

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

November 16, 2009

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TITLE

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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. CNPS will be represented by Greg Suba at the Initial Prehearing Conference on November 18, 2009.

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

CNPS 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 CNPS 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:

The topic areas that CNPS intends to pursue at the evidentiary hearing but that are not complete at this time include all of the topic areas listed below in Section 3 as disputed issues. Lack of time to fully review the document is the primary reason that CNPS has not yet completed preparation of topics for the evidentiary hearings.

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.

Purpose and Need: The FSA/DEIS fails to address risks associated with global climate change in context including both the need for climate change mitigation strategies (e.g.,

reducing greenhouse gas emissions) and the need for climate change adaptation strategies (e.g., conserving intact wild lands and the corridors that connect them). 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.

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 (to implement the mitigation strategy) in an alternative site away from intact wild lands (to implement the adaptation strategy). The way to maintain healthy, vibrant ecosystems is not to fragment them and reduce their biodiversity. The FSA/DEIS improperly assumes, to the contrary, that the proposed ISEGS plant must be built at this location.

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. Moreover, there is insufficient identification and analysis of impacts to show that the proffered mitigation measures will provide adequate mitigation and the mitigation measures that are discussed are too vague and uncertain, leaving development of critical mitigation plans to a later time.

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.

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) This impact should have been identified and analyzed in the FSA/DEIS.

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 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. 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. Without full information on how this will be accomplished, a full accounting of impacts 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. No mitigation measures are provided for the loss of carbon sequestration from desert vegetation types which are able to sequester atmospheric carbon dioxide (greenhouse gas) 24 hours/day, unlike other vegetation communities which are able to sequester carbon dioxide only during daylight hours.

6. 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 relevés rather than transects or modified Whitaker 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 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. CNPS reserves the right to provide additional comments on this plan and on other aspects of the FSA/DEIS in our Final Prehearing Statement.

Cumulative Impacts and Growth Inducing Impacts: The Cumulative Scenario omits several key projects and fails to adequately analyze the scope of the cumulative impacts in this area.

The FSA/DEIS fails to adequately identify and analyze both the cumulative impacts and the growth inducing impacts which in this instance are closely tied together. While review of the Optisolar application has yet to begin, the high cost of the Eldorado-Ivanpah transmission upgrade provides a compelling economic incentive for approval of the Optisolar project, virtually ensuring yet another solar power project with rare plant occurrences in the northern Ivanpah Valley. Arguably, neither project alone could amortize the cost of the proposed Eldorado-Ivanpah upgrade, which involves the construction of 35 miles of high voltage lines from California into Nevada and separate telecommunications pathways. The cumulative impacts from these two projects on the northern Ivanpah Valley are not adequately assessed and the growth inducing impacts from the approval of one project on the entire area is not adequately assessed or analyzed.

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 across the range of these species and ways to avoid and minimize these impacts. In addition, as noted above, 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.

Cumulative impacts will convert the Northern Ivanpah Valley into a de-facto solar zone and industrial zone. The cumulative impacts to species across the zone and across the stateline into the eastern Ivanpah Valley are not adequately addressed as well as the conversion of a largely natural area – the Ivanpah Valley and dry lake area as a whole—into a largely industrialized area with more than 6 large scale solar plants, the accompanying substations and power lines, glare and heat islands that will be created across the “zone.”

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.

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:

Jim André will present testimony on desert rare plant occurrences and biology as expert witness on behalf of CNPS. Mr. André is the Director of the Sweeney Granite Mountains Desert Research Center, operated by the University of California, Riverside. The Center is located in the Mojave National Preserve.

We have not prepared an estimate of the time required to present direct testimony for this preliminary statement. This information, as well as

information on additional witnesses we may sponsor will be included in our Final Prehearing Statement, to be submitted to the CEC and other parties by December 8, 2009.

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:

CNPS requests the opportunity to cross-examine Staff and Applicant witnesses on all topic areas in dispute and witnesses presented by other Intervenors. 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 and CNPS reserves the right to cross-examine any witnesses presented. CNPS anticipates that the scope of cross-examination will include at least the following:

Biological Resources: CEC Staff, CDFG staff, FWS staff, BLM staff, and Applicant witnesses regarding assessment of impacts to biological resources and appropriate avoidance, minimization, and mitigation strategies.

Alternatives: CEC Staff, BLM Staff, Applicant witnesses regarding identification and selection of alternatives for review; the analysis of those alternatives; and the analysis of the feasibility of alternative sites.

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

CNPS intends to provide a complete list of exhibits along with the Final Prehearing Statement.

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

CNPS 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. Additionally, CNPS requests that the opening briefs following the evidentiary hearings should be due no earlier than 3 weeks after the close of the evidentiary hearings.

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.

CNPS has not had sufficient time to review all of the Proposed Conditions of Certification for enforceability, comprehension, and consistency.

CNPS reserves the right to provide proposed modifications for each of the conditions and additional proposed conditions at a later stage in this process.

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.

CNPS 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 Intervenors 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.**

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.

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

Dated: November 16, 2009

Respectfully submitted,



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DECLARATION OF SERVICE

I, Gregory K. Suba , declare that on November 16, 2009, I served and filed copies of the attached *Preliminary Prehearing Conference Statement of Intervenor California Native Plant Society*, dated November 16, 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

Attn: Docket No.

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



Greg Suba

Sent via email to: sdeyoung@brightsourceenergy.com; tstewart@brightsourceenergy.com; jcarrier@ch2m.com; jdh@eslawfirm.com; e-recipient@caiso.com; tom_hurshman@blm.gov; Raymond_Lee@ca.blm.gov; dfgpalm@adelphia.net; tgulessarian@adamsbroadwell.com; mjconnor@westernwatersheds.org; gloria.smith@sierraclub.org; joanne.spalding@sierraclub.org; gssilliman@csupomona.edu; jbasofin@defenders.org; atomicoadranch@netzero.net; gsuba@cnps.org; thansen@cnps.org; granites@telis.org; jbyron@energy.state.ca.us; jboyd@energy.state.ca.us; pkramer@energy.state.ca.us; jkessler@energy.state.ca.us; dratliff@energy.state.ca.us; publicadviser@energy.state.ca.us; docket@energy.state.ca.us

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