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

FOR FILING WITH THE ENERGY COMMISSION:

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.

Original Signature in Dockets
Maria Santourdjian