

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

DOCKET

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DATE NOV 11 2009

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***PRELIMINARY PREHEARING CONFERENCE STATEMENT OF
INTERVENOR BASIN AND RANGE WATCH***

November 11, 2009

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TITLE

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INTERVENOR BASIN AND RANGE WATCH**

Pursuant to the Notice of Prehearing Conferences and Evidentiary Hearing, Intervenor Basin and Range Watch (“BRW”) provides this Preliminary Prehearing Conference Statement. BRW will be unable to attend the Preliminary Prehearing Conference in person or by telephone, but will attend subsequent pre-hearing conferences and the evidentiary hearing.

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

BRW has not yet had sufficient time to complete review of all of the topic areas that we wish to pursue at the evidentiary hearing. At this time BRW cannot agree that any topic areas are complete and ready to proceed to evidentiary hearing.

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

As an all-volunteer organization, BRW has found reviewing the electronic version of the 1,200-page FSA/DEIS difficult with so short a timeline. We just received the hard copy on November 14, 2009. Public participation in this process is severely curtailed by

this short timeframe, especially in that comments to CEC to be entered into the record for the Evidentiary Hearing are due by December 7, 2009.

BRW also believes that the failure to adequately identify several impacts, analyze those impacts and provide documentary evidence or any adequate basis for the staff's conclusions undermines adequate public participation in this process.

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

This is only a partial list provided for this Preliminary Prehearing Conference Statement. Overall, BRW believes that the FSA/DEIS is incomplete and admits that many critical issues have not been fully analyzed, including many of the mitigation requirements which have been deferred for later development without sufficient, specific, and enforceable performance standards. We note also that several references in the FSA text are not even included in the References section.

Project Description: The project description is too narrow and new substation and transmission upgrades and additions should be included.

Purpose and Need: The FSA/DEIS fails to address risks associated with global climate change in context including the need for climate change mitigation strategies and reducing greenhouse gas emissions. The Mojave Deserts has been shown in recent studies to have the capacity to naturally sequester biologic and geologic carbon in both plant biomass and soils; a carbon analysis should be included to identify the balance of how much carbon the project would release as opposed to save from offsetting other emissions. Climate change adaptation strategies should also be included in the FSA/DEIS describing how the project will impact the ability to protect intact wild lands and associated wildlife corridors during climate change. [Reference: Have Desert Researchers Discovered a Hidden Loop in the Carbon Cycle? Richard Stone. Science, 13 June 2008: □ Vol. 320. no. 5882, pp. 1409 – 1410.]

BRW believes the alternative of distributed generation in urban centers should be examined as a climate adaptation strategy so that intact ecosystems will not be fragmented in remote desert lands. According to Romero-Alvarez and Zarza (2007) no solar thermal power tower plant has achieved an annual capacity factor of more than 25%. We question the need to disturb and fragment so large an area of intact desert ecosystems for what would amount to approximately 100 Megawatts of annual output, when this could be achieved with such technologies as roof-top photovoltaic systems at the places of consumption, and an analysis of this should be included in the FSA/DEIS.

[Reference: Romero-Alvarez, Manuel and Eduardo Zarza. 2007. Concentrating Solar Thermal Power. In, Frank Kreith and D. Yogi Goswami (eds.), Handbook of Energy Efficiency and Renewable Energy. CRC Press: Boca Raton, London, New York.]

Air Quality 6.1: The FSA/DEIS fails to address several key air quality issues including PM 10.

Biological Resources 6.2: The identification and analysis of impacts to all biological resources is inadequate and little to no attempt is made to avoid impacts to these resources or minimize the impacts as required under CEQA.

a. Bighorn: The FSA/DEIS fails to fully analyze impacts to bighorn, provide alternatives to avoid impacts, or provide measures to minimize impacts. For example, BRW does not believe building an artificial guzzler would mitigate for the potential loss of springs on the mountain slopes and bajadas due to groundwater pumping.

b. Desert tortoise: The FSA/DEIS discussion of desert tortoise impacts and the proposed mitigation is wholly inadequate. As an initial matter, the FSA/DEIS fails to adequately address the following issues and the proposed mitigation is inadequate in the following ways:

- The tortoises present in the North Ivanpah Valley are part of the Northeastern Mojave desert tortoise population.
- Northeastern Mojave desert tortoises are an Evolutionary Significant Unit.
- Northeastern Mojave desert tortoises are the most genetically distinct population of California's desert tortoises.
- The Northeastern Mojave tortoise population is declining. Current tortoise densities within the Northeastern Mojave Recovery Unit are the lowest of the six Recovery Units recognized in the Recovery Plan.
- Northeastern Mojave desert tortoises have a limited range in California. The North Ivanpah Valley contains a significant portion of this range in California.
- The proposed project will directly, indirectly and cumulatively impact the Northeastern Mojave population. The impacts include destruction and loss of habitat, take of Northeastern desert tortoises, population fragmentation, and compromised viability.
- The FSA/DEIS proposes mitigating impacts by acquiring habitat and implementing recovery actions in the Eastern Mojave Desert Tortoise Recovery Unit, an area occupied by a different Evolutionary Significant Unit of desert tortoise.

- The mitigations proposed for the project do not meet CESA's fully mitigated standard.
- The mitigations are not adequate to protect any translocated tortoises. For example, the FSA notes that FWS stated that fencing along I-15 is critical before any tortoise translocations are under taken (FSA/DEIS at 6.2-50) however Bio-9 for tortoise does not require that the fencing be in place.
- A better estimate of population should be included, such as a mark-recapture study, to understand the impacts to this population.

c. Other Wildlife: The FSA/DEIS fails to fully analyze impacts to Gila monsters, burrowing owl, migratory birds, raptors, sensitive bird species, bats and other wildlife or to provide alternatives to avoid impacts, or provide measures to minimize impacts.

For example, many state and federal sensitive species are not included in the FSA/DEIS, such as several bat species.

Concerning Gila monsters, the BLM and CEC need to have qualified individuals do more complete surveys of the area for the species before any conclusions are made about population numbers. Populations of this species in the Mojave Desert are fringe populations and could carry unique genetic bottleneck traits that should be researched.

The FSA/DEIS fails to explain what survey methodology, if any, was used in 2007 and 2008 to detect burrowing owls and sign. Information was not provided on burrowing owls that were detected: dates, times, surveyors, behavior; neither was any indication given as to whether burrowing owl surveys were conducted using recommended CDFG protocols (Burrowing Owl Survey Protocol and Mitigation Guidelines. 1993. Prepared by the California Burrowing Owl Consortium.

www.dfg.ca.gov/wildlife/nongame/docs/boconsortium.pdf, accessed November 10, 2009).

The FSA/DEIS provides little analysis of impacts to birds from solar facilities from burning in the sunlight beams, even though this would be the largest such facility ever built, and would present a significant area of contact with super-heated air for migratory and randomly flying resident birds. The FSA/DEIS apparently belittles a study done at Solar 1, Daggett, and does not adequately address the issue of burn kills and collisions.

c. Habitat Loss and Compensatory Mitigation: The compensatory mitigation plan relies on so-called "nesting" to provide compensatory mitigation for loss of habitat and individuals for multiple several plants and animal species. Because the plan described in the FSA/DEIS only addresses desert tortoise habitat, it may in fact be inadequate to provide for the mitigation needs of the many other species that will be impacted by the project. BRW believes that the staff must revisit this issue and explain how the so-called "nesting" of mitigation actually provides for compensatory mitigation

for each species of rare or sensitive plant and animal, including listed species as well as Gila monster, burrowing owl, nesting bird species, badger, and Nelson bighorn sheep.

d. Rare Plants and Special Status Plant Communities

For rare plants and special status plant communities the FSA/DEIS provides too little analysis of impacts, inadequate discussion of alternatives that could avoid impacts, and inadequate information about the proposed mitigation strategy. The FSA/DEIS admits that impacts to Mojave milkweed and Rusby's desert-mallow would be unavoidable and mitigation would not adequately provide protection to these populations.

In addition, the FSA/DEIS fails to identify and analyze the loss of carbon sequestration from plants on the site that will occur under the proposed project.

Special-Status Plant Impact Avoidance and Minimization. The measures provided in the FSA/DEIS are also 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 result in significant impacts under CEQA.
2. Transplantation is not a successful mitigation practice for rare plants since current knowledge of conditions favorable to plant survival are incomplete.
3. The lack of fall surveys under-represents the full suite of rare plant taxa occurring on site - these need to be done on this site and desert project sites.
4. No detail is provided on how the applicant will reconfigure the project features within the northern portions of ISEGS 1 and 3 to avoid areas that support the highest density and diversity of rare plant species.
5. The FSA/DEIS fails to explain how the acquisition of lands for desert tortoise habitat 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.
6. No mitigation measures are provided for the loss of carbon sequestration from desert vegetation types.

e. Limiting the Spread of Invasive Non-Native Plants/Weeds

f. Impacts to National Park Service Lands and Resources:

The FSA/DEIS fails to mitigate or minimize impacts from night lighting, and fails to describe the exact amount of lighting that will be given off, affecting close National Park dark skies. Impacts from groundwater pumping to springs within Mojave National Park are also not adequately addressed.

Cultural Resources and Native American Values 6.3: BRW is concerned that some Native American tribes with interests in this area have not been properly notified.

Land Use 6.5: Multiple use issues are not adequately addresses in the FSA/DEIS, allowing for an exclusive industrial use for an indefinite period of time.

Soil and Water Resources 6.9:

Water Resources: The FSA/DEIS fails to adequately address the hydrology of the groundwater basins that are proposed to be pumped by the applicant and the likely impacts to local springs, including nearby springs on the bajada used by wildlife.

EPA, when analyzing the Ivanpah Valley Aquifer for the Colosseum Mine, was concerned about overdrafts from any water extractions, as the annual recharge is so small (only 800 acre-feet) (Reference: <http://epa.gov/waste/nonhaz/industrial/special/mining/techdocs/gold/goldch3.pdf>). The FSA/DEIS needs to address this.

Soils: Damage to intact desert soils with biotic crusts and the resulting increased siltation during flooding and dust are not adequately analyzed in the FSA/DEIS.

Cumulative Impacts and Growth Inducing Impacts: The Cumulative Scenario omits several large projects and fails to adequately analyze the scope of the cumulative impacts in Ivanpah Valley and surrounding mountains. The FSA/DEIS fails to adequately consider that the California population of the Northeastern Mojave Desert Tortoise Recovery Unit in the northern Ivanpah Valley is unique in California and is at risk from the cumulative effects of this project, the Optisolar solar thermal power project adjacent to ISEGS, the proposed DesertXpress High Speed Passenger Train, and the upgrade of the Eldorado-Ivanpah transmission line in California alone.

In Nevada on the east side of Ivanpah Valley NextLight Renewable Power has two proposed photovoltaic power projects on 7,840 acres of public lands. These lands are also high quality desert tortoise habitat with intact with robust populations of desert tortoise. The FSA/DEIS fails to adequately assess the cumulative impacts to tortoise in this Recovery Unit from these projects and several other solar projects on the Nevada side of the border.

Alternatives Analysis: The FSA/DEIS fails to undertake a full analysis of all alternatives, especially distributed generation. The FSA/DEIS should more fully address the issue of sustainability of heavily impacting public lands resources as opposed to urban rooftop photovoltaic systems on homes and businesses. The FSA/DEIS also fails to compare subsidies that the applicant will be receiving from state and federal sources for utility-scale power production.

4. The identity of each witness sponsored by each party (note: expert witnesses must have professional expertise in the scope of their testimony); the topic area(s) which

each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness:

BRW does not have a witness list at this time due to the short time period for preparation.

5. Topic areas upon which a party desires to cross-examine witnesses, a summary of the scope of such cross-examination, and the time desired for such cross-examination:

BRW requests the opportunity to cross-examine Staff and Applicant witnesses on all topic areas in dispute and witnesses presented by other Interveners. Until we see other parties' prehearing conference statements, witness lists, and exhibit lists, we cannot be certain about the nature or extent of cross-examination.

6. A list identifying exhibits and declarations that each party intends to offer into evidence and the technical topics to which they apply:

In addition to re-submitting exhibits submitted with our earlier comments, BRW anticipates providing a complete list of exhibits along with the final Prehearing Statement.

7. Proposals for briefing deadlines, vacation schedules, and other scheduling matters:

BRW requests that the evidentiary hearing be continued until January 11 and 12, 2010, in order to provide sufficient time for all parties to review the FSA/DEIS and all supporting documents.

8. 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.

The proposed conditions appear to be vague and do not meet the CEQA requirements that mitigation measures be specific, feasible, and enforceable.

9. For the preliminary statement only, for discussion at the November 18 Prehearing Conference:

a) any comments the party wishes to make about this schedule, including any alternative schedule proposals.

BRW requests that the evidentiary hearing be continued until at least January 11 and 12, 2010. If the evidentiary hearings are continued until January 11 and 12, the other deadlines should be continued as well as follows:

Staff and Interveners file and serve opening testimony: **Wednesday, December 30, 2009**

Parties file Final Prehearing Conference Statements: **Tuesday, January 5, 2010**

All parties file rebuttal testimony: **Wednesday, January 6, 2010**

Second Prehearing Conference: **Thursday, January 7, 2010**

Evidentiary hearings: **Monday and Tuesday January 11 and 12, 2010.**

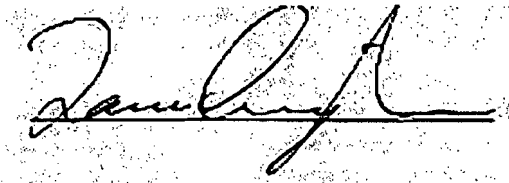
Request for Site Visit by the Commission: At this time the Prehearing conferences and evidentiary hearings on this matter are all now scheduled to take place in Sacramento, California. BRW believes that there is a need for a site visit by Commission in order to fully appreciate the current biological, water, visual, and other resources found on the proposed site for this project, the size of the proposed project within the landscape. CBD therefore requests that at least one site visit by the Commissioners and all parties should be scheduled during the pre-hearing process. In addition, BRW requests that the Commission and hearing officer consider holding at least some of the hearings on this matter in closer proximity to the site to facilitate participation by all parties and share the burden of travel equally.

b) updated information about the remaining steps in the BLM process, including a projected timetable, to assist the Committee in coordinating this AFC process with BLM's process.

BRW has no additional information regarding the BLM timetable at this time.

Dated: November 15, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laura Cunningham", written over a horizontal line. The signature is stylized and cursive.

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DECLARATION OF SERVICE

I, Laura Cunningham, declare that on November 15, 2009, I served and filed copies of the attached Preliminary Preconference Hearing Statement, dated November 15, 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

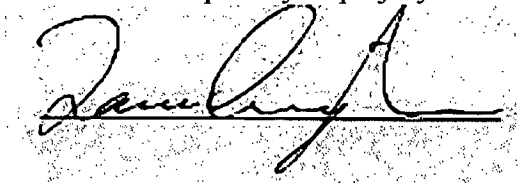
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I declare under penalty of perjury that the foregoing is true and correct.



Laura Cunningham

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