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Working to protect and restore Western Watersheds

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Re E-mail

John Kessler
Project Manager
Siting, Transmission and Environmental Protection Division
California Energy Commission
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DOCKET	
07-AFC-5	
DATE	<u>MAR 04 2009</u>
RECD.	<u>MAR 12 2009</u>

RE: IVANPAH SOLAR ELECTRIC GENERATING SYSTEM (ISEGS) (07-AFC-5)
PRELIMINARY STAFF ASSESSMENT

Dear Mr. Kessler:

The public comment period for the Ivanpah Solar Electric Generating System Preliminary Staff Assessment (PSA) closed on January 23, 2009. However, I would like to submit the following comments regarding aspects of the proposed Conditions of Certification that relate to the desert tortoise that I feel should be clarified as the EIS/EIR process moves forward for this project.

As the PSA recognizes, the proposed ISEGS project would be constructed within the Northeastern Mojave Recovery Unit, one of the six Desert Tortoise Recovery Units designated in the 1994 Desert Tortoise (Mojave Population) Recovery Plan. [PSA at 5.2-29] The Siberia East alternative falls on the western border of the Northern Colorado Desert Tortoise Recovery Unit. [PSA at 7-14] The Broadwell Lake alternative is located on the western borders of the Northern Colorado and Eastern Mojave Desert Tortoise Recovery Units. [PSA at 7-39]

The 1994 Desert Tortoise (Mojave Population) Recovery Plan identified six distinct desert tortoise populations west and north of the Colorado River. These six populations were identified based on genetics, behavior, ecology, geographic isolation, and morphology. Five of these populations occur wholly or partly in California. The Recovery Team that wrote the plan clearly equated the term Recovery Unit with the terms "Evolutionary Significant Unit" and "Distinct Population Segment". [FWS 1994, at *i* and 19-22] The Recovery Plan also recognized that the desert tortoise populations within the different Recovery Units faced a suite of threats, the degree and quality of which varied between Recovery Units, and provided specific analysis by Recovery Unit. [FWS 1994, Appendix F]

Since the Recovery Plan was published, a number of studies have compared tortoises between different Recovery Units and confirmed biological differences among the populations. Most recently, Murphy et al., 2007 published a comprehensive study of desert tortoise genetics. They found additional, new evidence that the desert tortoises in the various Recovery Units constitute distinct populations and their analysis confirmed the validity of the 1994 Plan's six Desert Tortoise Recovery Units.

The California Department of Fish and Game has long recognized the importance of the Desert Tortoise Recovery Units in determining if compensation is adequate to mitigate for impacts. For example, the mitigations for the Fort Irwin expansion all focused on the West Mojave Recovery Unit. Compensation measures adopted included habitat acquisition as well as habitat enhancement measures such as the buyout of the livestock grazing leases for BLM cattle grazing allotments located in desert tortoise habitat both within and outside the Superior-Cronese Desert Wildlife Management Area.

The California Endangered Species Act (CESA) allows the California Department of Fish and Game to issue Incidental Take Permits but requires that this take be minimized and fully mitigated. The mitigation measures must be roughly proportional in extent to the impact of the take and be capable of successful implementation. Adequate funding must be provided to implement conditions of the permit. The range of the species must be maintained. The species or subspecies must not be jeopardized. The Department should use the best scientific information that is reasonably available to it.

We respectfully request that agencies use the best scientific information available to them and modify the proposed Conditions of Certification to specify that compensation activities focus on the relevant affected Desert Tortoise Recovery Unit. For the proposed action, this would be the Northeastern Mojave Recovery Unit. Without doing this, we do not see how the Department could ensure full compliance with CESA or could ensure that the desert tortoise compensation component for the proposed project is roughly proportional to the size of the impact.

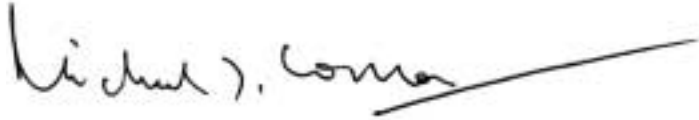
We understand that available compensation habitat may be limited within the California portion of the Northeastern Mojave Recovery Unit although some suitable lands in reasonable proximity to the project site may be available within Mojave National Preserve. Other compensation actions should be considered such as buying out the Clark Mountain cattle-grazing lease, expanding the DWMA boundaries, and erecting barrier fencing along nearby roads to enhance the remaining desert tortoise habitat.

There are many other similar renewable energy projects being considered within California's Mojave Desert region. Given this, it is especially important that the state agencies be seen to take a science-based, objective, and consistent approach in evaluating the efficacy of compensation. The populations of some Desert Tortoise Recovery Units may suffer disproportionate impacts and may even be lost if due import is not paid to the specific, affected desert tortoise population.

Thank you for considering my comments. Please feel free to contact me by telephone at 818-345-0425 or by e-mail at <mjconnor@westernwatersheds.org> if you would like me to provide

any additional information. Could you add Western Watershed Project to the list of interested parties for this and related projects at the address listed below.

Yours sincerely,

A handwritten signature in black ink that reads "Michael J. Connor". The signature is written in a cursive style and is underlined with a single horizontal line.

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References

Fish and Wildlife Service. 1994. Desert Tortoise (Mojave Population) Recovery Plan. U.S. Fish and Wildlife Service, Portland, Oregon. 73 pages plus appendices.

Murphy, R. W., Berry, K. H., Edwards, T. and Mcluckie, A. M. 2007. A Genetic Assessment of the Recovery Units for the Mojave Population of the Desert Tortoise, *Gopherus agassizii*. Chelonian Conservation and Biology 6(2): 229–251.